



सत्यमेव जयते

**GOVERNMENT OF INDIA
LAW COMMISSION OF INDIA**

**REVISITING THE LAW ON PREVENTION OF DAMAGE TO
PUBLIC PROPERTY**

Report No. 284

January, 2024

The 22nd Law Commission was constituted by Gazette Notification for a period of three years vide Order No. F No. 45021/1/2018-Admn-III(LA) dated 21st February, 2020 issued by the Government of India, Ministry of Law and Justice, Department of Legal Affairs, New Delhi. The term of the 22nd Law Commission was extended vide Order No. FA No. 60011/225/2022-Admn.III(LA) dated 22nd February, 2023.

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Law Commission of India

Justice Ritu Raj Awasthi
(Former Chief Justice of High Court of Karnataka)
Chairperson
22nd Law Commission of India



न्यायमूर्ति ऋतु राज अवस्थी
(सेवानिवृत्त मुख्य न्यायाधीश, कर्नाटक उच्च न्यायालय)
अध्यक्ष
भारत के 22^{वें} विधि आयोग



D.O. No. 6(3) 338/2023-LC (LS)

Date: 31st January, 2024

*Hon'ble Sri Arjun Ram Meghwal ji,
Namaskar !*

I am pleased to forward you **Report No. 284** of the Law Commission of India on **“Revisiting the Law on Prevention of Damage to Public Property.”**

While the courts in India have been at the forefront in recognizing the right to protest as a facet of the right to freedom of speech and expression, they have, at the same time, cautioned that such right needs to be exercised with restraint and at all times, peacefully. In this regard, the Parliament enacted the ‘Prevention of Damage to Public Property Act’ in 1984, which aims to criminalize acts of vandalism directed at public property.

However, even after passing the said law, destruction of public property continued unabated, compelling the Hon’ble Supreme Court to take *suo motu* cognizance in *In Re: Destruction of Public & Private Properties v. State of A.P.* [(2009) 5 SCC 212]. The apex Court subsequently, set up two committees to further look into the said issue. The first committee was constituted under Justice K. T. Thomas and the second one under Shri Fali S. Nariman. Both the Committees had submitted their reports and the Supreme Court issued certain guidelines based on these reports that were made operative immediately.

Thereafter, an attempt was made in 2015 to amend the said law, and in that regard, the Ministry of Home Affairs released a draft of the Prevention of Damage to Public Property Act (Amendment) Bill, 2015 and sought comments/suggestions thereon. However, it seems that the proposal for amendment of the Principal Act was not pursued further.

The destruction of public property has continued undiminished. In fact, it appears that the scale of destruction has only increased over the years, causing gargantuan losses to the public exchequer and inconvenience to the general public. The law that was passed in 1984 seems to have failed in its stated objective of preventing the destruction of public property. This is a sentiment echoed not only by the courts but also by various other government bodies. For example, the Law Commission of Karnataka, in its 56th Report, stated that the current law was inadequate and recommended its complete overhaul to tackle with the growing concerns.

Justice Ritu Raj Awasthi
(Former Chief Justice of High Court of Karnataka)
Chairperson
22nd Law Commission of India



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Bearing in mind the gravity of the issue and the loss being borne by the state exchequer, the 22nd Law Commission *suo motu* undertook to prepare this Report. In pursuance of the same, the Commission undertook an extensive study of the subject, analysing the various relevant constitutional and statutory provisions, the numerous judicial pronouncements by the courts across the country, and the incidents involving large scale destruction of public property.

Having had in-depth deliberations on the same, the Commission has recommended amendments in the Prevention of Damage to Public Property Act, 1984. The Commission also recommends that to tackle the issue of prolonged willful obstruction of public property, a separate law dealing with the same may be enacted or necessary amendments be made in the Bharatiya Nyaya Sanhita or the Indian Penal Code to this effect. Accordingly, this Report is being submitted for your kind perusal.

With warmest regards,

Yours sincerely,

(Justice Ritu Raj Awasthi)

Shri Arjun Ram Meghwal
Hon'ble Minister of State (Independent Charge)
Ministry of Law & Justice
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New Delhi -110001.

ACKNOWLEDGEMENT

The Commission would like to express its sincere gratitude to all those who have contributed to the completion of this Report on “Revisiting the Law on Prevention of Damage to Public Property”.

We extend our heartfelt thanks to all the legal scholars, practitioners and academicians who liberally shared their time and knowledge during the preparation of this Report. Their expertise and insightful feedback have been instrumental in shaping the content and structure of this document.

Considering that the issue at hand is not simply a legal one, the Commission would also like to thank the various government officials and public-spirited groups who contributed to the Commission’s understanding on the issue. Their inputs have added depth and perspective to the findings presented herein.

Further, we would like to acknowledge the perseverant efforts put in the preparation of this Report by **Mr. Rishi Mishra, Mr. Shubhang Chaturvedi, Ms. Priya Rathi, Ms. Ruchika Yadav, Ms. Deepika Chaudhary, Mr. Kumar Abhishek, and Mr. Anubhav Dubey**, who worked as Legal Consultants. Their insightful and vital contribution in the research and drafting of this Report deserves special mention. We place on record our deepest admiration for their painstaking efforts in the preparation of this Report.

This Report would not have been possible without the collective contributions and support of all those mentioned above. While any errors or omissions remain our own, the Commission is grateful for the collaborative effort that has gone into the creation of this document.

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1. INTRODUCTION

1.1. Democracy is a rule of the people, for the people, and by the people.¹ Citizen participation, thus, lies at the heart of democracy. Freedom of speech and expression comes to perform a vital function here as it facilitates active participation of citizens. It is a vehicle for rich political discourse that helps sustain democracy.² Dissent is a facet of free speech and is an important pillar that sustains democracy. The citizens right to participate is not limited to merely casting the vote but also holding their elected representatives accountable. True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country.³ Protests as a facet of freedom of expression as also the right to form association and peaceful assembly enable the citizens to bring various issues to the fore thereby enabling change. The importance of dissent and protests has been beautifully expressed by the Supreme Court as:

*"54. The right to protest is, thus, recognised as a fundamental right under the Constitution. This right is crucial in a democracy which rests on participation of an informed citizenry in governance. This right is also crucial since it strengthens representative democracy by enabling direct participation in public affairs where individuals and groups are able to express dissent and grievances, expose the flaws in governance and demand accountability from the State authorities as well as powerful entities. This right is crucial in a vibrant democracy like India but more so in the Indian context to aid in the assertion of the rights of the marginalised and poorly represented minorities."*⁴

¹ Abraham Lincoln, *Gettysburg address delivered at Gettysburg Pa. Nov. 19th, 1863*, available at: www.loc.gov/item/rbpe.24404500/ (last visited on Januray 24, 2024).

² *Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal*, (1995) 2 SCC 161, para 43.

³ *Id.*, para 82.

⁴ *Mazdoor Kisan Shakti Sangathan v. Union of India*, (2018) 17 SCC 324.



- 1.2. Freedom of speech is an essential pre-condition in a system of democratic governance. Such a freedom was also valued in the earliest organised democracy - the city state of Athens.⁵ During the meetings of the city's governing assembly, about 50000 male citizens of the city could choose to participate, and share their thoughts without impediments.⁶ Even in the Indian context, freedom of speech and expressing dissent is not an alien concept. In fact, dissent and protest were central to our struggle for independence.
- 1.3. In colonial times, Mahatma Gandhi's call for a civil disobedience and non-cooperation movement in the face of injustices being unleashed by the colonizers played a significant role in the struggle for freedom against the Britishers.⁷ The waves of movements such as Swadeshi movement, Satyagraha, Non Co-operation Movement and Quit India Movement helped transform the Indian society by uniting people together in collective non-violent action against the common oppressor.⁸ It is perhaps on account of the important role that such forms of dissent played during our independence struggle and its vitality to democracy as was realised by the framers, that our constitution protects these aspects. It is against this background that the Supreme Court in *In re Ramlila Maidan Incident*,⁹ observed:

"245. Freedom of speech, right to assemble and demonstrate by holding dharnas and peaceful agitations are the basic features of a democratic system. The people of a democratic country like ours

⁵ Shameek Sen, "Right to Free Speech And Censorship: A Jurisprudential Analysis" 56 *Journal Of The Indian Law Institute* 175-201 (2014).

⁶ *Id.*

⁷ *Id.*

⁸ See Peter Ackerman and Jack Du Vall, *Force More Powerful: A Century of Non-violent Conflict* 61-106 (Palgrave Macmillan, 2000).

