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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **THE CRITICAL NEED FOR PROPORTIONALITY IN ADMINISTRATIVE DISCRETION: LESSONS FROM BULLDOZER JUSTICE**

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## **ABSTRACT**

*This study addresses the pressing issue of abuse of administrative discretion by authorities in Indian governance, particularly in the context of bulldozer justice. This practice reflects a concerning trend where administrative actions occur without proper recourse to legal procedures or adherence to the principle of proportionality, undermining the Separation of Powers as outlined in the Indian Constitution. While intended to combat illegal encroachments, these extrajudicial measures often violate fundamental rights and due process, thereby affecting marginalized communities. Such actions not only compromise the Rule of Law but also diminish public trust in legal institutions. This research aims to illuminate the implications of unchecked administrative authority and the urgent need for reforms that restore accountability. By exploring the intersection of administrative discretion, individual rights, and legal principles, the study seeks to provide a framework for ensuring that administrative actions are just, proportionate, and respectful of constitutional mandates. Ultimately, it advocates for a legal environment where administrative decisions are subject to rigorous scrutiny, thereby reinforcing the Rule of Law and protecting the rights of all citizens.*

**Keywords:** *Bulldozer Justice, Administrative Discretion, Principles of Proportionality*

## **INTRODUCTION**

In recent years, there has been a sharp increase in the number of demolition drives carried out by the state using bulldozers to demolish illegal constructions and establishments. Although on the face of it, it seems justified to eradicate illegal encroachments, these demolition drives serve as a facade of harsh punitive measures taken by the government to provide instant retributive actions against the accused involved in a crime which had provoked a public outcry. 'Bulldozer', a mere industrial machine, has become an extra-judicial tool in Indian governance.



This practice started in UP since 2017 when a power statement was given by the CM that the government will bulldoze house of anyone who even thinks of committing a crime against women and weaker sections of the society<sup>1</sup> and now it is being exercised by other States as well. In 2020, the demolition actions were initiated against the buildings of gangster Vikas Dubey and MLA Mukhtar Ansari.<sup>2</sup> In 2023, the house of an 18-year-old teenager was demolished on an allegation of spitting in Mahakal procession<sup>3</sup> which depicts the inhuman and unreasonable approach taken by the authorities just to convey strong political messages against the criminals or in most cases, the marginalized groups.

The administrative authorities have the discretionary powers, granted through the municipal and regional laws, to determine illegal encroachments, to establish grounds to exercise their demolition and to carry out procedure for representation of the affected parties. The State Governments are exercising these discretionary powers in a wrongful and arbitrary manner thus undermining the Rule of Law. By neglecting due process such as the right to a fair hearing and the opportunity for individuals to present their case, such actions erode public trust in legal institutions and can lead to arbitrary decision-making. This growing concern over the abuse of administrative discretion has underscored the critical importance of adherence to the *Principles of Proportionality*. Proportionality requires that any action taken by authorities must not only aim to achieve a legitimate objective but also ensure that the means employed are appropriate, necessary, and balanced in relation to the desired outcome. This principle acts as a safeguard against excessive or arbitrary measures. In this way, it strengthens the rule of law and reinforces the framework that regulate the exercise of administrative discretion.

## I. ADMINISTRATIVE DISCRETION IN INDIAN FRAMEWORK

### 1.1 Meaning of Administrative Discretion and Judicial Interpretation

Discretion, in simple terms, means “liberty to act at pleasure”<sup>4</sup>. Administrative discretion refers

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<sup>1</sup> First Post Explainers, ‘Bulldozer Baba, Bulldozer Mama, bulldozer justice’: How the modest machine has become the buzzword in Indian politics, FIRST POST (Apr. 21, 2022) <https://www.firstpost.com/politics/bulldozer-baba-bulldozer-mama-bulldozer-justice-how-the-modest-machine-has-become-the-buzzword-in-indian-politics-10580201.html> last visited on May 29, 2025.

<sup>2</sup> Haidar Naqvi, *Kanpur gangster Vikas Dubey’s house demolished*, HINDUSTAN TIMES (Jul 05, 2020), <https://www.hindustantimes.com/india-news/kanpur-gangster-s-house-demolished/story-ruwgIfK6QoPI6AjRAkhNN.html> last visited on May 29, 2025.

