

CHRONOLOGY OF EVENTS

- Over the last few years, there has been an advent of communal and retributive bulldozing of homes and private properties of accused persons by States.
- These demolitions have been justified as an action against encroachment or under the pretext of unauthorised construction.
- Such state-sanctioned acts of punitive violence have also been endorsed by several politicians & majoritarian supporters, who have hailed them as a form of “instant justice.”
- It began with the bulldozer demolitions in Delhi’s Jahangirpuri following communal violence which spread to other parts of the country.
- The communal violence that ensued in Nuh, Haryana, in 2023, ended with the local administration demolishing a large number of homes in the neighbourhood.
- Similarly, communal riots in Khargone, Madhya Pradesh, led to the demolition of houses and businesses owned by Muslims, who were deemed to be “alleged rioters.”
- According to a 2024 estimate by the Housing and Land Rights Network (HLRN), authorities at the local, State, and central levels demolished 153,820 homes in 2022 and 2023, displacing over 738,438 individuals across rural and urban areas of the country.
- A report published in February by Amnesty International revealed that authorities in four BJP-ruled States and one Aam Aadmi Party-governed State demolished 128 structures—primarily belonging to Muslims—between April and June 2022.
- The court’s verdict was delivered in response to a batch of petitions challenging demolition drives conducted by several States, including Uttar Pradesh, Rajasthan and Madhya Pradesh.
- These petitions were clubbed with another petition filed by Jamiat Ulama-i-Hind, a Muslim organisation, challenging the demolitions carried out in Delhi’s Jahangirpuri in 2022.
- On September 2, 2024 the two-judge Bench conveyed the intention to frame binding pan-India guidelines to address the petitioners’ concerns by invoking its inherent powers under Article 142 of the Constitution.
- Supreme Court on November 13, 2024 underscored that it is unconstitutional to demolish a person’s property without adhering to the due process of law, simply on the grounds of their alleged involvement in a crime.

THE VERDICT OF THE APEX COURT

- A Bench of Justices B.R. Gavai and K.V. Viswanathan issued a slew of guidelines to prevent illegal and retributive bulldozing of homes and private properties of accused persons by States.
- Earlier, the top court had extended its interim order halting demolitions across the country without express permission except for encroachments on public land or unauthorised structures.
- The court asserted that constitutional ethos strictly prohibits the demolition of properties belonging to individuals, whether accused or convicted, without due process of law.
- It further underscored that such exercise of arbitrariness by government officials strikes at the very heart of the “rule of law” and undermines public trust.
- Cautioning against the executive usurping the judiciary’s role by preemptively punishing the accused.
- Justice Gavai observed, “The executive cannot become a judge and decide that a person accused is guilty and, therefore, punish him by demolishing his residential/commercial property/properties. Such an act of the executive would be transgressing its limits.”
- The judges acknowledged that demolition drives not only target the alleged perpetrators of an offence but also impose a form of “collective punishment” on their families by destroying their place of dwelling.

“If his spouse, children, parents live in the same house or co-own the

- Same property, can they be penalized by demolishing the property without them even being involved in any crime only on the basis of them being related to an alleged accused person? As is well known, a pious father may have a recalcitrant son and vice versa,” he candidly observed.
- He stressed that the “true motive” behind such actions appeared to be a deliberate attempt to punish the accused without affording them the opportunity for a fair trial in a court of law.

DIRECTIVES ISSUED

- The top court issued comprehensive guidelines aimed at fostering greater institutional accountability. However, it clarified that these directives would not apply to unauthorised constructions on public lands—such as roads, water bodies, or forested areas—or to demolitions mandated by a court.
- To curb potential State impunity, the judges specified that officials responsible for carrying out

illegal demolitions would face disciplinary action, contempt charges, and monetary penalties.

