
THE RIGHT TO HOUSING AS AN UNENUMERATED FUNDAMENTAL RIGHT: TESTING INDIA'S EVICTION JURISPRUDENCE AGAINST ARTICLE 21

Ms. Shamayeeta Dey, LLM (Human Rights, AIALS, Amity University, Noida, Uttar Pradesh).¹

ABSTRACT

The Supreme Court has told India, more than once and in increasingly forceful language, that the right to shelter lives inside Article 21. It said so in 1985, when it linked pavement dwellers' evictions to the right to livelihood. It said so again in 1996, dropping the hedge entirely and calling shelter a fundamental right in its own name. And it said so with real teeth in November 2024, when it labelled bulldozer demolitions of mere criminal suspects' homes "wholly unconstitutional" and imposed nationwide procedural guardrails notice, hearing, video graphed compliance before any structure could legally come down. The problem this essay takes on is not that the doctrine is thin. It's that the doctrine is selectively deployed. Courts reach for the full force of Article 21 when a demolition can be framed as extrajudicial punishment of a person the state has singled out and reach for almost nothing when the exact same deprivation happens to a slum settlement labelled "encroachment." The families losing their homes are, in both cases, losing exactly the same thing. Only one of them gets the benefit of a constitutional bench calling it unconstitutional. Drawing on Olga Tellis, Chameli Singh, Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, Sudama Singh, and the 2024 demolition guidelines, this essay traces how a single, well-established doctrine of unenumerated constitutional rights has come to protect some evictees far more than others, not because the law distinguishes between them, but because the label attached to the bulldozer does.

In doing so, the essay resists the temptation to treat this as a simple story of judicial failure. A right that expands sharply for the politically visible and stalls for the politically invisible is not, this essay argues, functioning as an unenumerated fundamental right, it is functioning as a discretionary courtesy.

Keywords: Right to Shelter; Article 21; Unenumerated Fundamental Rights; Eviction Jurisprudence; Encroachment Doctrine; Bulldozer Justice

¹ LLM (Human Rights, AIALS, Amity University, Noida, Uttar Pradesh).

INTRODUCTION

Here's a fact that should bother you more than it seems to bother the Supreme Court is the same institution that called bulldozing a suspect's house “wholly unconstitutional” in November 2024 has spent decades watching identical demolitions happen to slum dwellers without blinking.² Same act. Same loss. Same family standing in the rubble of what used to be a kitchen. Different legal reaction entirely.

The Court has never lacked the doctrine to fix this. In 1985, in *Olga Tellis*, it told Bombay's pavement dwellers that evicting them without due process wasn't just bureaucratically sloppy but was a deprivation of livelihood serious enough to touch the right to life itself.³ By 1996, in *Chameli Singh*, it stopped hedging and said the quiet part out loud: shelter is a fundamental right, full stop, not a policy nicety the state gets to dispense when convenient.⁴ And then, almost thirty years later, when bulldozers started showing up at the homes of people merely accused of crimes, not convicted, sometimes not even charge-sheeted, the Court suddenly rediscovered its spine. Justice Gavai's bench didn't mince words: demolishing someone's home as extrajudicial punishment is unconstitutional, and here are mandatory nationwide rules to make sure it doesn't happen again.⁵

So the doctrine exists. It's been sitting there since 1985. What's missing is any consistency about when the Court decides to use it.

Because here's what actually happens on the ground: mass slum clearances keep going, often displacing not one accused person but thousands of families at once, and they get filed under an entirely different heading “encroachment removal” a label that somehow makes the exact same constitutional question disappear.⁶ Nobody calls a slum demolition “extrajudicial punishment,” even when it functions exactly like one: no real notice, no real hearing, no real chance to be heard before the machines show up. The 2024 guidelines that now protect a criminal suspect's house don't protect a squatter's house, even though both are people losing shelter without process, and even though the Court itself has already said, in *Olga Tellis*, that

² In re Directions in the Matter of Demolition of Structures, (2024) SCC Online SC 3492 (India).

³ *Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 SCC 545 (India).

⁴ *Chameli Singh v. State of U.P.*, (1996) 2 SCC 549 (India).

⁵ *Supra* note 1.