<sup>3</sup> Anand Mohan J, *Teen who spent 5 months in jail for ‘spitting on procession’ gets bail as witnesses ‘didn’t support prosecution’s case’*, THE INDIAN EXPRESS (Jan 16, 2024), <https://indianexpress.com/article/india/madhya-pradesh-teen-spitting-procession-bail-ujjain-9110639/> last visited on May 29, 2025.

<sup>4</sup> Chambers Twentieth Century Dictionary.



to the level of freedom that public administrators have when making decisions or carrying out their responsibilities. This often comes into play when government laws are vague or ambiguous. In practical terms, discretion can be understood as situations where determining facts is left to the judgment of administrative officials. Discretion is granted by statutes that instruct an official to use their authority based on beliefs, expectations, or tendencies rather than on solid, verifiable facts.<sup>5</sup> Justice Coke in the famous case of *Susannah Sharp v. Wakefield*<sup>6</sup> observed that, “discretion is a science or understanding to discern between falsity and truth, between right and wrong, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to their wills and private affections.”<sup>7</sup>

The practice of judicial review for administrative actions and decision-making has its roots in Roman law and the Administrative law of the United Kingdom. Indian courts have developed this system by drawing from British and German Administrative Law, incorporating mechanisms like the Ombudsman to ensure checks and balances on administrative actions.<sup>8</sup> The Indian Constitution provides strong protections for individual rights and grants courts greater authority to address executive shortcomings. Judiciary has played a crucial role in safeguarding the liberties and freedoms of the people in India throughout its constitutional history.

Under Articles 32 and 226 of the Constitution<sup>9</sup>, citizens have the right to file Writ Petitions in the Supreme Court and High Courts if they believe that administrative actions violate constitutional provisions. This framework establishes the Supreme Court as a key defender and guardian of citizens' fundamental rights.<sup>10</sup> In *Basappa v. Nagappa*<sup>11</sup>, the Supreme Court observed that judicial review is an essential administrative function, rooted in the fundamental principles of prerogative writs. A comparison of English and Indian law shows that the scope of judicial review in India, as outlined in Articles 32 and 226, is quite similar to that found in England regarding prerogative writs.

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<sup>5</sup> A. N. Holcombe, *Review of Administrative Powers over Persons and Property* by E. Freund, 44 POL. SCI. Q. 265 266 (1929).

<sup>6</sup> *Susannah v. Wakefield*, 1 S. 5 (Pa. 1841) (India).

<sup>7</sup> *Id.*, ¶ 40.

<sup>8</sup> Dr. Faisal Ali Khan, *The Law of Public Administration and Discretionary Powers: A Critically Appraisal to the Judicial Review*, 4(4) INT'L J. L. & HUMAN, 928, 934 (2021).

<sup>9</sup> INDIA CONST. art 32 § 226.

<sup>10</sup> *Romesh Thappar v. State of Madras*, A.I.R. 1950 SC 124 (India).

<sup>11</sup> *Basappa v. Nagappa*, AIR 1950 SC 124 (India).

## 1.2 Administrative Discretion Abuse: Patterns and Practices

Administrative discretion abuse occurs when decision-makers act with dishonest intentions or corrupt motives. This term encompasses actions driven by personal animosity or a desire for revenge against those affected by these decisions.<sup>12</sup> While proving the abuse of power can be challenging due to the broad language often found in statutes, any administrative action rooted in insincerity can be deemed invalid. Thus, abuse of administrative discretion can happen in the form of: *mala fides*, *improper purpose*, *irrelevant consideration* and *colourable exercise of power*.<sup>13</sup>

The legitimacy of public decision-making hinges on the principle that official actions must be free from improper motives such as malice or personal self-interest. For instance, in the case of *Pratap Singh v. State of Punjab*<sup>14</sup>, the Supreme Court highlighted the concept of *mala fides* when it struck down administrative actions motivated by personal grievances. The court ruled that misuse of power, driven by personal vendetta, constituted *mala fides*. The rise in discretionary power among administrative authorities has led to increased instances of such abuse. If an authority exercises its power for reasons unrelated to the statute's intent, courts can declare that action invalid or *ultra vires*. Moreover, administrative discretion must align with the original intent of the statute. While courts can check the motives behind actions, distinguishing between *mala fides* and legitimate administrative decisions is crucial.<sup>15</sup>