- Moreover, it directed that compensation for wrongful demolitions be directly recovered from such erring officials.
- Recognising the need to provide affected parties with adequate time to arrange alternative housing and challenge the demolition order, the court mandated that no demolition drive should proceed without a 15-day prior notice
- Such notice should be served on the house owner by registered post and must provide details of the nature of the unauthorised construction, details of specific violations and grounds warranting such a coercive action.
- The designated authority has been ordered to extend an opportunity of personal hearing to the owner.
- The minutes of such a meeting are directed to be duly recorded with the final order detailing the contentions of the parties including whether the unauthorised construction is compoundable, or whether there is a need to undertake demolition of the entire structure
- Additionally, the concerned authority must prepare a detailed inspection report, signed by at least two witnesses, before proceeding with the demolition drive.
- The judges further directed the authorities to ensure that the entire demolition process is thoroughly videographed.
- Following this, a detailed demolition report must be prepared, specifying the names of the police officials and personnel involved in the operation.
- The report was also ordered to be placed before the Municipal Commissioner and uploaded on a digital portal to ensure public accessibility.

SETTING UP JURISDICTION & ACCOUNTABILITY

- According to Mr. Alok Prasanna Kumar, Co-Founder and Lead at the Vidhi Centre for Legal Policy in Bengaluru, the guidelines possess the legal teeth necessary to put an end to the practice of extra-judicial demolition drives.
- “The verdict will compel officials to think twice before blindly following the orders of the political class to demolish houses to “send a message”, he notes.
- He further highlights that holding government officials personally liable will serve as a strong deterrent against such punitive measures.
- There is, however, some skepticism that a culture of impunity may still persist, particularly given that the court’s previous attempts to frame guidelines addressing issues like hate speech and mob lynching have not yielded significant results.
- Ultimately, the effectiveness of these measures will depend on how swiftly & effectively the district

courts & High Courts implement these directions and ensure their compliance

ARTICLE 142

- Article 142 titled ‘Enforcement of decrees and orders of the Supreme Court and orders as to discovery, etc.’ has two clauses.
- Article 142(1) reads: The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
- Article 142(2) reads: “Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.”
- Supreme Court invoked Article 142(1) under which it was empowered to pass any order necessary to do complete justice in any matter pending before it.

Important instances when Article 142 was invoked

- Bhopal Gas tragedy case: The Supreme Court awarded a compensation of \$470 million to the victims and held that “prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142.”
- Babri Masjid demolition case: The Supreme Court ordered framing of a scheme by the Centre for formation of trust to construct Ram Mandir at the Masjid demolition site in Ayodhya.
- Liquor sale ban case: The Supreme Court banned liquor shops within a distance of 500 metres from National as well as State highways in order to prevent drunken driving.
- When a draft Constitution was prepared by the drafting committee and placed before the Constituent Assembly, Article 142 was actually numbered as Article 118.
- It was placed before the Constituent Assembly on May 27, 1949 for debate but got adopted on the same day without any debate possibly because everyone agreed that in order to ensure judicial independence, the highest court of the country must be empowered with plenary power to do complete justice.
- The Supreme Court in May 2022, exercised the power conferred on it under Article 142 of the Constitution to order the release of former Prime Minister Rajiv Gandhi assassination case convict A.G. Perarivalan

