

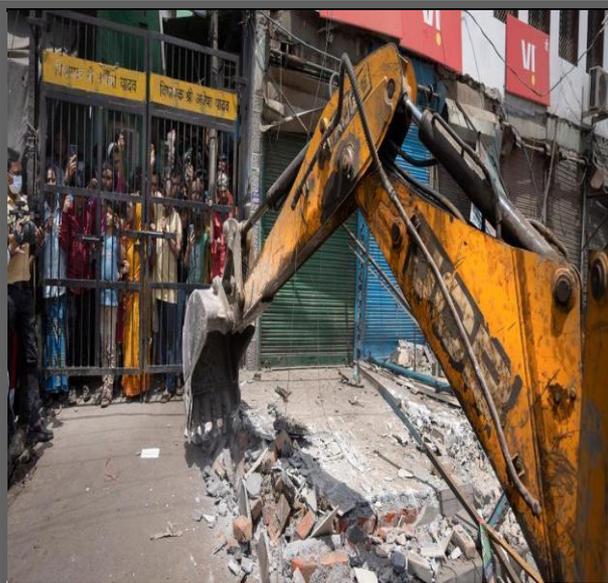
## THE RISE OF COMMUNALISM IN INDIA: HOW LAWFARE AND DEMOLITIONS ARE TURNING THE STATE OF EXCEPTION INTO THE NEW NORMAL

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*(Views expressed in the brief are those of the author, and do not represent those of ISSI)*



In November 2019, while addressing a gathering of Kashmiri Pandits in New York, India's Consul General had received plenty of flak when advocating for the adoption of an "Israeli Model" in Kashmir.<sup>1</sup> In his remarks, Sandeep Chakravorty, India's highest-ranking diplomat in New York City, had advocated for the use of settler-colonial tactics that have been used in the West Bank and East Jerusalem. However, recent developments have shown that evictions and demographic changes have become the norm not only in Kashmir but in the rest of India as well.

In order to create space for an influx of settlers, occupying powers must rely on a program of dispossession and disenfranchisement. In 2020 alone, 114 houses were destroyed in Indian-held Kashmir during military operations.<sup>2</sup> The rise of communication blackouts in Kashmir means that obtaining the latest figures is becoming increasingly arduous. While the revocation of Kashmir's special status on August 5, 2019 was touted by the Indian government as the first step in integrating Jammu & Kashmir with the rest of India, the valley continues to exist in a 'state of exception', a space where political and economic disturbances warrant the suspension of constitutional order.<sup>3</sup>

1 "Anger over India's Diplomat Calling for 'Israel Model' in Kashmir," Al Jazeera, November 22, 2019, <https://www.aljazeera.com/news/2019/11/28/anger-over-indias-diplomat-calling-for-israel-model-in-kashmir>.

2 Sidiq, Nusrat, "Military Operations Rendering People Homeless, Hopeless in Kashmir," Anadolu Agency, June 22, 2021, <https://www.aa.com.tr/en/asia-pacific/military-operations-rendering-people-homeless-hopeless-in-kashmir/2281499>.

3 Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, University of Chicago Press ed. (Chicago: University of Chicago Press, 2005), 5-8.

According to the Italian philosopher Giorgio Agamben, “the state of exception is neither external nor internal to the juridical order, and the problem of defining it concerns precisely a threshold, or a zone of indifference, where inside and outside do not exclude each other but rather blur with each other.”<sup>4</sup> In this regard, the abrogation of Kashmir’s status on August 5, 2019, has not only failed to normalize the affairs of the region but has in fact normalized the utilization of similar measures in the rest of India as the lines have begun to blur. For example, the use of evictions and destruction of property has recently become the premier tool through which the government tries to forward its agenda of marginalizing India’s Muslims. In Khargone, Madhya Pradesh alone, the district administration, with the blessing of the Madhya Pradesh government, demolished 16 houses and 29 shops.<sup>5</sup> While district administrations in Madhya Pradesh and Uttar Pradesh have claimed that they are only acting against illegal constructions, some of these houses had been built under government schemes.<sup>6</sup> Ajay Singh, a Congress leader in Madhya Pradesh lambasted these egregious violations of the constitution in the state assembly by asking, “The entire Madhya Pradesh is asking if the Rowlatt Act, which provided for no appeal, no justification and did not allow even a lawyer, and which was scrapped during the British period, has come back into force again?”<sup>7</sup> It is clear that this wave of demolitions is meant to intimidate India’s Muslims and to label them as outsiders who do not belong in its urban localities.