⁹ (2012) 5 SCC 1 : (2012) 2 SCC (Civ) 820.

have a right to raise their voice against the decisions and actions of the Government or even to express their resentment over the actions of the Government on any subject of social or national importance. The Government has to respect and, in fact, encourage exercise of such rights. It is the abundant duty of the State to aid the exercise of the right to freedom of speech as understood in its comprehensive sense and not to throttle or frustrate exercise of such rights by exercising its executive or legislative powers and passing orders or taking action in that direction in the name of reasonable restrictions. The preventive steps should be founded on actual and prominent threat endangering public order and tranquillity, as it may disturb the social order. This delegated power vested in the State has to be exercised with great caution and free from arbitrariness. It must serve the ends of the constitutional rights rather than to subvert them.”¹⁰

- 1.4. While right to protest serves a very relevant purpose, however, it has a very important qualification attached to it. Any protest has to be peaceful. The Courts have time and again, while upholding the right to protest, emphasised that such right is guaranteed so long as they are peaceful. Even the bare language of Article 19(1)(b) guarantees the right to assemble *peaceably* and without arms. Thus, maintaining a peaceful character of the protest is a *sine qua non* for claiming any protection as a fundamental right. Demonstrations are protected so long as they are not violent or disorderly.¹¹ Riotous and disorderly assemblies are by no stretch of imagination protected within the scope of this right and can be restricted on grounds of protecting the sovereignty and integrity of India or maintaining public order.¹² It must always be borne in mind that the framers of our Constitution were circumspect of the dangers of unrestricted free speech and it is precisely for this reason that this freedom is not absolute. While the right to freedom of speech and expression is guaranteed within the Constitution,

¹⁰ *Id.*

¹¹ Mahendra Pal Singh (ed.), *V.N. Shukla's Constitution of India* 131 (Eastern Book Company, 14th edn., 2022).

¹² *Id.*, pg. 150.

the same “cannot be so exercised as to endanger the interest of the nation or the interest of the society, as the case may be. This is not merely in the interest of nation and society but equally in the interest of the freedom of speech and expression itself, the reason being the mutual relevance and interdependence aforesaid.”¹³

- 1.5. The right to peacefully demonstrate cannot be stretched to include the breach of law by causing damage to the public property. The leading proponents of civil protests, Gandhi and Rawls, support the view that the function of civil protest is to awaken the conscience of the people and the ruling class in order to reform some unjust law or another.¹⁴ According to them, such a change can be brought about only if the protest is non-violent.¹⁵ A violent protest will be countered by violent measures from the state, thereby leading to added violence and the appeal to conscience will be lost.¹⁶
- 1.6. Protests may and indeed do turn violent thus causing disruption to the lives of other citizens, as well as destruction of public and private property. Recognising this and with a view to curb such violent forms of protests that cause damage to public property, the Parliament enacted the Prevention of Damage to Public Property Act, 1984¹⁷ (hereinafter, referred to as the “PDPP Act”). The PDPP Act aims to prevent damage to public property by curbing acts of vandalism, including destruction and damage resulting from riots and other public commotion.

¹³ *Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal*, (1995) 2 SCC 161, para 188.

¹⁴ P.C. Chatterji, “Protest: Non-Violence, Persuasion and Coercion” 18 *India International Centre Quarterly* 91-100 (1991).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Act No. 3 of 1984.

(A) Scheme of the PDPP Act

1.7. Section 2(a) of the PDPP Act defines 'mischief' as having the same meaning as in Section 425 of the Indian Penal Code, 1860 ("IPC"). Section 2(b) defines 'public property'. Section 3 of the PDPP Act provides that whoever commits mischief by doing any act in respect of any public property shall be punished for a term which may extend to five years and with fine¹⁸ and with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine¹⁹ in different contingencies. Section 4 of the Act further provides that whoever commits an offence under sub-section (1) or sub-section (2) of section 3 by fire or explosive substance shall be punished with rigorous imprisonment for a term which shall not be less than one year, but which may extend to ten years and with fine. Section 5 provides for special provisions regarding bail. Section 6 says that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

(B) Inadequacies in Law to Deal with Destruction of Public Property

1.8. Taking note of the large-scale destruction of public and private properties in the name of agitations, bandhs, hartals and the like and the virtual inaction against the offenders responsible for such destruction, the Supreme Court in *In re Destruction of Public & Private Properties*²⁰ took *suo moto* cognizance of the issue. The Court, in light of various reports submitted before it, set up two committees to further look in to the said

¹⁸ *Id.*, Sec. 3(1).

¹⁹ *Id.*, Sec. 3(2).

²⁰ (2007) 4 SCC 474.

issue. The first committee was set-up under Justice K. T. Thomas and the second one under Shri Fali S. Nariman. Both the Committees submitted their reports and the Supreme Court had issued certain guidelines based on these reports that were made operative immediately.²¹

(C) Previous Attempts at Amending the Law

1.9. The Ministry of Home Affairs, taking note of the recommendations made by the Justice K. T. Thomas Committee in respect of the inadequacies in the PDPP Act, sought to amend the same so as to deter vandalization and destruction of public or private property during any form of protest.

1.10. In this regard, a proposed draft of Prevention of Damage to Public Property Act (Amendment) Bill, 2015 (marked as **Annexure-A** to this Report) was released by the Ministry of Home Affairs. The Ministry had sought suggestions/comments on the same from the public and other stakeholders on or before 20th July, 2015. However, it would appear, that the proposal for amendment of the PDPP Act was not pursued further.

(D) Suo Moto Cognizance Taken by The Law Commission

1.11. The destruction to public property during protests continues unabated. In fact, the magnitude of such destruction only seems to be increasing²² as the current law fails to constitute sufficient deterrent to deal with rampant destruction of public property.

²¹ *In Re: Destruction of Public & Private Properties v. State of A.P.*, (2009) 5 SCC 212; AIR 2009 SC 2266.

²² *Anita Thakur v. State of J&K*, (2016) 15 SCC 525.

1.12. Not only the courts, but the inadequacies of the PDPP Act have also been felt by other bodies. For instance, the Law Commission of Karnataka in its 56th Report, while noting that the PDPP Act was woefully inadequate, recommended that a comprehensive legislation on the subject to address the dual issues of imposition of punishment as well as recovery of damages was the need of the hour. Thus, the Law Commission of Karnataka also gave the draft layout for the proposed legislation titled ‘The Karnataka Prevention of Damage to Person and Property Act, 2021’. In this context, the following observations of the Law Commission of Karnataka are noteworthy:

“19. Unfortunately it is not uncommon these days that there is large scale violence resulting in loss of life and property. There are many incidents now when people get agitated over some issue-political, social, communal-and they gather as a group and resort to demonstration which takes different forms-dharna, procession, hartal, bandh, strike-which even when they begin as peaceful, develop and turn into violent ones, again violence taking various forms- pelting stones, torching vehicles, damaging buildings. The net result of all this is damage to property, public and private, and also loss of life with consequent disruption of normal life and activity entailing cessation of economic activity and loss.

20. The targets of such violence are wittingly or unwittingly public properties like government/quasi government buildings, installations, means of transport and communications, private properties – houses, shops and vehicles. Damage and loss can also occur when police have, out of necessity, to resort to control the situation with different means like lathi charge, tear gas and firing. Such agitations and violence trample upon the rights of others like other individuals, businessman, labourers and even students.”²³

²³ The Law Commission of Karnataka, “Fifty-Sixth Report on Proposed Legislation – The Karnataka Prevention of Damage to Person and Property Act, 2021” (Ministry of Law, Government of Karnataka, January, 2021), available at <https://lawcommission.karnataka.gov.in/storage/pdf-files/English%20Reports%20LCK/Report%20No-56.pdf> (last visited on January 24, 2024).

- 1.13. Since no amendment has been made to the PDPP Act so far, in spite of several judicial pronouncements suggesting the same, the Law Commission of India felt it necessary to take up the matter *suo motu*. This is especially so in light of the widespread loss that is caused on account of such incidents. The magnitude of such loss suffered has been detailed under Chapter 5 of this Report, which clearly underscores the exigency of remedying the deficiencies in the law as it stands on date.
- 1.14. The 22nd Law Commission has, after carefully considering the issue, identified certain anomalies in the PDPP Act as it stands presently. The Commission felt that there is urgent need to amend the PDPP Act as pointed out by the Supreme Court in the case of *Amit Sahni (Shaheen Bagh, In re) v. State*²⁴ and as pointed out in the recommendations made by Justice K. T. Thomas Committee and Shri Fali S. Nariman Committee before the Supreme Court in the case of *In Re: Destruction of Public and Private Properties v. State of Andhra Pradesh*²⁵.



²⁴ (2020) 10 SCC 439; (2021) 1 SCC (Cri) 424.

²⁵ (2009) 5 SCC 212 : AIR 2009 SC 2266.

2. RELEVANT CONSTITUTIONAL AND LEGAL PROVISIONS

(A) *Constitutional Provisions*

2.1. Right to Protest is undoubtedly a fundamental right within the scheme of the Indian Constitution.²⁶ While not enumerated specifically within the text of the Constitution, this right is implicit and flows from Article 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution.²⁷ As a dimension of free speech, the right to express dissent and criticise is vital to any democracy for it allows the citizens to directly participate in public affairs and demand accountability.²⁸ In this context, freedom of speech and expression would ensure that the change desired by the people, whether in political, economic or social sphere, is brought about peacefully and through law thereby strengthening democracy.²⁹ Further, the freedom to assemble and the freedom to form associations are equally critical for the citizens of a democracy as these enable citizens to engage with one another and organise themselves to collectively participate in the polity.³⁰ The interplay of Articles 19(1)(a), 19(1)(b) and 19(1)(c) in protecting the right to protest as a fundamental right has been perfectly summarised in the observations made by the Supreme Court in *Anita Thakur v. State of J&K*:³¹

“12. We can appreciate that holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under Articles 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution. Article 19(1)(a)

²⁶ *Mazdoor Kisan Shakti Sangathan v. Union of India*, (2018) 17 SCC 324, para 54.