- In the early years of the evolution of Article 142, the general public and the lawyers both lauded the Supreme Court for its efforts to bring complete justice to various deprived sections of society or to protect the environment.
- Stories of miraculous changes brought about to the lives of ordinary people — especially those who, on account of poverty, illiteracy, and ignorance were unable to seek remedies from the courts — were innumerable.
- One of the important instances of application by the Supreme Court of Article 142 was in the Union Carbide case — Supreme Court, went to the extent of saying that to do complete justice, it could even override the laws made by Parliament by holding that, “prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142.”
- By this statement the Supreme Court of India placed itself above the laws made by Parliament or the legislatures of the States.
- Fortunately, this statement was toned down later in Supreme Court Bar Association v. Union of India . It was said therein that the said article could not be used to supplant the existing law, but only to supplement the law.
- In recent years, the Supreme Court has been foraying into areas which had long been forbidden to the judiciary by reason of the doctrine of ‘separation of powers’, which is part of the basic structure of the Constitution.
- Unfortunately, these judgments have created an uncertainty about the discretion vested in the court to invoke Article 142 where even fundamental rights of individuals are being ignored.
- The court, in its anxiety to do justice in a particular case , has failed to account for the far-reaching effects of its judgments, which may result in the deprivation of the rights of a multitude of individuals who are not before the court at that time.
- For example , Allocation of coal blocks granted from 1993 onwards was cancelled in 2014 without even a single finding that the grantees were guilty of any wrongdoing. The cancellation carried with it a penalty of ₹295 per tonne of coal already mined over the years.
- Article 142 had necessarily to be invoked. The individuals were not heard on their particular facts, but only their associations were heard. The result was devastating, so far as these lessees were concerned.
- While the notification by the central government prohibited liquor stores along National Highways only — those abutting the National Highways — the Supreme Court put in place a ban of a distance of 500 metres by invoking Article 142.
- Additionally, and in the absence of any similar notification by any of the State governments, the court extended the ban to State highways as well.
- As a result of the order, thousands of hotels, restaurants, bars and liquor stores were forced to close down or discontinue the sale of liquor, resulting in lakhs of employees being thrown out of employment
- It may be noted that the total percentage of accidental deaths caused due to drunken driving, as found by the court from the statistics of 2015, was only 4.2% as against the 44.2% caused by over-speeding.
- The Supreme Court had itself held that the right to employment is a basic right traceable to Article 21. However, in its order banning the sale of alcohol along highways, it made no reference to the loss of employment to lakhs of people, a direct consequence of the order.
- In the Babri Masjid demolition case: A two-judge bench passed an order which was in the teeth of an earlier three-judge bench decision of the Supreme Court, between the same parties, which was binding on it.
- Despite the decision of the larger bench, the court was prepared to hold, while invoking Article 142, that in view of the long pendency of the case for 25 years, it would direct that the trial would now stand transferred from Rae Bareilly to Lucknow.
- The judgment did not merely supplement the law but supplanted it by reason of the binding nature of the three-judges bench decision, which was *res judicata* between the parties.
- The trial was in fact nearing completion at Rae Bareilly; it would now take at least two years for the examination of a few hundred witnesses at Lucknow before conclusion of the trial, as the charge of conspiracy has also to be gone into.
- The Supreme Court has perceived its role as one which would require it to ‘wipe away every tear from every eye’, but perhaps it is time that the use of this vast, unlimited power included checks and balances.
- While one ponders over the possible solution to this conundrum, one cannot lose sight of the fact that today, we have a court of 34 judges who sit in thirteen divisions of two or three to deliberate on the seminal legal issues of the day.
- India has thirteen Supreme Courts as each division represents, by itself, the Supreme Court of India, and each bench is independent of the other.
- Therefore experts proposed that all cases invoking Article 142 should be referred to a Constitution Bench of at least five judges so that this exercise of discretion may be the outcome of five independent judicial minds operating on matters having such far-reaching impact on the lives of people.

