

Demolition drive and Rule of Law

June 27, 2022

Manifest Pedagogy-

Demolitions in U.P. are antithetical not only to Article 300A, but to the spirit of the Constitution as a whole. It infringes the victim's fundamental rights for equality under Article 14, freedoms under Article 19, and the right for dignified life under Article 21 of the Constitution. By demolishing the houses of the citizens, it's actually bulldozing hard-earned freedoms.

In News: The Supreme Court recently asked the Uttar Pradesh government to not carry out demolition activities "except in accordance with law"

Placing it in Syllabus: Polity

Static Dimensions

- What is the Rule of Law?
- About Article 300A

Current Dimensions

- Background of the issue
- Issues associated with the Government's move
- Various related Court Judgements
- Way Forward

Content

Background of the issue-

- Protests broke out in the cities of Prayagraj and Kanpur in Uttar Pradesh over the controversial remarks made by former BJP spokesperson against Prophet Muhammad.
- Days after protests, the civil administration of the cities ordered the demolition of "illegal properties"

belonging to the protesters who allegedly incited violence in the cities.

- Some former judges and senior advocates wrote to Chief Justice of India N V Ramana urging him to take suo motu cognisance of the demolition of houses of protesters in Uttar Pradesh.

Issues associated with the Government's Action-

- Violates Constitutional right under **Art 300A**, against Fundamental right under **Art 21**– Right to life.
- Razing down buildings without giving affected persons prior notice or hearing them first was a violation of the Rule of Law, a basic feature of the Constitution.
- Exhorting officials to take such action against those guilty that it sets an example so that no one commits a crime or takes law into their hands in future sets a very wrong precedent.
- Coordinated manner in which the police and development authorities have acted lead to the clear conclusion that demolitions are a form of collective extra judicial punishment, attributable to a state policy which is illegal.
- A plea by Jamiat Ulama-i-Hind in the Supreme Court contended that the “demolition of properties carried out by the Uttar Pradesh government in retaliation was in breach of the laws enacted by the state legislature itself”.
 - **Section 10 of the Uttar Pradesh (Regulation of Building Operations) Act** of 1958 which mandates that a building should not be demolished without giving the affected parties “a reasonable opportunity of being heard
 - **Section 27 of the Uttar Pradesh Urban Planning and Development Act, 1973** requires the affected person to be heard and given 15 days’ prior notice before proceeding with the demolition. The Act allows a

person aggrieved with the order of demolition to appeal within 30 days.

- **Article 300A** is a “potent” right.

Rule of Law – Meaning-

- The rule of law” was popularized in the 19th century by British jurist A. V. Dicey.
- It implies that every person is subject to the law, including persons who are lawmakers, law enforcement officials and judges.
- As per **Article 13 of the Indian Constitution**, it refers to the law of the land.
- To put it simply, Rule of law means that no one is above the law and that everyone, regardless of their position or status, is subject to the authority of ordinary courts of law.
- The concept of the rule of law also stipulates that no one should be subjected to arbitrary or harsh treatment.
- The word ‘law’ in rule of law signifies that an individual or a community must be controlled by law rather than a man or ruler.
- All three branches of government are subservient to the Constitution, i.e the Judiciary, the Legislature, and the Executive and all are not only bound by the Constitution’s provisions but also must act in accordance with them.
- In **Chief Settlement Commissioner Punjab v. Om Prakash** case it was ruled that the authority of the law courts to test all administrative action by the standard of legality and Rule of Law is the central and most distinguishing feature of our constitutional system.

About Article 300A-

- Article 300A was inserted shortly after the Emergency through the **Constitution (44th Amendment) Act of 1978**.
- No person can be deprived of his property without the

authority of law.

- The rights could be curtailed, abridged or taken away only by law and not by an executive fiat.
- Article 300A does not provide for payment of any compensation even when there is deprivation of property
- It only ordains that no person shall be deprived of his property save by authority of law, a Law means a valid law.
- Such a law will therefore be subject to other provisions of the Constitution, e.g., Articles 14, 19(1)(g).

Court Cases related to the issue-

- **Indian Handicrafts Emporium** case, has held that right to property was also a “constitutional right”.
- In **T Plantation Pvt. Ltd. Vs. State of Karnataka**, 2011 the SC held that public purpose was a precondition for deprivation of a person of his property under Article 300A of the Constitution and the right to claim compensation was also inbuilt in that Article.
- **Maneka Gandhi vs Union of India (1978):**
 - The Supreme Court, while interpreting the scope of Article 21 of the Constitution, stated that the “due process of law” is an integral part of “procedure established by law”, explaining that such procedure must be fair, just and reasonable.
 - If the procedure prescribed by law is fanciful, oppressive and arbitrary in nature then it should not be considered procedure at all and thus not all the requirements of Article 21 would be satisfied.
- **Municipal Corpn., Ludhiana v. Inderjit Singh (2008):**
 - In this case, the apex court categorically stated that if the requirement of giving notice is provided under a municipal legislation, then this requirement must be necessarily complied with.
 - The Apex Court of the country has made it

unambiguously clear that no authority can directly proceed with demolitions, even of illegal constructions, without providing notice and an opportunity of being heard to the occupant.

- **In Chief Settlement Commissioner Punjab v. Om Prakash**, the Supreme Court of India stated that the concept of the rule of law is the central and most distinguishing feature of our constitutional system, which means, in this case, the authority of the law courts to test all administrative action by the standard of legality.
 - The Court went on to say that the rule of law doctrine rejects the idea of a dual state, in which government action is maintained in a privileged position of immunity from legal supervision.