## II. RECENT PHENOMENON OF 'BULL DOZER ACTIONS' IN ADMINISTRATIVE DISCRETION

Bulldozers are big machines that have been essential for clearing and demolishing buildings for quite some time. In India, bulldozers, often referred to as JCBs, are frequently used to demolish slums as part of urban renewal projects and to take down makeshift homes and stalls built on encroached government land. However, their use in the country has sparked a lot of controversy, leading to protests, clashes, and political blame. The concept of 'Bulldozer Justice' has raised concerns about its alignment with the rule of law. There have been numerous cases where demolitions occurred without any prior notice to those affected, even though

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<sup>12</sup> Srishti Vaishnav and Karn Mahawa, *Judiciary: A Ladder between Inevitable Administrative Discretion and Good Governance*, 2 (2) INT'L J. MULTIDISCIP. APPROACH & STUD., 63, 66 (2015).

<sup>13</sup> *Id.*, p. 67.

<sup>14</sup> *Pratap Singh v. State of Punjab*, AIR 1964 SC 72 (India).

<sup>15</sup> *S.R. Venkataraman v. Union of India*, 1979 SCR (2) 202 (India).

providing notice is a basic requirement of municipal laws. There is no legal basis in penal laws that allows for the destruction of a criminal's property. Politicians often justify these demolitions by claiming that the residents were involved in criminal activities, but such actions lack legal support.<sup>16</sup> If the homes were deemed illegal, they should have been demolished much earlier and across all areas with illegal constructions. The timing and locations of these demolitions seem selective and questionable.<sup>17</sup> Even if one were to argue that these actions followed the law, applying it only to certain individuals undermines core principles of the Indian Constitution, particularly *Articles 13, 14, 21, and 300A*.<sup>18</sup> Demolishing homes of those accused without a fair hearing or proof of guilt goes against the fundamental principles of natural justice, particularly '*Audi Alteram Partem (right to be heard)*.'

## 2.1 Legality of Bulldozer actions in comparison to Constitutional Laws

The rule of law asserts that everyone, regardless of their status, is subject to the same legal standards. Article 13 of Indian Constitution emphasizes that the rule of law is fundamental to the legal system, ensuring that all administrative actions can be scrutinized by the courts. However, it's crucial to recognize that laws must not be applied in a capricious or unjust manner. Historical examples, such as Nazi Germany, demonstrate how legal frameworks can be manipulated to facilitate horrific actions like the Holocaust. Similarly, apartheid in South Africa embedded racial discrimination within its legal structures. This highlights the necessity for laws to be fair and free from arbitrary enforcement.

In the case of *Som Raj v. State of Haryana*<sup>19</sup>, the Supreme Court stated that the rule of law essentially means the absence of arbitrary power. The landmark ruling in *Maneka Gandhi v. Union of India*<sup>20</sup> expanded this concept, asserting that legal procedures must be '*just and fair*.' Recently, the Supreme Court emphasized that due process must be followed in demolition cases, yet many of these actions have seemed arbitrary and selective, often targeting homes belonging to individuals from minority communities or those accused of participating in riots. The practice of demolishing homes without providing an opportunity for residents to defend themselves violates principles of natural justice. The Supreme Court has affirmed that such

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<sup>16</sup> Abhinav Sekhri, *Demolitions: Rule by Law or Rule of Law?* THE INDIA FORUM (Oct 04, 2023) available at: <https://www.theindiaforum.in/law/demolitions-rule-law-or-rule-law> last visited on Jun 03, 2025.

<sup>17</sup> *Id.*

<sup>18</sup> INDIA CONST. art. 13, 14, 21 § 300A.

<sup>19</sup> *Som Raj v. State of Haryana*, 1990 AIR 1176 (India).