- Experts also propose that in all cases where the court invokes Article 142, the government must bring out a white paper to study the beneficial as well as the negative effects of the judgment after a period of six months or so from its date.
- The Supreme Court has held that it has unfettered powers under Article 142 of the Constitution to enlarge the scope of hearing in a particular case to render substantive justice depending on its facts & circumstances.
- A Bench of Justices A.K. Ganguly and Deepak Verma said: “The Supreme Court, while hearing the matter finally and considering the justice of the case, may pass such orders which the justice of the case demands and in doing so, no fetter is imposed on the court’s jurisdiction except any express provision of the law to the contrary, and normally this court cannot ignore the same while exercising its power under Article 142.”
- Justice Ganguly said: “The provisions of Article 142 have been construed by this court in several judgments. However, one thing is clear: that under Article 142, this court, in exercise of its jurisdiction, may pass such decrees & may make such orders as is necessary for doing complete justice in any case or matters pending before it.
- In the Yomesh Bhatt case, life imprisonment by a trial court in a murder case was confirmed by the Gujarat High Court – At the appeal against the High Court judgment, appellant submitted that he was entitled to argue not only for lesser punishment but also for acquittal and the Supreme Court was not bound by its initial order restricting its notice only on the question of determination of the offence.
- The Bench agreed with the appellant and said “having regard to the constitutional provision under Article 142, we do not think that this court at the time of final hearing is precluded from considering the controversy in its entire perspective and in doing so, this court is not inhibited by any observation in an order made at the time of issuing the notice.”
- The Bench said: “An order which was passed by the court at the time of admitting a petition does not have the status of an express provision of law. Any observations which are made by the court at the time of entertaining a petition by way of issuing notice are tentative observations. We are, therefore, entitled to consider the plea of the appellant for acquittal despite the fact that at the time of issuing notice, it was limited in terms of the order dated July 27, 2009.
- The court however made it clear that, this cannot be a universal practice in all cases.”
- In this case, the Bench held that it would fall under IPC Section 304 Part II (culpable homicide not amounting to murder for which punishment is 10 years) and set aside the High Court

judgment. Moreover it does not fall under the IPC Section 302. Since the appellant had already suffered imprisonment for 11 years 2 months, the Bench directed that he be released forthwith.

INVOKING ARTICLE 142 IN WOMEN ISSUES

- A Constitution Bench said it could use this extraordinary discretionary power to grant divorce by mutual consent to couples trapped in bitter marriages.
- The Court said it could use Article 142 to quash pending criminal or legal proceedings, be it over domestic violence or dowry, against the man or woman
- The Bench said the Supreme Court could grant divorce on the grounds of an “irretrievable breakdown of marriage” if the “separation is inevitable and the damage is irreparable”.
- Under the Hindu Marriage Act, irretrievable breakdown of marriage is not yet a ground for divorce.
- In its judgment, there was a word of caution that the grant of divorce would not be a “matter of right, but a discretion which is to be exercised with great care... keeping in mind that ‘complete justice’ is done to both parties.”
- Several factors would be considered by the Supreme Court before invoking Article 142 in matrimonial cases, including duration of marriage, period of litigation, the time the couple has stayed apart, the nature of pending cases, and attempts at reconciliation.
- The Court will have to be satisfied that the mutual agreement to divorce was not under coercion.
- In India, while divorcees have doubled in number over the past two decades, the incidence of divorce is still at 1.1%, with those in urban areas making up the largest proportion.
- But the divorce numbers do not tell the whole story; there are many women, particularly among the poor, who are abandoned or deserted.
- Census 2011 revealed that the population which is “separated” is almost triple the divorced number.
- The court exercised its extraordinary power under Article 142 of the Constitution to open the doors of IIT Dhanbad to Atul Kumar a student, the son of a daily wager and a member of a Scheduled Caste community, who missed admission to the Indian Institute of Technology (Dhanbad) due to his inability to pay ₹17,500 as fees on time before the admission portal closed. (Sept 2024)

SOME OTHER ISSUES

- While the Court’s judgment is no doubt welcome, there are a number of issues that it raises. The first is delay. This pattern of vigilante demolition of homes — what scholars refer to as “domicide” — has been taking place for at least three years now.
- It had begun in the wake of the Citizenship Amendment Act-National Register of Citizens

protests, and has multiplied across the country since then. Many of these demolitions were challenged in courts including the Supreme Court, but it is only now that the Court chose to act.