²⁷ *Anita Thakur v. State of J&K*, (2016) 15 SCC 525; (2016) 4 SCC (Cri) 695, para 12.

²⁸ Lawrence Liang, “Free Speech and Expression” in Sujit Choudhry, Madhav Khosla, et.al. (eds.), Oxford Handbook of the Indian Constitution 814 (Oxford University Press, 2016).

²⁹ *Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal*, (1995) 2 SCC 161.

³⁰ Menaka Guruswamy, “Assembly and Associations” in Sujit Choudhry, Madhav Khosla, et.al. (eds.), Oxford Handbook of the Indian Constitution 836 (Oxford University Press, 2016).

³¹ (2016) 15 SCC 525.

confers freedom of speech to the citizens of this country and, thus, this provision ensures that the petitioners could raise slogan, albeit in a peaceful and orderly manner, without using offensive language. Article 19(1)(b) confers the right to assemble and, thus, guarantees that all citizens have the right to assemble peacefully and without arms. Right to move freely given under Article 19(1)(d), again, ensures that the petitioners could take out peaceful march. The "right to assemble" is beautifully captured in an eloquent statement that "an unarmed, peaceful protest procession in the land of "salt satyagraha", fast-unto-death and "do or die" is no jural anathema". It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non-violent protest marches were a key weapon in the struggle for Independence, and the right to peaceful protest is now recognized as a fundamental right in the Constitution."

- 2.2. The ambit of right to protest under Article 19 is not unlimited. The same is subject to reasonable restrictions as permissible under Article 19(2) and 19(3). Further, there can be various forms of protests and only certain forms fall within the freedoms guaranteed by Articles 19(1)(a) and 19(1)(b).³² The Supreme Court has clearly delineated the contours of right to protest that is protected within the framework of Article 19:

"31. Article 19 of the Constitution of India guarantees some of the most important fundamental rights to the citizens. Article 19 protects important attributes of personal liberty. Right to freedom of speech and expression as guaranteed under Article 19(1)(a) and the right to assemble peaceably and without arms as protected by Article 19(1)(b) are the rights which in reference to the present case have importance. The right of freedom of speech and expression coupled with right to assemble peaceably and without arms are rights, expression of which are reflected in carrying demonstration on several occasions. Freedom to air one's view is the lifeline of any democratic institution. The words "freedom of speech" must be broadly construed to include right to circulate one's view by word

³² *Kameshwar Prasad v. State of Bihar*, 1962 Supp (3) SCR 369 : AIR 1962 SC 1166.

*or mouth or through audio-visual instrument. Right of public speech is one form of expression which is also a part of freedom of speech and expression. Demonstrations are also a mode of expression of the rights guaranteed under Article 19(1)(a). **Demonstrations whether political, religious or social, or other demonstrations which create public disturbances or operate as nuisances, or create or manifestly threaten some tangible public or private mischief, are not covered by protection under Article 19(1).** A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. **From the very nature of things a demonstration may take various forms; "it may be noisy and disorderly", for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Article 19(1)(a) or (b).....**"³³*

(emphasis added)

- 2.3. There have been varying kinds of protests that our polity has witnessed – dharnas, pickets, strikes, bandhs etc. The Courts have differentiated between these different kinds of protests and have treated them differently. The Courts have viewed favourably the act of picketing by a few not going beyond the limit of persuasion or inducement and that which does not restrain others from doing what they please and have read the same as protected under Article 19(1)(a).³⁴ Peaceful picketing has been considered a non-violent act of persuasion and a manifestation of one's freedom of speech and expression.³⁵ Bandhs on the other hand have been declared unconstitutional.³⁶ Bandhs, unlike general strikes, often lead to destruction of public property and there is interference with the fundamental freedoms

³³ *Bimal Gurung v. Union of India*, (2018) 15 SCC 480 : (2019) 1 SCC (Cri) 887.

³⁴ Mahendra Pal Singh (ed.), *V.N. Shukla's Constitution of India* 131 (Eastern Book Company, 14th edn., 2022); *Raj Narain v. State*, AIR 1961 All 531.

³⁵ M. P. Jain, *1 Indian Constitutional Law* 1451-52 (LexisNexis, New Delhi, 6th edn., 2013).

³⁶ *Bharat Kumar K. Palicha v. State of Kerala*, AIR 1997 Ker 291.

of other citizens.³⁷ The Supreme Court has held that the fundamental rights of people as a whole are not subservient to the fundamental rights of an individual or of a section of people.³⁸ Bandhs invade and endanger the life, liberty and property of citizens and public, enabling anti-social forces to gain control resulting in all-round destruction with counter-productive results at the expense of public order and public peace.³⁹

- 2.4. Article 51 A which enshrines the “Fundamental Duties” of the citizens of India also becomes pertinent to be noted in the context of protests. One of the eleven fundamental duties imposed upon the citizens of India under the framework of the Constitution is “to safeguard public property and to abjure violence”. Article 51A(i) reads:

“51A. It shall be the duty of every citizen of India—

.....

(i) to safeguard public property and to abjure violence;”

(B) The Prevention of Damage to Public Property Act, 1984

- 2.5. The Prevention of Damage to Public Property Act, 1984 is an Act to provide for prevention of damage to public property and for matters connected therewith. Section 3 of the PDPP Act deals with “Mischief causing damage to public property”. Section 4 deals with “Mischief causing damage to public property by fire or explosive substance.” The relevant sections, Sections 2 to 6 of the PDPP Act, have been extracted below:

³⁷ M. P. Jain, 1 *Indian Constitutional Law* 1452 (LexisNexis, New Delhi, 6th edn., 2013); *James Martin v. State of Kerala*, (2004) 2 SCC 203.

³⁸ *The Communist Party of India (M) v. Bharat Kumar* AIR 1998 SC 184.

³⁹ M. P. Jain, 1 *Indian Constitutional Law* 1450 (LexisNexis, New Delhi, 6th edn., 2013).

"2. Definitions.-

In this Act, unless the context otherwise requires,-

- a. *"mischief" shall have the same meaning as in Section 425 of the Indian Penal Code (45 of 1860);*
- b. *"public property" means any property, whether immovable or movable (including any machinery) which is owned by, or in the possession of, or under the control of –*
 - i. *the Central Government; or*
 - ii. *any State Government; or*
 - iii. *any local authority; or*
 - iv. *any corporation established by, or under, a Central, Provincial or State Act; or*
 - v. *any company as defined in Section 617 of the Companies Act, 1956 (1 of 1956); or*
 - vi. *any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specify in this behalf;*

Provided that the Central Government shall not specify any institution, concern or undertaking under this sub-clause unless such institution, concern or undertaking is financed wholly or substantially by funds provided directly or indirectly by the Central Government or by one or more State Governments, or partly by the Central Government and partly by one or more State Governments.

3. Mischief causing damage to public property.-*(1) Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.*

(2) Whoever commits mischief by doing any act in respect of any public property being-

- a. *any building, installation or other property used in connection with production, distribution or supply of water, light, power or energy;*
- b. *any oil installation;*
- c. *any sewage work;*
- d. *any mine or factory;*
- e. *any means of public transportation or of tele-communications, or any building, installation or other property used in connection therewith,*

shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine:

Provided that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.

4. Mischief causing damage to public property by fire or explosive substance.-

Whoever commits an offence under sub-section (1) or sub-section (2) of section 3 by fire or explosive substance shall be punished with rigorous imprisonment for a term which shall not be less than one year, but which may extend to ten years and with fine;

Provided that the court may, for special reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than one year.

5. Special provisions regarding bail.-

No person accused or convicted of an offence punishable under section 3 or section 4 shall, if in custody, be released on bail or on his own bond unless the prosecution has been given an opportunity to oppose the application for such release.

6. Saving.- *The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force, and nothing contained in this Act shall exempt any person from any proceeding (whether by way of investigation or otherwise) which might apart from this Act, be instituted or taken against him."*

(C) The Indian Penal Code

- 2.6. Section 2(a) of The Prevention of Damage to Public Property Act, 1984, defines the expression "mischief" as having the same meaning as in Section 425 of the Indian Penal Code, 1860 (hereinafter, referred to as

“IPC”),⁴⁰ Hence, Section 425 of the IPC and Sections 426 to 440 dealing with several categories of mischief are also relevant in this context. The relevant sections, Sections 425 to 440 of the IPC are extracted below:

“425. Mischief.—Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

426. Punishment for mischief.—Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

427. Mischief causing damage to the amount of fifty rupees.—Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

428. Mischief by killing or maiming animal of the value of ten rupees.—Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of the ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

429. Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.—Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant,

⁴⁰ Act No. 45 of 1860.

camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

430. Mischief by injury to works of irrigation or by wrongfully diverting water.—Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

431. Mischief by injury to public road, bridge, river or channel.—Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

432. Mischief by causing inundation or obstruction to public drainage attended with damage.—Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

433. Mischief by destroying, moving or rendering less useful a light-house or sea-mark.—Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

434. Mischief by destroying or moving, etc., a land-mark fixed by public authority.—Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or



by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

435. Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.—Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards or (where the property is agricultural produce) ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

436. Mischief by fire or explosive substance with intent to destroy house, etc.—Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

437. Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden.—Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

438. Punishment for the mischief described in section 437 committed by fire or explosive substance. —Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

439. Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc.—Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of

property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

440. Mischief committed after preparation made for causing death or hurt.—*Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.*”

- 2.7. The provisions pertaining to public nuisance must also be considered in this regard here. Section 268 and 290 are relevant in that context and have been reproduced below:

268. Public nuisance.—*A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.*

290. Punishment for public nuisance in cases not otherwise provided for.—*Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.*”

(D) The Bharatiya Nyaya Sanhita, 2023

- 2.8. The Bharatiya Nyaya Sanhita, 2023⁴¹ (hereinafter, referred to as “BNS”) was passed by the Lok Sabha on 20th December, 2023 and by the Rajya Sabha on 21st December, 2023. It received Presidential assent on 25th December, 2023. The BNS, once implemented, will replace the IPC.