Source: Twitter – Arfa Khanum Sherwani, Senior Editor, TheWire.in, May 10<sup>th</sup>, 2022.

## The Use of Lawfare

‘Lawfare’ refers to the use of laws and penal codes to impose the will of the government on its subordinates through the means of legalized violence. These legal instruments are intended to

<sup>4</sup> Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2008), 23.

<sup>5</sup> Anurag Dwary and Akhil Kumar, “House Built Under PM’s Scheme Razed After Madhya Pradesh Violence,” NDTV.com, April 15, 2022, <https://www.ndtv.com/india-news/khargone-house-built-under-pm-awas-yojana-among-those-demolished-in-volence-hit-madhya-pradesh-town-2891663>.

<sup>6</sup> Ibid.

<sup>7</sup> “How Did MP Govt Complete Probe in a Day and Demolish 90 Houses in Khargone, Asks Ajay Singh,” *The Economic Times*, April 20, 2022, <https://economictimes.indiatimes.com/news/politics-and-nation/how-did-mp-govt-complete-probe-in-a-day-and-demolish-90-houses-in-khargone-asks-ajay-singh/articleshow/90960713.cms?from=mdr>.

legitimize the use of force as a coercive measure.<sup>8</sup> These measures can include the destruction of property that can be declared illegal overnight to punish those who resist the will of the state and to induce demographic changes in order to influence electoral outcomes. However, lawfare in India is not only limited to the use of bulldozers, but it has also materialized in other avenues such as the use of sedition laws to clamp down on dissent and the adoption of laws that prevent interfaith marriages.<sup>9</sup>

### **Anti-encroachment or anti-Muslim?**

The distinction between state-led violence and lawfare is that the latter is buttressed by legal instruments that can be used to marginalize those who challenge the government. District administrations and state governments in India are arguing that those properties that have been razed had been illegally constructed.<sup>10</sup> While this may be true, it is important to remember that the state has created numerous hurdles for Muslims and other minorities to not only own property but to regularize its legal status as well. The rise of housing discrimination and Hindutva politics furthers the ghettoization of India's poor Muslims, who are often pushed into localities with poor living standards. Furthermore, the construction of illegal settlements is by no means a solely Muslim problem. In fact, Hindu houses and shops do not face the same level of scrutiny and even in the latest wave of communal violence, Hindu-owned structures remained mostly untouched, while their Muslim neighbors faced the wrath of the state.<sup>11</sup>

The reason such tactics are extremely hard to contend with is that the state chooses to justify its heavy handedness by relying on municipal codes. In India's case, these arguments lack merit due to the vitriolic political rhetoric that has become a mainstay of Indian politics. Individual BJP leaders and even bureaucrats could not restrain themselves from dragging communal hatred into their statements regarding the recent violence in multiple Indian states during religious processions. On 11<sup>th</sup> April, Madhya Pradesh Home Minister Narottam Misra had claimed that the authorities would

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<sup>8</sup> Jean Comaroff and John L. Comaroff, *Law and Disorder in the Postcolony* (Chicago: University of Chicago Press, 2006), 30.

<sup>9</sup> Lauren Frayer, "In India, Boy Meets Girl, Proposes — and Gets Accused of Jihad," *NPR*, October 10, 2021, sec. World, <https://www.npr.org/2021/10/10/1041105988/india-muslim-hindu-interfaith-wedding-conversion>.

<sup>10</sup> Iram Siddique, "Madhya Pradesh: Admin Demolishes 'Illegal' Buildings in Khargone after Ram Navami Procession Clash," *Indian Express*, accessed May 27, 2022, <https://indianexpress.com/article/cities/bhopal/madhya-pradesh-admin-demolishes-illegal-buildings-khargone-after-ram-navami-clash-7864673/>.