- This raises serious questions about the Court's delay in addressing such a foundational threat to the rule of law. But also, it raises questions about redress and compensation for past acts, now ruled to be illegal.
- In its judgment, while the Court held that state officials responsible for illegal demolitions would be held personally liable for compensation and redress, it failed to clarify how its judgment would apply to all the demolitions that had taken place so far, and how it would aid the victims of such demolitions, who have been rendered homeless. This is a significant omission.
- Second, it is important to understand the two-faced nature of the state on the issue of demolitions. While politicians and Ministers would celebrate these demolitions as having delivered instant justice, with a view to dog-whistling to their constituencies, the municipal authorities who were actually responsible for the demolitions and had to defend them in Court, would invoke the much more prosaic justification of "illegal" or "irregular" constructions.
- The state never argued in Court that it was engaged in vigilante, or retributive, demolitions.
- Thus, when the Court framed the main question in the case as being "whether it is permissible for the State to demolish the home of someone merely because they have been accused of an offence", it was setting up a straw man as nobody had ever claimed that such a thing was permissible.
- The actual claim was that the invocation of municipal building laws and "irregular construction" was a facade to legally justify what were, in effect, targeted and punitive demolitions.
- At one point in the judgment, it noted that if, for example, one home in a locality was singled out for demolition while surrounding homes were left untouched, that would be an indication of mala fide state action.
- At another point, it discussed how the demolition of an individual's home affected their (innocent) family as well, and that "collective punishment" was impermissible under Indian law.
- As both these events actually happened in the recent past, it is unclear why the Court used the language of hypotheticals rather than addressing the material reality before it.
- The judgment, thus, reads like an indirect approach to the actual problem at hand, and reflects a hesitation on the part of the Court to identify the problem in clear terms.
- In its main verdict, Supreme Court's objective was to prevent the state from using demolitions as a

political weapon by introducing two crucial requirements into the procedure: of transparency, and of due process.

- There would have to be a personal hearing, and even after the order of demolition became final, the affected person had a right of appeal, which again required the state to stay its hand for at least 15 days.
- As the entire purpose of "bulldozer raj" was to serve a form of instant "mob" justice at the instance of the state (regardless of guilt or innocence).
- The Court also went an extra mile and mandated transparency requirements in order to prevent "backdating" of notices
- Most importantly, it introduced a "proportionality" requirement into the process: municipal officials were required to explain, in writing, why the extreme step of demolition was the only option available, and why, for example, regularisation (through payment of compounding fees), or demolishing only a part of the structure, was not possible
- This requirement, would make municipal officials think twice before engaging in instant demolitions. The Court gave this teeth as well, by holding that in cases of illegal demolitions, erring officers would be personally liable.
- These Guidelines, thus, represent a sincere and committed effort by the Court to check the menace of "bulldozer raj".
- It now remains to be seen how effective they will be going forward, and much of this will depend on how other Benches will implement these Guidelines, when fresh cases come to the Court.
- In previous cases involving lynching and hate speech, for example, we have seen detailed guidelines.
- But these have been ineffective because the Court has refrained from following up on & enforcing its own judgment when violations take place.
- The Court made an exception in its judgment for structures on certain kind of public land (such as abutting a railway track, or a road).
- A look at this exception makes it clear that it would exclude from its protective ambit, slums and informal settlements where the most vulnerable and marginalised sections of society live
- If anything, it is such individuals living in permanent precarity who are most in need of the Court's protection.
- There is also no reason why requirements of notice & proportionality should not apply to such individuals as well.
- The partial application of its judgment shows that there is a long way to go, and struggles still to engage in, when it comes to securing a meaningful

right to shelter and protection from evictions for all the citizens of this country.

- Justice Gavai highlighted the profound impact of these demolitions, pointing out that targeting a property affects not only the accused but also their innocent family members, violating the fundamental right to shelter under Article 21 of the Constitution. He underscored that due process is indispensable to ensure fairness and uphold legal protections.
- Justice Gavai warned against executive overreach, cautioning that the state cannot act as both “judge and jury,” inflicting punishment without a fair trial.
- Victims of the so-called bulldozer action on the properties of the minorities and marginalised sections, expressed dissatisfaction with the apex court’s judgment. They want compensation to rebuild their houses and punishment for those responsible for the demolition.
- They are still living under a plastic and tarpaulin roof. Nobody is ready to give them a house on rent