⁴¹ Act No. 45 of 2023.

Hence, it becomes pertinent to consider the applicable provisions of the BNS. The relevant provisions of the BNS have been mentioned below:

“270. Public nuisance.—A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right but a common nuisance is not excused on the ground that it causes some convenience or advantage.

292. Punishment for public nuisance in cases not otherwise provided for.—Whoever commits a public nuisance in any case not otherwise punishable by this Sanhita shall be punished with fine which may extend to one thousand rupees.

324. Mischief.—(1) Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits mischief.

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

(2) Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(3) Whoever commits mischief and thereby causes loss or damage to any property including the property of Government or Local Authority shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

(4) Whoever commits mischief and thereby causes loss or damage to the amount of twenty thousand rupees and more but less than one lakh rupees shall be punished with imprisonment of either

description for a term which may extend to two years, or with fine, or with both.

(5) Whoever commits mischief and thereby causes loss or damage to the amount of one lakh rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

327. Mischief with intent to destroy or make unsafe a rail, aircraft, decked vessel or one of twenty tons burden.—(1) *Whoever commits mischief to any rail, aircraft, or a decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that rail, aircraft or vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

(2) Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in sub-section (1), shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

328. Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc.—*Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

(E) International Obligations

- 2.9. In respect of right to dissent and protest, Article 19 of the Universal Declaration of Human Rights, 1948 and Article 19 of the International Covenant on Civil and Political Rights, become relevant and have been reproduced below:

Universal Declaration of Human Rights. –

Article 19 - *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*⁴²

The International Covenant on Civil and Political Rights

Article 19 – (1) *Everyone shall have the right to hold opinions without interference.*

(2) *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

(3) *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

(a) *For respect of the rights or reputations of others;*

(b) *For the protection of national security or of public order (ordre public), or of public health.*⁴³

⁴² Universal Declaration of Human Rights, 1948, art. 19.

⁴³ International Covenant on Economic, Social and Cultural Rights, 1966, art. 19.

3. RELEVANT JUDICIAL PRONOUNCEMENTS

3.1. Various judicial pronouncements of by the Supreme Court and the High Courts passed over the years clearly indicate a consistently strong stance taken by courts against any violent protest. While the courts have never shied away from protecting the right to peaceful protests and have assertively done so on many occasions, yet at the same time they have come down heavily on any violent protest. Any violent protest that endangers other citizens and stops them from exercising their freedoms or liberties or leads to destruction of public or private property is antithetical to the very idea of right to protest imbibed in our constitutional values and what it seeks to achieve. Over the years, courts have expressed their dissatisfaction over the inability of the current law to act as a sufficient deterrent against violence during protests and destruction of public property. The courts have time and again emphasized on the failure of the state to act adequately to prevent such acts and reiterated the need to bring people engaging in such acts of vandalism and destruction to justice. Some of these case laws have been discussed in the following paragraphs:

*(A) In Re: Destruction of Public and Private Properties v. State of A.P.*⁴⁴

3.2. In this case, the Supreme Court took serious note of various instances of large-scale destruction of public and private properties in the name of agitations, bandhs, hartals and the like and initiated *suo motu* proceedings on 05.06.2007. The Supreme Court appointed two Committees. One of the Committees was headed by Justice K. T. Thomas, former Judge of the Supreme Court. The other members of the Committee were Shri K.

⁴⁴ AIR 2009 SC 2266; (2009) 5 SCC 212.

Parasaran, Senior Advocate; Dr. R. K. Raghavan, Ex-Director of CBI; Shri G.E. Vahanavati, the then Solicitor General of India; an officer not below the rank of Additional Secretary of Ministry of Home Affairs; and the Secretary of the Department of Law and Justice, Government of India. The other Committee was headed by Shri Fali S. Nariman, Senior Advocate. The other members of that Committee were the Editor-in-Chiefs of the Indian Express, the Times of India and Dainik Jagaran; Shri Pranoy Roy of NDTV; an officer not below the rank of Additional Secretary of Ministry of Home Affairs and the Ministry of Information and Broadcasting; Secretary, Department of Law and Justice, Government of India; Shri G.E. Vahanavati, Solicitor General; and Dr. Rajiv Dhawan, Senior Counsel who was appointed as *amicus curiae*.

- 3.3. The Supreme Court considered the recommendations of the Committees headed by Justice K. T. Thomas and Shri Fali S. Nariman and also the suggestions made by the learned *amicus curiae*. The Supreme Court, thereafter, held as follows:

"4. The report submitted by Justice K. T. Thomas Committee has made the following recommendations:

(i) The PDPP Act must be so amended as to incorporate a rebuttable presumption (after the prosecution established the two facets) that the accused is guilty of the offence.

(ii) The PDPP Act to contain provision to make the leaders of the organization, which calls the direct action, guilty of abetment of the offence.

(iii) The PDPP Act to contain a provision for rebuttable presumption.

(iv) Enable the police officers to arrange videography of the activities damaging public property.

The recommendations have been made on the basis of the following conclusions after taking into consideration the materials.

1. *In respect of (i)*

'According to this Committee the prosecution should be required to prove, first that public property has been damaged in a direct action called by an organization and that the accused also participated in such direct action. From that stage the burden can be shifted to the accused to prove his innocence. Hence we are of the view that in situations where prosecution succeeds in proving that public property has been damaged in direct actions in which accused also participated, the Court should be given the power to draw a presumption that the accused is guilty of destroying public property and that it is open to the accused to rebut such presumption. The PDPP Act may be amended to contain provisions to that effect.'

2. *In respect of (ii)*

'Next we considered how far the leaders of the organizations can also be caught and brought to trial, when public property is damaged in the direct actions called at the behest of such organizations. Destruction of public property has become so rampant during such direct actions called by organizations. In almost all such cases the top leaders of such organisations who really instigate such direct actions will keep themselves in the background and only the ordinary or common members or grass root level followers of the organisation would directly participate in such direct actions and they alone would be vulnerable to prosecution proceedings. In many such cases, the leaders would really be the main offenders being the abettors of the crime. If they are not caught in the dragnet and allowed to be immune from prosecution proceedings, such direct actions would continue unabated, if not further escalated, and will remain a constant or recurring affair. Of course, it is normally difficult to prove abetment of the offence with the help of direct evidence. This flaw can be remedied to a great extent by making an additional provision in PDPP Act to the effect that specified categories of leaders of the organization which make the call for direct actions resulting in damage to public property, shall be deemed to be guilty of abetment of the offence. At the same time, no innocent person, in spite of his being a leader of the organization shall be made to suffer for the actions done by others. This requires the inclusion of a safeguard to protect such innocent leaders.'

3. *In respect of (iii)*

'After considering various aspects to this question we decided to recommend that prosecutions should be required to prove (i) that those accused were the leaders or office bearers of the organisation which called out the direct actions and (ii) that public property has been damaged in or during or in the aftermath of such direct actions. At that stage of trial it should be open to the Court to draw a presumption against such persons who are arraigned in the case that they have abetted the commission of offence. However, the accused in such case shall not be liable to conviction if he proves that (i) he was in no way connected with the action called by his political party or that (ii) he has taken all reasonable measures to prevent causing damage to public property in the direct action called by his organisation.'