<sup>11</sup> Vishnukant Tiwari, "'All Gone to Dust': MP Govt Razes 16 Houses, 29 Shops After Ram Navami Violence," *The Quint*, April 12, 2022, <https://www.thequint.com/news/india/after-ram-navami-violence-madhya-pradesh-government-bulldozes-houses-shops>.

turn those houses to stone that had been involved in stone pelting during the violence in the Ram Navami procession in Khargone.<sup>12</sup>

While states such as Madhya Pradesh and Uttar Pradesh have laws that allow the government to levy fines on those who participate in the destruction of property, this cannot be done without due process.<sup>13</sup> In the case of Madhya Pradesh, the government can only levy a fine or strip away property after the fulfillment of a legal process in front of a Claims Tribunal. Individual citizens can also approach such a tribunal if they deem that the state has acted unjustly in taking their property away. Currently, the state is razing structures without levying fines or taking individuals to court. As far as illegal encroachments are concerned, laws in Madhya Pradesh require governmental authorities to send a notice to any individual or corporation that might be in violation of these rules and allow them ten days to either leave the premises or ensure that the structure is compliant with regulations.<sup>14</sup> While the government has claimed that these houses were on government lists for many years, data compiled by The Housing and Land Rights Network in 2019 shows that there were no localities in Khargone that were under threat of being evicted.

	STATE	SITE AND CITY/TOWN/VILLAGE	HOUSES/ FAMILIES/PEOPLE THREATENED	PURPORTED REASON OF EVICTION
			people	Seaport
40.	Madhya Pradesh	Ahata Rustam Khan and Pratap Nagar, Bhopal	150 houses	Construction of a "smart road" under the Smart Cities Mission
41.	Madhya Pradesh	Machhi Bazaar area, Indore	300 houses	Riverfront development project between Harsiddhi and Machhi Bazaar, following an order of the National Green Tribunal
42.	Madhya Pradesh	Rampura Village, Panna District	150 people (adivasis/tribals)	Tiger Conservation (Panna Tiger Reserve)
43.	Madhya Pradesh	Ratlam	21 families	Food-processing Park
44.	Madhya Pradesh	Seoni	400 families	Government land clearance (Indian Railways)
45.	Madhya Pradesh	Villages affected by the Sardar Sarovar Dam in Madhya Pradesh	35,000 families	Sardar Sarovar Project on the Narmada River
46.	Maharashtra	Bezonbagh, Nagpur	379 houses	Order of the Nagpur bench of the Bombay High Court (W.P. (PIL) 1515/2008) for the removal of "encroachments" on the land of Bezonbagh Society

**Source:** Forced Evictions in India in 2018: An Unabating National Crisis, Housing and Land Rights Network, New Delhi, 2019. Annexure II, Threat of Forced Eviction/Displacement in India.

<sup>12</sup> Vakasha Sachdev, "MP's 'Rule of Bulldozer' Is Yet Another Blow to the Rule of Law in India," TheQuint, April 13, 2022, <https://www.thequint.com/news/law/mp-khargone-bulldozers-destroy-stone-pelters-homes-illegal>.

<sup>13</sup> Madhya Pradesh Bill, Madhya Pradesh Prevention and Recovery of Damage to Public and Property Act. Bill no. 34, 2021.

<sup>14</sup> The Madhya Pradesh Bhumi Vikas Rules, Part II-Organisation and Enforcement, Rule 12, 1984.

### **The Blurred Lines between Norm and Exception**

While violence against Muslims is not a new development in Indian politics, the weaponization of law by the BJP is a worrying trend that needs to be addressed by the state. The important thing to bear in mind is that when Kashmir's special status was revoked in August 2019, the BJP had claimed that the affairs of the valley would be normalized due to the integration of the territory into the republic. For Kashmiris however, the reality of curfews, information blackouts and enforced disappearances has not been left behind in the 'old Kashmir' but continues today as well. In fact, the center's harsh rule in Indian-Occupied Jammu & Kashmir is permeating into the rest of India as well. The Indian government needs to realize that they can no longer keep Kashmir behind the veil of exception. In fact, the floodgates are open now and the state's oppressive tactics are permeating throughout the rest of India. Either the BJP feels that it is ideal for them to exercise a high degree of control throughout the republic as they do in Kashmir, or they can no longer reign in the Hindutva hate machine that they have utilized for electoral gains. The BJP needs to realize that by painting hundreds of millions of people as anti-national and justifying its draconian tactics will limit its ability to justify the zones of exception it has created in the Northeast and Kashmir.