ETHNIC CLEANSING

- The Punjab & Haryana High Court made a rare interference by taking judicial notice suo motu and stayed the demolition drive.
- The High Court’s question whether an exercise of ethnic cleansing is being carried out by the State.
- Ethnic cleansing is not defined by the Indian Penal Code or international law.
- Its first use is attributed to a UN appointed Commission of Experts (1992) chaired by Prof. Cherif Bassiouni, a father figure in international criminal law, mandated to look into the war crimes in former Yugoslavia.
- In its final report, the five member commission referred to ethnic cleansing as “... a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.”
- The commission enumerated state actions like arbitrary arrest and detention, destruction of property, forcible removal, displacement, deportation of civilian population and extrajudicial executions in the list of coercive practices that constitute ethnic cleansing.
- In the Maneka Gandhi case (1978), the Supreme Court had expanded the scope of procedure established by law by ruling that such procedure has to be “fair, just and reasonable, not fanciful, oppressive or arbitrary”, thereby introducing the principle of “procedural due process”.
- Despite such an expansion of the scope of Article 21, it is a constitutional travesty that scant regard for such basic principles is demonstrated by elected governments.

THE ANTITHESIS OF RULE OF LAW

- While the rule of law is declared a basic feature of the Constitution, *rule by law* is the antithesis of all that is represented by rule of law. The rule of law is a government run by law, not men.
- The roots of the idea of a rule of law can be seen in Article 39 of Magna Carta (1215) that declares that “No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.
- This civilisational journey has since then found its reflection in Article 21 of Indian constitution and had its contours expanded by the Supreme Court.
- This progressive journey gets barbarically reversed when rule by law comes into play.
- Rule by law is when the law is used as an instrument of suppression, oppression and social control in the course of implementing a political agenda.
- While the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement, 2019, prescribe directives to address this issue from a humanitarian perspective, multiple court cases in the higher judiciary have dealt with demolition issues in a piecemeal manner over the years.
- The assessment of the surrounding circumstances must strike a balance between state action and the right to adequate housing and resettlement while bearing in mind that such violations have come to be systemic.
- There is also a need to analyse data on demolitions that have taken place over the last few years to identify clear patterns and better understand the existing gaps and deficiencies in the process.
- The procedural guidelines should be structured in a phased manner, to add multiple checkboxes at each stage which need to be ticked before any adverse or irreversible step is taken.
- A reasoned notice for demolition, including information about land records and resettlement plans, should be widely publicised, giving ample time for those concerned to analyse the situation, seek legal advice and respond to the show-cause notice.
- An independent committee, appointed by the State government, including judicial and civil society representatives, should review the proposed demolition (particularly when a large number of houses in a neighbourhood are proposed to be demolished) and provide technical assistance to the affected parties about their rights and options.
- Affected persons must be engaged in discussions about alternative housing options and compensation.

- There should be a requirement for the presence of government officials who are not a part of the authority demolishing the construction.
- The time for the demolition should be pre-decided and surprise demolitions should be cause for punitive action against the authority.
- Rehabilitation, adequate and proper temporary or permanent rehabilitation should be provided to the persons concerned to ensure that they are not left homeless
- A speedy grievance redress mechanism needs to be established under every law that allows for demolition to afford the affected persons a chance to challenge the decisions that may have been taken at any stage.
- Remedies such as compensation, restitutions and return to the original home must be carved out within the law.
- Municipal laws, which empower authorities to carry out such demolitions, usually provide complete impunity to officials under the 'good faith' clauses housed under such laws. Such clauses prevent the initiation of judicial action against those who unscrupulously carry out demolitions.
- Referring to the glorification, grandstanding, and justification of the demolition action, the bench said, "Now, whether this should happen in our country... Whether the Election Commission can be noticed so that some kind of a thing can be laid down?" At the outset, a counsel appearing for the petitioners said even after the September 2 hearing demolition was carried out in the country.
- The bench directed every municipal/local authority to assign a designated digital portal, within three months starting November 14, in which details regarding the serving of the notice, the reply, the show cause notice and the order passed would be available.
- Both Uttar Pradesh and Madhya Pradesh have also passed laws — the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act and The Prevention of Damage to Public and Private Property and Recovery of Damages Act 2021— that "legalise" such demolitions.



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