4. *In respect of (iv)*

'The Committee considered other means of adducing evidence for averting unmerited acquittals in trials involving offences under PDPP Act. We felt that one of the areas to be tapped is evidence through videography in addition to contemporaneous material that may be available through the media, such as electronic media. With the amendments brought in the Evidence Act, through Act 21 of 2000 permitting evidence collected through electronic devices as admissible in evidence, we wish to recommend the following:

i) If the officer in charge of a police station or other law enforcing agency is of opinion that any direct action, either declared or undeclared has the potential of causing destruction or damage to public property, he shall avail himself of the services of video operators. For this purpose each police station shall be empowered to maintain a panel of local video operators who could be made available at short notices.

ii) The police officer who has the responsibility to act on the information that a direct action is imminent and if he has reason to apprehend that such direct action has the potential of causing destruction of public property, he shall immediately avail himself of the services of the videographer to accompany him or any other police officer deputed by him to the site or any other place wherefrom video shooting can conveniently be arranged concentrating on the person / persons indulging in any acts of

violence or other acts causing destruction or damage to any property.

iii) If the officer in charge of a police station or other law enforcing agency is of opinion that any direct action, either declared or undeclared has the potential of causing destruction or damage to public property, he shall avail himself of the services of video operators. For this purpose each police station shall be empowered to maintain a panel of local video operators who could be made available at short notices.

iv) The police officer who has the responsibility to act on the information that a direct action is imminent and if he has reason to apprehend that such direct action has the potential of causing destruction of public property, he shall immediately avail himself of the services of the videographer to accompany him or any other police officer deputed by him to the site or any other place wherefrom video shooting can conveniently be arranged concentrating on the person / persons indulging in any acts of violence or other acts causing destruction or damage to any property.

v) No sooner than the direct action subsides, the police officer concerned shall authenticate the video by producing the videographer before the Sub Divisional or Executive Magistrate who shall record his statement regarding what he did. The original tapes or CD or other material capable of displaying the recorded evidence shall be produced before the said Magistrate. It is open to the Magistrate to entrust such CD / material to the custody of the police officer or any other person to be produced in Court at the appropriate stage or as and when called for.

The Committee felt that offenders arrested for damaging public property shall be subjected to a still more stringent provision for securing bail. The discretion of the Court in granting bail to such persons should be restricted to cases where the Court feels that there are reasonable grounds to presume that he is not guilty of the offence. This is in tune with S.437 of the Code of Criminal Procedure, 1973 and certain other modern Criminal Law statutes. So we recommend that S.5 maybe amended for carrying out the above restriction.

Thus we are of the view that discretion to reduce the minimum sentence on condition of recording special reasons need not be diluted. But, instead of 'reasons' the Court should record 'special reasons' to reduce the minimum sentence prescribed.

However, we felt that apart from the penalty of imprisonment the Court should be empowered to impose a fine which is equivalent to the market value of the property damaged on the day of the incident. In default of payment of fine, the offender shall undergo imprisonment for a further period which shall be sufficient enough to deter him from opting in favour of the alternative imprisonment.'

vi) The recommendations according to us are wholesome and need to be accepted."

- 3.4. Based on the recommendations made by Justice K. T. Thomas Committee, the Supreme Court issued the following guidelines:

*To effectuate the modalities for preventive action and adding teeth to enquiry/ investigation following guidelines are to be observed:
"As soon as there is a demonstration organized:*

- I. The organizer shall meet the police to review and revise the route to be taken and to lay down conditions for a peaceful march or protest;*
- II. All weapons, including knives, lathis and the like shall be prohibited;*
- III. An undertaking is to be provided by the organizers to ensure a peaceful march with marshals at each relevant junction;*
- IV. The police and State Government shall ensure videograph of such protests to the maximum extent possible;*
- V. The person in charge to supervise the demonstration shall be the SP (if the situation is confined to the district) and the highest police officer in the State, where the situation stretches beyond one district;*
- VI. In the event that demonstrations turn violent, the officer in charge shall ensure that the events are videographed through private operators and also request such further information from the media and*

others on the incidents in question.

VII. *The police shall immediately inform the State Government with reports on the events, including damage, if any, caused.*

VIII. *The State Government shall prepare a report on the police reports and other information that may be available to it and shall file a petition including its report in the High Court or Supreme Court as the case may be for the Court in question to take suo motu action."*

3.5. The Committee headed by Sri. Fali S. Nariman, recommended, *inter alia*, the following:

"Where persons, whether jointly or otherwise, are part of a protest which turns violent, results in damage to private or public property, the persons who have caused the damage, or were part of the protest or who have organized will be deemed to be strictly liable for the damage so caused, which may be assessed by the ordinary Courts or by any special procedure created to enforce the right. This Committee is of the view that it is in the spirit of the observation in M. C. Mehta v. Union of India⁴⁵ that this Court needs to lay down principles on which liability could be fastened and damages assessed in cases in which due to behaviour of mobs and riotous groups public and private property is vandalized and loss of life and injury is occasioned to innocent persons. These are clearly 'unusual situations', which have arisen and likely to arise in future and need to be provided for in the larger interest of justice. It is on the principles set out above that (it is suggested) that the Hon'ble Court should frame guidelines and venture to evolve new principles (of liability) to meet situations that have already arisen in the past and are likely to arise again in future, so that speedy remedies become available to persons affected by loss of life, injury and loss of properties, public or private, as a result of riots and civil commotions.

.....

... ..The Law Commission of Australia has also concluded, after a fairly evenly balanced consultation, that exemplary damages should

⁴⁵ 1987 (1) SCC 395 ; 1987 SCC (L&S) 37; AIR 1987 SC 1086.

be retained where the defendant "had deliberately and outrageously disregarded the plaintiff's rights."

15. In the absence of legislation the following guidelines are to be adopted to assess damages:

(I) Wherever a mass destruction to property takes place due to protests or thereof, the High Court may issue suo motu action and set up a machinery to investigate the damage caused and to award compensation related thereto.

(II) Where there is more than one state involved, such action may be taken by the Supreme Court.

(III) In each case, the High Court or Supreme Court, as the case may be, appoint a sitting or retired High Court Judge or a sitting or retired District Judge as a Claims Commissioner to estimate the damages and investigate liability.

(IV) An Assessor may be appointed to assist the Claims Commissioner.

(V) The Claims Commissioner and the Assessor may seek instructions from the High Court or Supreme Court as the case may be, to summon the existing video or other recordings from private and public sources to pinpoint the damage and establish nexus with the perpetrators of the damage.

(VI) The principles of absolute liability shall apply once the nexus with the event that precipitated the damage is established.

(VII) The liability will be borne by the actual perpetrators of the crime as well as organisers of the event giving rise to the liability - to be shared, as finally determined by the High Court or Supreme Court as the case may be.

(VIII) Exemplary damages may be awarded to an extent not greater than twice the amount of the damages liable to be paid.

(IX) Damages shall be assessed for:

(a) damages to public property;

(b) damages to private property;

(c) damages causing injury or death to a person or persons;

(d) Cost of the actions by the authorities and police to take preventive and other actions.

(X) The Claims Commissioner will make a report to the High Court or Supreme Court which will determine the liability after hearing the parties.”

3.6. Accepting the Reports submitted by the Committees, the Supreme Court held thus:

“20. The recommendations of Justice K. T. Thomas Committee and Mr. F. S. Nariman Committees above which have the approval of this Court shall immediately become operative. They shall be operative as guidelines.”

(B) *Kodungallur Film Society v. Union of India*⁴⁶

3.7. In *Kodungallur Film Society v. Union of India*, the principal relief sought for by the petitioners was to issue directions to the States/Union of India to strictly implement the decision of the Supreme Court in *In Re: Destruction of Public and Private Properties v. State of Andhra Pradesh*.⁴⁷ In the course of arguments, the Supreme Court took note of the following submission made by the Shri K. K. Venugopal, the learned Attorney General:

*“6. Mr. Venugopal is unequivocal in his submission that violent protests which lead to loss of life and damage to public and private properties are against the spirit of democracy. He submits that pursuant to the judgment in *In Re: Destruction of Public and Private Properties* (supra), the Union of India has advised the respondent states to follow the guidelines laid down therein vide letter dated 6th May, 2013.”*

⁴⁶ (2018) 10 SCC 713.

⁴⁷ (2009) 5 SCC 212.

3.8. The Supreme Court also held:

"9. There is a broad consensus that the recommendations made and directions given in In Re: Destruction of Public and Private Properties (supra), at paragraph 3 hereinabove are comprehensive to deal with the issue of large – scale destruction of private and public properties which unwinds during violent protests and demonstrations. We find that the Committee's recommendations noted in the said judgment traverse the length and breadth of the issue at hand and, if implemented in their entirety, would go a long way in removing the bane of violence caused against persons and property. As far as implementation of the said recommendations, is concerned, and as stated earlier, the learned Attorney General's submission is that the Union is mindful of the dictum in In Re: Destruction of Public and Private Properties (supra), and has advised the States to follow the same in its letter and spirit and also drafted a bill for initiating legislative changes in conformity with the recommendations of this Court, namely, The Prevention of Damage to Public Property (Amendment) Bill, 2015, which is currently being examined in consultation with the Ministry of Law and Justice."

3.9. The Supreme Court quoted the Prevention of Damage to Public Property (Amendment) Bill, 2015 and held:

"For the time being, we do not wish to comment on the efficacy of the proposed legislative changes including as to whether it would fully address the points noted in the guidelines / recommendations in In Re: Destruction of Public and Private Properties (supra). We keep that issue open to be decided in appropriate proceedings if and when the occasion arises. We hope that the said Bill will be taken to its logical end in the right earnest.