<sup>20</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (India).



actions contravene the right to equality enshrined in Article 14 of the Constitution. Notably, legal scholars like A.V. Dicey equate the rule of law with equality before the law.<sup>21</sup> Thus, the targeted demolition of properties belonging to alleged criminals or marginalized groups not only breaches the rule of law but also undermines the fundamental right to equality and justice. The demolition of homes and businesses in these areas also violates the right to shelter and livelihood, which is a part of Right to Life under Article 21. It also undermines Article 14 and 19. In the famous case of *Minerva Mills v. Union of India*<sup>22</sup>, Chief Justice YV Chandrachud, giving the majority opinion observed that,

“Three Articles of our Constitution, and only three, stand between the heaven of freedom into which Tagore wanted his country to awake and the abyss of unrestrained power. They are Articles 14, 19 and 21, the golden triangle affords to the people of this country an assurance that the promise held forth by the preamble will be performed by ushering an egalitarian era through the discipline of fundamental rights, that is, without emasculation of the rights to liberty and equality which alone can help to preserve the dignity of the individual.”<sup>23</sup>

Thus, it can be derived from the evolution of judgments that bulldozer actions attack to the egalitarian ethics.

### **III. PRINCIPLES OF PROPORTIONALITY AND ITS NEED IN ADMINISTRATIVE DISCRETION**

#### **3.1 Introduction to Principles of Proportionality**

Proportionality has become the benchmark for courts around the world when it comes to assessing restrictions on fundamental rights. This shift has prompted many scholars to refer to this time as the ‘*age of proportionality*’.<sup>24</sup> While there is a general agreement on the overall framework of the proportionality test, its specific application varies from country to country. Courts have embraced this global principle but have also tailored it to reflect local contexts, giving proportionality a unique character in each legal system. The proportionality test serves as a practical guide for evaluating whether an action that restricts a fundamental right is constitutional.<sup>25</sup> It stipulates that any measure limiting rights must have a legitimate purpose

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<sup>21</sup> ABHINAV SEKHRI, *supra* note 16, ¶ 45.

<sup>22</sup> *Minerva Mills v. Union of India*, AIR 1980 SC 1789.

<sup>23</sup> *Id.*, ¶ 55.

<sup>24</sup> Vicki Jackson, *Constitutional Law in an Age of Proportionality*, 124 YALE L.J., 3094, 3100 (2015).

<sup>25</sup> AHARON BARAK, *CONSTITUTIONAL RIGHTS AND THEIR LIMITS*, 3 (2<sup>nd</sup> ed. 2012).

and use appropriate means that are both suitable and necessary to achieve that goal. Additionally, it emphasizes finding a fair balance between the significance of that goal and the negative impact of the limitations on rights.

In *Union of India v. G. Ganayutham*<sup>26</sup>, the Supreme Court had observed how reasonableness and proportionality are important parameters in checking the discretion exercised by the administrative authorities. The Supreme Court of India has stated that, in cases where essential rights are not involved, the country will use the 'Wednesbury unreasonableness standard' from the UK as an alternative. However, the Court has not taken a clear stance on whether the principle of proportionality should apply when fundamental rights are violated. This was highlighted in the significant case of *Omkumar Vs. Union of India*<sup>27</sup>, where the Court's decision hinted at the possibility of using proportionality as a basis for rulings. Since 1950, Indian courts have frequently applied the proportionality test to assess the constitutionality of laws. This test is outlined in Article 19 and has been consistently utilized. In more recent rulings, the Supreme Court has empowered judges to evaluate whether the restrictions imposed are excessive, rather than simply opting for the least restrictive option.<sup>28</sup> Five principles of proportionality laid down by the Supreme Courts, specially elaborating in the cases of *KS. Puttaswamy (Retd.) and Anr. v. Union of India*<sup>29</sup> and *Ramesh Chandra Sharma v. State of UP*<sup>30</sup> are:

1. Sanctioning of the action by law;
2. Legitimate Objective and Aim of the Action
3. Interference to fundamental rights must be proportionate to such interference;
4. Means to achieve the objective, i.e. the action must be suitable.
5. Sufficient Safeguards to the abuse of the rights by such interference.<sup>31</sup>

By applying the test of proportionality, courts will invalidate decisions made by administrative bodies when there is a lack of reasonable connection between the intended goal and the means used to achieve it.<sup>32</sup> Similarly, if the punishments handed down by these bodies or lower courts are excessively harsh compared to the actual misconduct, the courts will intervene. This means that if an administrative action appears to discriminate unfairly, it could be overturned by the court. The principle of proportionality requires the court to assess both the benefits and

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<sup>26</sup> *Union of India v. G. Ganayutham*, (2006) 65 (1) Crim. L.J. 174 (India).