⁶ *Ahmedabad Mun. Corp. v. Nawab Khan Gulab Khan*, (1997) 11 SCC 121 (India).

shelter is life. The label changes. The constitutional injury doesn't.

That's the argument of this essay: India doesn't have a right-to-shelter problem. It has a right-to-shelter inconsistency problem a doctrine robust enough to stop a bulldozer when the target is politically sympathetic, and strangely quiet when the target is just poor. What follows traces exactly how that split happened, case by case, and asks whether the 2024 guidelines can or should be stretched to cover the demolitions everyone still isn't talking about.

THE DOCTRINAL FOUNDATION: HOW SHELTER GOT INTO ARTICLE 21 IN THE FIRST PLACE

Olga Tellis is one of those judgments that reads more radical the more you sit with it. The petitioners were pavement and slum dwellers in Bombay, about to be evicted under the Bombay Municipal Corporation Act's summary eviction powers, and their argument audacious for 1985 was that eviction from the only shelter you have is functionally eviction from your ability to earn a living, and eviction from your livelihood is eviction from life itself under Article 21.⁷ The Court didn't reject this. It accepted the logic almost entirely, holding that the procedure for eviction had to be fair and reasonable, which meant, at minimum, notice and an opportunity to be heard before anyone's home came down.⁸ What it stopped short of was saying the eviction itself was unconstitutional the state could still evict, it just had to do it properly. That distinction you can take the house, but you have to follow a process first becomes the load-bearing wall of everything that follows, for better and for worse.

Eleven years later, *Chameli Singh* dropped the caution entirely. This wasn't a case about pavement dwellers negotiating for procedural fairness; it was land acquired for a Harijan Basti housing scheme, and the Court used the occasion to declare, in language with no hedge in it at all, that the right to shelter is a fundamental right implicit in Article 21 not merely four walls, but the minimum conditions necessary to live with dignity: safe structure, clean water, sanitation, light, and access to livelihood.⁹ Read against *Olga Tellis*, this is a genuine escalation. Shelter stopped being a procedural entitlement attached to eviction and became a substantive right you could argue you were owed, independent of any pending demolition.

⁷ *Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 SCC 545, 552 (India).

⁸ *Id.* at 572.

⁹ *Chameli Singh v. State of U.P.*, (1996) 2 SCC 549, 555 (India).

And then Nawab Khan Gulab Khan, decided the same year, immediately supplies the counterweight that keeps this doctrine from ever becoming as strong as it sounds.¹⁰ The case dealt squarely with “encroachment” structures built on public land without authorization and the Court, while nodding to Olga Tellis's procedural requirements, made clear that encroachers don’t get to claim a permanent right to occupy public land simply because they’ve been there a while; the state's power to reclaim its own land survives, so long as removal follows a fair procedure and, where feasible, rehabilitation is considered.¹¹ On its face this sounds like a reasonable balance. In practice, it created the exact fork this essay is about: one line of cases (Olga Tellis, Chameli Singh) building shelter up as something close to inviolable, and another (Nawab Khan) quietly carving out an entire category of “encroachment” where the same right gets diluted into “fair procedure, when convenient” rather than “a right the state has to seriously reckon with.” Nobody built these two lines to conflict. They just do, every time a bulldozer shows up somewhere the state calls its own land.

THE PROCEDURAL PATCH: WHAT SUDAMA SINGH TRIED TO FIX, AND WHY IT WASN'T ENOUGH

By 2010, the gap between “shelter is a fundamental right” and “encroachers can still be cleared with minimal fuss” had produced enough Delhi slum demolitions that the Delhi High Court finally tried to close it at least procedurally. *Sudama Singh v. Government of NCT of Delhi* dealt with slum clusters along the Yamuna riverbed, cleared for “beautification” and infrastructure projects without any meaningful attempt to find out who actually lived there or what would happen to them afterward.¹² The Court's fix was specific and, for once, enforceable: before any slum demolition, the authorities had to conduct a survey of residents and produce a concrete rehabilitation plan, not a vague promissory gesture toward resettlement somewhere, someday.¹³

This is real progress, and it’s worth not undervaluing it. But notice what kind of progress it is. *Sudama Singh* didn’t touch the underlying question of whether encroachment demolitions deserve the same substantive scrutiny as Olga Tellis-style evictions. It added a paperwork requirement survey first, plan second layered on top of a doctrine that still treats the underlying

¹⁰ *Ahmedabad Mun. Corp. v. Nawab Khan Gulab Khan*, (1997) 11 SCC 121 (India).