10. On the issue of whether additional measures need to be introduced, the learned Attorney General has also made certain suggestions which can be implemented as interim measures, pending the outcome of the aforesaid Bill, to fasten accountability and prescribe timelines for the law - enforcement agencies. The same are set out hereunder:

"12. While the Union of India is still considering the

amendments, as an interim measure, it is suggested that this Court may consider issuing the following directions:

a. The offence is covered under S.3 of the PDPP Act, which provides that whoever commits mischief by doing any act in respect of any public property shall be punished with imprisonment and fine. Mischief has been defined under S. 425 of the Indian Penal Code as – “whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

b. This Court may consider the example of the Delhi Development Authority, where, in order to deal with illegal encroachments, the DDA has divided the city into various zones and placed them under different officers who would be held responsible in case there were building law violations in their respective zones. This has had the result of improving accountability and reduced instances of illegal encroachment.

c. The liability for compensation has to be fixed on the organizer(s) irrespective of whether he was himself the perpetrator of the act which caused the damage.

d. In addition, the actual perpetrators who caused the damage will also be liable to pay compensation.

e. Accordingly, the State Governments may be directed to pin the responsibility of maintaining law and order during such protests, bands, etc. on the Senior Superintendent of police in charge of that district. If this is done, in all future cases, the Courts can seek a response directly from the SSP regarding video recordings, details of FIRs filed, steps taken etc.

f. In addition, the Court may direct, each police station to maintain a panel of local video operators who could be made available at short notices to videograph the incidents of violence and damage to public property etc.

g. Further, the States can consider setting up helplines to specifically deal with instances of violence or damage to property caused during such protests, and have a force that immediately deals with complaints made on such helplines.”

3.10. The Supreme Court also issued several guidelines. It is apposite to note that one of the guidelines relates to granting of bail, which reads as follows:

“c) A person arrested for either committing or initiating, promoting, instigating or in any way causing to occur any act of violence which results in loss of life or damage to property may be granted conditional bail upon depositing the quantified loss caused due to such violence or furnishing security for such quantified loss. In case of more than one person involved in such act of violence, each one of them shall be jointly, severally and vicariously liable to pay the quantified loss. If the loss is yet to be quantified by the appropriate authority, the judge hearing the bail application may quantify the amount of tentative damages (which shall be subject to final determination thereof by the appropriate authority) on the principle stated in paragraph 15 of the decision in In Re: Destruction of Public and Private Properties (supra), after hearing the submissions of the State / agency prosecuting the matter in that regard.”

3.11. The petitioners in the instant case had given certain suggestions in order to ameliorate and curb the occurrence of such events. In this regard, certain suggestions made in respect to reporting of cases and police action become noteworthy. The same have been reproduced below:

“11. The police shall immediately conduct an investigation into the genuineness of the audio and video content within a period of three days and if contents are prima facie found to be true, the accused shall be arrested again (if already released on bail) who shall thereafter be entitled for bail only in the event of depositing the amount commensurate with the loss/damage, caused by such act/s directly and indirectly, as assessed by the police.

12. State shall take steps to establish sufficient number of forensic labs to verify the authenticity of social media content and audio/video content which may be in issue in such cases.”

(C) *Koshy Jacob v. Union of India*⁴⁸

3.12. In Koshy Jacob's case, the petitioner in the Writ Petition sought direction for implementation of guidelines issued by the Supreme Court in *In Re: Destruction of Public and Private Properties v. State of Andhra Pradesh*.⁴⁹ The petitioner, an Advocate, complained that he was forced to spend more than twelve hours on road to reach his home after having been discharged from hospital after surgery, on account of an agitation which was going on in the place.

3.13. Referring to the decision in *Re: Destruction of Public and Private Properties v. State of Andhra Pradesh*, the Supreme Court held thus:

"4. Committees appointed by this Court in the above case recommended statutory amendments for making those sponsoring such agitations accountable and punishable under the criminal law and also requiring preventive and remedial actions such as videography of all the activities and award for damages. In spite of such recommendations, no legislation or speedy mechanism has been put in place so far which appears to be the reason for this petition.

5. In pursuance of notice issued by this Court in this matter, affidavits have been filed by different States as well as by Union of India. In the affidavit filed by the Union of India, it is submitted that the process has been initiated for amendment of the Prevention of Damage to Public Property Act, 1984 in consultation with the Ministry of Law and Justice. A draft has been prepared and published on the website seeking comments of the public and other stake - holders. Union of India has also sent a letter dated 6th May, 2013 to all the States and Union Territories advising the action to be taken as soon as there is a demonstration."

⁴⁸ (2018) 11 SCC 756.

⁴⁹ (2009) 5 SCC 212.

3.14. During the course of arguments, the Court took note of the submissions made by the learned Attorney General:

"6. Mr. K. K. Venugopal, learned Attorney General for India, has submitted that in spite of the guidelines, situations have been created wherein peaceful agitation turns into violent, causing loss of lives and destruction of public property. At times, central forces are deployed to aid the law and order machinery. He fairly states that there is undoubted need for preventive and remedial measures to be adopted to deal with such situations. A mechanism is necessary to fix accountability of any failure to take preventive steps as well as to provide for punishing the guilty and compensation to the victim."

3.15. Noticing the arguments of the learned Attorney General, the Supreme Court held:

"9. Since no law has been framed even though 8 years have passed after the matter was dealt with by this Court in the aforesaid judgment, the petitioner has approached this Court, as noted earlier.

10. In view of the stand in the counter affidavit and the statement of learned Attorney General, we do hope that the law now proposed by the Union of India is brought into force within a reasonable time to address all concerned issues. Learned Attorney General has very fairly stated that the law may provide speedy mechanism for criminal liability, action for administrative failures as well as remedies to the victims. A suggestion has been made that one or more district / additional district Judges can be appointed by the State Government in consultation with the High Court to deal with such issue either on whole – time basis or on part - time basis, as the situation may require. In such cases cadre strength of the judicial officers may require suitable temporary or permanent increase. This suggestion can be considered in the course of making the proposed law."

(D) Bharat Kumar K. Palicha v. State of Kerala⁵⁰

3.16. In *Bharat Kumar K. Palicha v. State of Kerala*, a Full Bench of the Kerala High Court held that calling of a bandh and holding of it is unconstitutional and illegal.

3.17. The petitioners therein contended that apart from denying the fundamental rights of the citizens under Articles 19 and 21 of the Constitution of India, with a view to purvey terror, the organisers of the bundh also indulge in wanton acts of vandalism like destruction of Government property and transport vehicles and even private cars and two wheelers.

3.18. The Full Bench held thus:

“17. No political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire State or Nation and is entitled to prevent the citizens not in sympathy with its view point, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the Nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it. The claim for relief by the petitioners in these Original Petitions will have to be considered in this background.

18. The contention that no relief can be granted against the political parties in these proceedings under Art.226 of the Constitution cannot be accepted in its entirety. As indicated already, this court has ample jurisdiction to grant a declaratory relief to the petitioners in the presence of the political party respondents. This is all the more so since the case of the petitioners is based on their fundamental rights guaranteed by the Constitution. The State has not taken any steps to control or regulate the bundhs. The stand adopted by the Advocate General is that the Court cannot compel the State or the Legislature to issue orders or make law in that regard. As we find

⁵⁰ AIR 1997 Ker. 291 : ILR 1997 (3) Ker. 445 :1997 (2) Kerala Law Times 287 (F.B.).

that organised bodies or Associations of registered political parties, by their act of calling and holding bundhs, trample upon the rights of the citizens of the country protected by the Constitution, we are of the view that this court has sufficient jurisdiction to declare that the calling of a 'bundh' and the holding of it, is unconstitutional especially since, it is undoubted, that the holding of 'bundhs' are not in the interests of the Nation, but tend to retard the progress of the Nation by leading to national loss production. We cannot also ignore the destruction of public and private property when a bundh is enforced by the political parties or other organisations. We are inclined to the view that the political parties and the organisations which call for such bundhs and enforce them are really liable to compensate the Government, the public and the private citizen for the loss suffered by them for such destruction. The State cannot shirk its responsibility of taking steps to recoup and of recouping the loss from the sponsors and organisers of such bundhs. We think, that these aspects justify our intervention under Art. 226 of the Constitution. In view of our discussion above, we allow these Original Petitions to the extent of declaring that the calling for a bundh by any association, organisation or political party and the enforcing of that call by it, is illegal and unconstitutional. We direct the State and its officials, including the law enforcement agencies, to do all that is necessary to give effect to this declaration."

(E) Communist Party of India (M) v. Bharat Kumar⁵¹

3.19. Herein, the Supreme Court while confirming the judgment of the High Court of Kerala in *Bharat Kumar K. Palicha v. State of Kerala*,⁵² held that:

"There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a "Bandh" which interfere with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may also add that the reasoning given by the High Court, particularly those in

⁵¹ 1998 (1) SCC 201 : AIR 1998 SC 18.

⁵² AIR 1997 Ker. 291 : ILR 1997 (3) Ker. 445 :1997 (2) Kerala Law Times 287 (F.B.).

Para.12,13 and 17 for the ultimate conclusion and directions in Para.18 is correct with which we are in agreement."

(F) *George Kurian v. State of Kerala*⁵³

3.20. In this case, the writ petitions were filed in public interest vexed by the fact that despite various judgments of the High Court of Kerala and the Supreme Court, there were frequent bandhs, forced hartals and general strikes in the State harassing general public causing trouble, inconvenience, loss and injury to them and a situation is created by unscrupulous, anti-national and anti-people groups who force majority of the people not to move about and force them in illegal detention in their own house by threat, coercion and force.