<sup>27</sup> *Omkumar Vs. Union of India*, AIR 2000 SC 3689 (India).

<sup>28</sup> M COHEN-ELIYA AND I PORAT, PROPORTIONALITY AND CONSTITUTIONAL CULTURE (2013).

<sup>29</sup> *KS. Puttaswamy (Retd.) and Anr. v. Union of India*, AIR 2018 SC (SUPP) 1841 (India).

<sup>30</sup> *Ramesh Chandra Sharma v. State of UP*, [2023] 2 S.C.R. 422 (India).

<sup>31</sup> This fifth prong of proportionality was added in the case of *Ramesh Chandra*; See, *supra* note 30.

<sup>32</sup> *Rajesh Yadav v. State of UP*, (2019) 3 UPLBEC 1853 (India).

drawbacks of an administrative decision. An action will only be deemed valid if the benefits clearly outweigh the downsides. If the response is not relevant with the issue at hand, the court is likely to quash it.

### **3.2 The Role of Proportionality in Mitigating Bulldozer Justice**

The principles of proportionality are crucial in evaluating actions that restrict fundamental rights, especially in contentious practices like bulldozer justice. At its core, proportionality demands that any government action limiting rights must serve a legitimate purpose and utilize appropriate means that are both effective and necessary to achieve that goal.<sup>33</sup> This approach ensures that the balance between the intended outcome and the impact on individuals' rights is fair and just. In the context of bulldozer justice, where demolitions are often carried out without prior notice or due process, the principles of proportionality can be a powerful tool for legal scrutiny. Many demolitions target marginalized communities and are seen as politically motivated, raising questions about their legitimacy. If a demolition is deemed necessary to address illegal encroachments, the proportionality test asks whether such drastic measures are truly warranted or if less harmful alternatives could achieve the same end. For instance, if the goal is to remove illegal structures, the authorities should consider whether there are other ways to manage this issue, like providing legal avenues for residents to contest their status or offering relocation options rather than resorting to immediate demolitions. When bulldozers are employed selectively, particularly against vulnerable populations, they not only breach the right to shelter but also violate the principles of fairness and equality enshrined in the Constitution. Moreover, the application of proportionality emphasizes that laws should not be enforced arbitrarily.<sup>34</sup> The Supreme Court has reiterated that actions taken must align with the principles of justice and fairness, ensuring that no group is disproportionately affected. In essence, applying these principles can help to restore balance, ensuring that the enforcement of laws is not only effective but also equitable, respecting the rights and dignity of all individuals involved.

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<sup>33</sup> *Supra* Note 28.

<sup>34</sup> *Id.*



## CONCLUSION

In conclusion, the increasing trend of demolition drives, particularly the controversial use of bulldozers as a punitive tool, poses significant challenges to the principles of the Rule of Law and Natural Justice in India. While these actions are often justified as measures against illegal encroachments, they frequently operate outside the bounds of legality and fairness. The state's exercise of administrative discretion in these cases reflects an alarming disregard for due process, impacting public trust in legal institutions. This erosion of faith is particularly evident among marginalized communities, who disproportionately bear the brunt of such actions. The fundamental principles of proportionality and natural justice must be reasserted to protect individual rights against arbitrary administrative actions. Proportionality requires that any state action, especially those that restrict fundamental rights, not only serves a legitimate purpose but also utilizes means that are necessary and balanced. The bulldozer actions often fall short of these criteria, leading to severe consequences for individuals without fair hearings or due process. The judiciary has consistently emphasized the importance of fairness, equality, and the necessity of providing a platform for those affected to present their cases. By integrating the principles of proportionality into judicial scrutiny, courts can challenge disproportionate and arbitrary administrative measures. The ongoing misuse of such power not only threatens the foundational tenets of democracy but also jeopardizes the rights and dignity of individuals. It is imperative that lawmakers and administrative bodies recognize the potential consequences of their actions and align them with the constitutional principles designed to safeguard citizen rights. In essence, the discussion around bulldozer justice serves as a stark reminder of the need for a legal framework that genuinely upholds the principles of justice and fairness. Ensuring adherence to these principles is essential not only for the restoration of public trust but also for the integrity of the legal system itself.