¹¹ *Id.*

¹² *Sudama Singh v. Gov't of NCT of Delhi*, 210 DLT 605 (Del. HC 2010).

¹³ *Id.*

demolition as presumptively lawful. A rehabilitation plan is not the same thing as a hearing on whether the demolition should happen at all; it assumes the demolition is happening and asks only that the state be organized about where people go afterward. Compare that to what the 2024 bulldozer guidelines demand for criminal suspects actual notice, an actual opportunity to be heard, actual video-graphed compliance, a genuine chance to contest the demolition itself before it happens and the disparity in what “due process” means depending on who you are becomes hard to unsee.¹⁴

NOVEMBER 2024: THE COURT FINALLY GETS ANGRY¹⁵

Whatever else can be said about *In re Directions in the Matter of Demolition of Structures*, it is not a timid judgment. The bench, led by Justice B.R. Gavai, was responding to a genuinely grim pattern: state governments demolishing the homes of people accused not convicted of crimes, often within days of an FIR being filed, with the demolition functioning as a punishment the criminal justice system was never asked to impose. The Court called this exactly what it is: state action masquerading as municipal enforcement while actually operating as extrajudicial punishment, a direct assault on the presumption of innocence and on Article 21 itself.¹⁶ The remedy wasn’t a suggestion. It was a mandatory, pan-India procedural framework of fifteen days written notice, a personal hearing, a reasoned order, videography of the entire demolition, and personal liability for officials who skip the process.¹⁷

Read in isolation, this is exactly the kind of decisive, protective jurisprudence this essay has been arguing Indian courts are capable of. Read against everything that came before it, it’s also a tell. The Court found the will to intervene decisively the moment the demolitions in question could be framed as punishment of an individual the state had targeted a framing that maps cleanly onto due process and presumption-of-innocence language judges are comfortable with. It has never, in forty years of “encroachment” jurisprudence, found the same will for demolitions that displace far more people, far more routinely, simply because those demolitions get filed under municipal land law instead of criminal law. The 2024 guidelines are excellent. They are also proof that the Court can move fast and mean it which makes its silence everywhere else look less like doctrinal limitation and more like a choice about whose home

¹⁴ Supra note 1.

¹⁵ *In re Directions in the Matter of Demolition of Structures*, (2024) SCC Online SC 3492 (India). ¹⁶ Id. ¹⁷ Id.

counts as a constitutional emergency.

THE ACTUAL PROBLEM: THE LABEL IS DOING THE CONSTITUTIONAL WORK

Strip away the labels and compare the underlying facts. A family loses the roof over their head. They receive little or no meaningful notice. They have no real opportunity to be heard before the structure comes down. They lose access to whatever livelihood was tied to that location. This is the fact pattern in both a “bulldozer justice” case and a routine slum “encroachment” clearance. The only variable that changes is what the demolition gets called and yet that label is doing all the constitutional heavy lifting, deciding whether the Chameli Singh line of cases gets invoked in full force or whether Nawab Khan’s more permissive “fair procedure, where feasible” standard quietly takes over instead.¹⁶

This isn’t a hypothetical asymmetry. Riverbank and railway-land slum clearances continue to be carried out under state “encroachment” and municipal statutes that face nothing resembling the 2024 guidelines mandatory notice-hearing-videography regime; Sudama Singh’s survey-and-rehabilitation requirement, itself limited to Delhi and not uniformly enforced even there, remains the strongest procedural check most of these families will ever see.¹⁹ Nobody is arguing these settlements are lawfully occupying the land they usually aren’t, and this essay doesn’t pretend otherwise. But Olga Tellis already established, forty years ago, that legal title to the land was never the point; the point was that losing shelter without fair process is itself a constitutional injury, regardless of whether you had a deed. That logic doesn’t stop applying just because the person losing their home is poor rather than merely accused of a crime.