3.21. With respect to destruction of public property, the Full Bench held thus:

"In the guise of hartals and general strikes, bandhs were actually observed depriving majority of the citizens their fundamental rights and the State was a silent spectator. Many of the State owned transport vehicles were damaged and on declaration of hartal, State Road Transport Corporation itself had stopped plying of the vehicles which itself shows that even the Government is unable to protect its own vehicles or unable to give protection to its vehicles."

3.22. The Full Bench further held:

"10. It is clear to us from the affidavits and counter affidavits filed in those cases and past experience that whenever hartal is called by the political parties or organizations, they are putting the State to ransom. The fundamental rights of the citizens are violated and Government is not able to give adequate protection to the citizens. In the light of the past experience, it is for the persons who call

⁵³ 2004 Kerala High Court Cases (KHC) 660 : 2004 (2) Ker.LT 758 : 2004 (2) Ker.LJ 88 : ILR 2004 (2) Ker. 481(FB).

hartals or general strikes to see that their followers are not using force or threat for preventing others from moving about and fundamental rights of others are not curtailed. Instead of stating that milk supplies, hospital etc. will be exempted as if others will not be allowed, in future notices calling of hartals and general strikes it should clearly state that nobody will be compelled to participate in the hartal or in the general strike and those who are willing to do their normal duties, can do so. Those who want to open the shops or ply the vehicles can do so and no persons will be prevented or obstructed and no force, coercion or violence will be used. It is also learned from the past experience that even though there may not be any call for using violence in the call for hartal, violence spreads and people are put to fear psychosis. Therefore, for damages caused during the strike and hartal days, people who are calling strike or hartals are vicariously liable to pay damages as held by the Full Bench and approved by the Apex Court in Bharat Kumar's case.

11. State is responsible to pay damages to the citizens as damages to the citizens are caused due to the failure of the Government to give adequate protection. The State functionaries responsible for culpable default of negligence ought to be made personally liable by invoking the principle of strict liability combined with the fact that the defence of sovereign immunity no longer available to the State officials. The concept of compensation by the State by invoking the principles of strict liability was first evolved by the Supreme Court in Rudul Sah v. State of Bihar and Another (AIR 1983 SC 1086) and later developed in the case of Sebastian M. Hongray v. Union of India (AIR 1984 SC 1026) followed by a string of authorities including Nilabati Behere v. State of Orissa and Others (1993 (2) SCC 746) of the Apex Court. Government is unable to give protection even to run its own vehicles. A situation is being created so that even State Transport vehicles are not allowed to run and the students have to write C.B.S.E., I.C.S.E. examinations etc. under threat and in difficult circumstances. Patients are unable to go to the hospital and workers on daily wages are denied their wages etc. If such a situation is there, it will amount to constitutional breakdown. As admitted in the counter affidavit, if police is unable to cope up with the situation, they should call the help of Army. There are sufficient provisions in the Constitution for requesting the Army to help. Chapter X of the Code of Criminal Procedure also prescribes the procedure to be adopted by the authorities for maintenance of public order and tranquility. S.130 and 131 of the Code of Criminal Procedure also authorize the District authorities to call the Army

for help. The Government should authorize the District Officers to call Army or para-military forces as and when necessary. Unless strict measures are taken, threat to the citizens cannot be abated. It is for the State Government to consider whether help is needed from the Union Government under Art.355 of the Constitution of India if it is unable to control the situation. It is for the State Government to take proper stern action to control lawlessness in the State which may lead to constitutional breakdown, a situation which may attract Art.356 of the Constitution."

3.23. The Full Bench issued the following directions:

"(1) Whenever a hartal or a general strike is called, the Government should take adequate measures to see that normal life of the citizens is not paralysed. That is to be done not by declaring holidays or postponing examinations; but, by giving effective protection to those who are not participating in such hartals or strikes. Government should be able to deal with the situation with strong hands. Considering the past experience, if the Government is feeling that they are unable to give adequate protection, it should request the Centre for deputing Army or para-military forces so that there should not be any constitutional breakdown and violation of fundamental rights of the citizens;

(2) The District Administration should be given sufficient direction to avail para-military force as provided under Chapter X of the Code of Criminal Procedure to maintain public services if law and order problem arises during the hartal or general strike by unlawful assembly of hartal or strike supporters;

(3) In cases of damage to public property, action should be taken to recover the damages from the persons who actually cause damages and also from the political parties, organizers and persons who give actual call for such hartal or general strikes. In view of the happenings in the past, they cannot say that they did not visualize such a situation which was created by anti social elements and directions issued in this regard in Para.18 of Bharat Kumar's case which is affirmed by the Supreme Court shall be followed strictly and if no proper action is taken, it should be realized from the defaulting officers and stern action should be taken against such officers;

(4) Effective action should be taken under the Prevention of Damages to Public Property Act, 1984 and circular dated 17.12.2003 (produced as Ext.R1(d) in W.P.(C) No. 20078 of 2003) shall be implemented strictly;

(5) Those who call for hartals or strikes by whatever reason should make it clear in their call that nobody will be compelled to participate in the hartals or strikes, that traffic will not be obstructed and those who are willing can go for work and that fundamental rights of others to move about will not be affected. They should also instruct their supporters to see that no coercion or force is used for compelling others to participate in the strike or hartal;

(6) With regard to the injuries and damages caused to the private persons and their properties, Government should adequately compensate them immediately as Government has failed to fulfill its constitutional obligation to protect lives and properties of the citizens and the Government should take steps to recover the same from the persons who caused such damages or injuries and also from the persons and political parties or organizations who called for such hartals or general strikes. Criminal cases also should be taken against the offenders as well as the abettors to the offence. Such criminal cases registered should be pursued with enthusiasm and it should not be withdrawn merely on political pressure and investigation should be conducted fairly not with a purpose of filing a subsequent refer report as undetected;

(7) Government should see that an atmosphere is created so that citizens can move about on the roads freely without fear and vehicular traffic is not obstructed and public transport can ply without any hindrance;

(8) Damages caused to the public or private properties etc. and recovery steps initiated should be published by the Government. Circular dated 17.12.2003 issued by the Government regarding recovery of damages should be implemented fully;

(9) Government should also take appropriate action against the District Administration and Police authorities if effective steps are not taken by them against the persons who use force or who are trying to impose their will on others to deprive the fundamental

rights of majority of the citizens in the guise of hartals and general strikes."

(G) *James Martin v. State of Kerala*⁵⁴

3.24. The cases arose out of criminal appeals decided by the High Court of Kerala. On a Bharat bandh day, some incidents took place in which two persons lost their lives. The mill and house of the accused were set ablaze by the activists of the political parties which made the bandh call. The second accused opened fire at them and two persons lost their lives. The trial court and the High Court held that the accused, the owner of a mill and house, exceed his right of private defence. The Supreme Court reversed the judgment of the High Court, set aside the conviction and sentence and acquitted the accused. While disposing of the case, the Supreme Court held:

"Before we part with the case it needs to be noted that in the name of hartal or bandh or strike no person has any right to cause inconvenience to any other person or to cause in any manner a threat or apprehension of risk to life, liberty, property of any citizen or destruction of life and property, and the least any Government or public property. It is high time that the authorities concerned take serious note of this requirement while dealing with those who destroy public property in the name of strike, hartal or bandh. Those who at times may have even genuine demands to make should not loose sight of the overall situation eluding control and reaching unmanageable bounds endangering life, liberty and property of citizens and public, enabling anti-social forces to gain control resulting in all around destruction with counter productive results at the expense of public order and public peace. No person has any right to destroy another's property in the guise of bandh or hartal or strike, irrespective of the proclaimed reasonableness of the cause or the question whether there is or was any legal sanction for the same. The case at hand is one which led to the destruction of

⁵⁴ (2004) 2 SCC 203.

property and loss of lives, because of irresponsible and illegal acts of some in the name of bandh or hartal or strike. Unless those who organize can be confident of enforcing effective control over any possible turn of events, they should think twice to hazard themselves into such risk prone ventures endangering public peace and public order. The question whether bandh or hartal or strike has any legal sanctity is of little consequence in such matters. All the more so when the days are such where even law-enforcing authorities/those in power also precipitate to gain political advantage at the risk and cost of their opponents. Unless such acts are controlled with iron hands, innocent citizens are bound to suffer and they shall be the victims of the highhanded acts of some fanatics with queer notions of democracy and freedom of speech or association. That provides for no license to take law into their own hands. Any soft or lenient approach for such offenders would be an affront to rule of law and challenge to public order and peace.”