WHAT AN ACTUALLY CONSISTENT STANDARD WOULD LOOK LIKE

The fix here isn’t complicated, even if the politics of implementing it are. The 2024 guidelines already exist as a template notice, hearing, reasoned order, documented compliance and there is no principled reason those requirements should apply only when the state’s stated justification is a criminal accusation. If the underlying constitutional injury (loss of shelter without process) is identical, the procedural floor protecting against it should be identical too, regardless of whether the demolition gets filed under a criminal-adjacent justification or a

¹⁶ Compare *Chameli Singh v. State of U.P.*, (1996) 2 SCC 549 (India), with *Ahmedabad Mun. Corp. v. Nawab Khan Gulab Khan*, (1997) 11 SCC 121 (India). ¹⁹ *Supra* note 11.

municipal land-management one.

The obvious objection is administrative burden of mass encroachment clearances involve far more structures and far more people than the individual bulldozer-justice cases the 2024 guidelines were built around, and requiring individual notice-and-hearing for every structure in a slum clearance is a genuinely harder logistical problem than doing it for one accused person's house. That's a fair practical concern, and Sudama Singh's survey-and-rehabilitation model is actually a reasonable answer to it a collective process (survey, resettlement plan, a real hearing on that plan) rather than an individualized one, but a process with actual teeth, applied uniformly, rather than the current patchwork where Delhi has Sudama Singh and most of the rest of the country has whatever the local municipal body feels like doing.¹⁷ The administrative-burden objection explains why the form of due process might differ between an individual case and a mass clearance. It does not explain why the mass clearance should get no comparable process at all which, in practice, across most of the country outside Delhi's specific precedent, is closer to what currently happens.

CONCLUSION

The right to shelter in India isn't underdeveloped. It's inconsistently enforced, which is arguably worse, because it means the Court has already done the hard doctrinal work declaring shelter fundamental in *Chameli Singh*, building real teeth in the 2024 guidelines and simply hasn't extended that same seriousness to the people who need it most: not the individual whose case makes headlines, but the thousands of families cleared off riverbanks and railway land every year under a label that makes the same constitutional question disappear. Bringing eviction jurisprudence into line with itself doesn't require a new right. It requires the Court to notice that a bulldozer doesn't ask what you're accused of before it takes your kitchen and neither should the Constitution.

¹⁷ Id.

BIBLIOGRAPHY

A. Constitutional Provisions

1. India Const. art. 21.

B. Cases

1. Olga Tellis v. Bombay Mun. Corp., (1985) 3 S.C.C. 545 (India).
2. Chameli Singh v. State of U.P., (1996) 2 S.C.C. 549 (India).
3. Ahmedabad Mun. Corp. v. Nawab Khan Gulab Khan, (1997) 11 S.C.C. 121 (India).
4. Sudama Singh v. Gov't of NCT of Delhi, (2010) 210 D.L.T. 605 (Delhi H.C.).
5. In re Directions in the Matter of Demolition of Structures, (2024) S.C.C. OnLine S.C. 3492 (India).

WEBLIOGRAPHY

1. Defer Demolitions By 15 Days, Personal Liability of Officials for Violations: Read Supreme Court's Directions Against 'Bulldozer' Actions, LiveLaw, <https://www.livelaw.in/topstories/defer-demolitions-by-15-days-personal-liability-of-officials-for-violations-readsupreme-courts-directions-against-bulldozer-actions-275068>.
2. India's Top Court Slams States Over "Bulldozer Justice," Razing of Illegal Homes That Allegedly Targets Muslims, CBS News, <https://cbsnews.com/news/india-bulldozer-justicerazing-illegal-homes-alleged-bias-muslims>.
3. SC Upholds Due Process in Prayagraj Demolition Case, Drishti IAS, <https://www.drishtias.com/daily-updates/daily-news-analysis/sc-upholds-dueprocess-in-prayagraj-demolition-case>.
4. SC Halts Demolition Drive in Jahangirpuri by Passing Status Quo, to Hear Matter on Thursday, Deccan Herald, <https://www.deccanherald.com/amp/story/india%2Fsc-haltsdemolition-drive-in-jahangirpuri-by-passing-status-quo-to-hear-matter-on-thursday1102261.html>.