(H) Kerala Vyapari Vyavasayi Ekopana Samithi v. State of Kerala⁵⁵

3.25. The Division Bench of the Kerala High Court, dealing with the aspect of destruction of public and private properties during hartals and bundhs, held thus:

“21. Even in Bharat Kumar v. State of Kerala (1997 (2) KLT 287), the Full Bench had suggested that it is for the authorities to initiate action for recovery of the damages caused to the State property by the supporters of a bundh call since no one had a right to destroy public property at the cost of the Nation or the State. It is not seen that when destruction is caused by the supporters of hartal to public property - the buses of the Kerala State Road Transport Corporation and Government Offices and institutions appear to be the prime targets - the State or the concerned authority or Corporation has chosen to initiate any action for recovery of the loss caused to the exchequer or to the particular Corporation or entity, so as to mitigate the damage caused to public property. It is argued by the petitioners that if the State and the various authorities are prompt in taking such action for recovery of such damages, the enthusiasm for destroying public property would be considerably dampened and a direction may be issued to the State and its officers and the

⁵⁵ AIR 2000 Ker. 389 : 2000 Kerala High Court Case (KHC 382) : 2000 (2) Ker.LT 430 : ILR 2000 (3) Ker. 173.

Corporations under it to take action for recovery of damages. Learned Government Pleader submitted that the destruction of public property was not justified but the State has desisted from taking action for recovery of the damages caused because of the difficulty in identifying the persons who actually caused the damages. The plea that the miscreants can never be identified cannot be accepted. But assuming that this argument of the Government Pleader is correct, even then, it is clear that those who have called for the hartal would be liable for the damage caused to public property and we do not see why they cannot be sued on the principle of compensation or on tort. Obviously, the officers of the State have the duty to protect and preserve public property. The performance of that duty also involves the recovery of compensation when a public or State asset is wantonly destroyed. So, in addition to initiating action under the Penal law including the Prevention of Damage to Public Property Act, 1984, the State can also sue the wrong doers and their instigators for recovery of damages.

.....

25. *Similarly, the submission of the petitioners in O. P. 18478 of 1999 that organisations have no right to create a blockade of Municipal office so as to prevent people from going to these offices for attending to their business, also deserves to be accepted once we accept the principle that no party or organisation has a right to compel others to toe its line unless these others want to do it voluntarily. On that principle, it has necessarily to be held that the contesting respondents in O. P. 18478 of 1999 have no right to call for a blockade of the office of the local authority so as to prevent people from approaching that authority in exercise of their right of free movement and as part of their personal freedom.*

26. *Similar is the situation regarding the plying of private vehicles on the roads on the day of hartal. It is not proper for the authorities to say that when people throw stones at vehicles they may not be able to prevent the same. Obviously, the police authorities have sufficient power under law including the Police Act, to take preventive steps in that regard. It is for them to resort to such steps to ensure that citizens are not prevented from using the roads or taking out their vehicles on to the roads for their own businesses and in exercise of their right of free movement guaranteed by the Constitution.”*



3.26. The Division Bench issued the following direction, among other:

“We direct the State, District Collectors, all other officers of the State and Corporations owned or controlled by the State to take immediate and prompt action, for recovery of damages in cases where pursuant to a call for hartal, public property or property belonging to the Corporation is damaged or destroyed, from the perpetrators of the acts leading to destruction/damage and those who have issued the call for hartal.”

(I) *The State of Kerala v. K. Ajith*⁵⁶

3.27. The incident involved in the case took place in the Kerala Legislative Assembly in 2015 when the then Finance Minister was presenting the budget for the financial year 2015-16.

3.28. On 13 March, 2015, the then Finance Minister was presenting the budget for the financial year 2015-2016 in the Kerala Legislative Assembly. The accused, who at the time were Members of the Legislative Assembly belonging to the party in opposition, disrupted the presentation of the budget, climbed over to the Speaker's dais and damaged furniture and articles including the Speaker's chair, computer, mike, emergency lamp and electronic panel, causing a loss of Rs. 2,20,093. A crime was registered for offences punishable under Section 447 and Section 427 read with Section 34 of IPC and Section 3(1) of the Prevention of Damage to Public Property Act. On completion of investigation, final report was submitted and cognizance was taken by the Chief Judicial Magistrate. At that stage, an application was filed by the Public Prosecutor under Section 321 CrPC seeking sanction to withdraw the case on the ground that the 'protest' by the MLAs was protected by the immunities and privileges under Article

⁵⁶ AIR 2021 SC 3594.

194(3) of the Constitution and that an offence which is committed in the Assembly, during a session or in its vicinity by MLAs, cannot be registered by the police without the permission of the Speaker. The Chief Judicial Magistrate declined to give consent to the application of the Prosecutor. Aggrieved, a revision petition was filed before the High Court. The High Court dismissed the petition holding that the conduct of the MLAs did not warrant the invocation of the immunities and privileges granted to MLAs and that there is no provision that mandated the police to seek permission or sanction of the Speaker before registering a crime against the MLAs. The decision of the High Court was called in question before the Supreme Court. The Supreme Court dismissed the appeals.

3.29. The Supreme Court held:

"50. The gravity of the offence involving a destruction of public property was considered by this Court in Re: Destruction of Public and Private Properties (2009 (2) KHC 374 : 2009 (1) KLD 664 : 2009 (2) KLT 552 : (2009) 5 SCC 212 : AIR 2009 SC 2266 : 2009 CriLJ 2807 : 2009 (5) SCALE 638 : (2009) 2 SCC (Cri) 629), where it took suo motu cognizance to remedy the large - scale destruction of public and private properties in agitations, bandhs, hartals and other forms of 'protest'. The Court formed two committees chaired by Justice K. T. Thomas (former Judge of this Court) and Mr. Fali S. Nariman, Senior Counsel and adopted the recommendations of both the committees in laying down specific guidelines for investigation and prosecution of offences involving destruction of public property, assessment of damages and determination of compensation in cases involving destruction of property. In the more recent decision Kodungallur Film Society and Another v. Union of India (2018 (5) KHC 297 : (2018) 10 SCC 713), this Court noted that the guidelines in Re: Destruction of Public and Private Properties (supra) have been considered by the Union of India and a draft Bill for initiating legislative changes along the lines of the recommendations is under consideration. The Court also issued guidelines on preventive measures to curb mob violence, determining compensation and fixing liability for offences, and in

regard to the responsibility of police officials for investigation of such crimes.

51. Based on the above, it is evident that there has been a growing recognition and consensus both in this Court and Parliament that acts of destruction of public and private property in the name of protests should not be tolerated. Incidentally, the Kerala Legislative Assembly also enacted the Kerala Prevention of Damage to Private Property and Payment of Compensation Act, 2019 (Act No. 09 of 2019) to complement the central legislation, Prevention of Damages to Public Property Act, 1984, with a special focus on private property.

52. The persons who have been named as the accused in the FIR in the present case held a responsible elected office as MLAs in the Legislative Assembly. In the same manner as any other citizen, they are subject to the boundaries of lawful behaviour set by criminal law. No member of an elected legislature can claim either a privilege or an immunity to stand above the sanctions of the criminal law, which applies equally to all citizens. The purpose and object of the Act of 1984 was to curb acts of vandalism and damage to public property including (but not limited to) destruction and damage caused during riots and public protests.

.....

59. On the touchstone of these principles, there can be no manner of doubt that the CJM was justified in declining consent for the withdrawal of the prosecution under S.321. The acts complained of which are alleged to constitute offences punishable under S.425, S.427 and S.447 of the IPC and under S.3(1) of the Prevention of Damages to Public Property Act, 1984 are stated to have been committed in the present case on the floor of the State Legislature. Committing acts of destruction of public property cannot be equated with either the freedom of speech in the legislature or with forms of protest legitimately available to the members of the opposition. To allow the prosecution to be withdrawn in the face of these allegations, in respect of which upon investigation a final report has been submitted under S.173 of the CrPC and cognizance has been taken, would amount to an interference with the normal course of justice for illegitimate reasons. Such an action is clearly extraneous to the vindication of the law to which all organs of the executive are bound. Hence, the mere finding of the High Court that there is no absence of good faith would not result in allowing the application

as a necessary consequence, by ignoring the cause of public justice and the need to observe probity in public life. The members of the State Legislature have in their character as elected representatives a public trust impressed upon the discharge of their duties. Allowing the prosecution to be withdrawn would only result in a singular result, which is that the elected representatives are exempt from the mandate of criminal law. This cannot be countenanced as being in aid of the broad ends of public justice."

(J) Hemanth Kumar v. Sub Inspector of Police⁵⁷

3.30. The offences alleged against the petitioners/accused were under Section 143, Section 147 and Section 452 read with Section 149 of the IPC and Section 3(1) of the PDPP Act. The prosecution case was the following: On 12-08-2011, the accused forcibly entered into the Government Vocational Higher Secondary School, Chathamangalam in connection with a political strike by one of the students' unions and the accused destroyed the furniture, computer etc. belonging to the school, thereby causing a loss of Rs.23,000/- to the State. The petitioners were not students of the Government Vocational Higher Secondary School, Chathamangalam, but they were outsiders. It was submitted by the learned counsel for the petitioners that though they were outsiders, they were also students in some other educational institutions.

3.31. The Kerala High Court held:

"6. The allegation is that the petitioners destroyed the valuable articles available in the school, which are intended for the use of the students. It is stated that the petitioners are also students. If so, they must understand the value and utility of the articles and materials available in the school. The petitioners had no business to enter into the compound of the school where the offence was committed.

⁵⁷ 2012 CriLJ 1297: 2011 (4) Kerala High Court Cases (KHC 89: 2011 (4) Ker.LT 288 : ILR 2011 (4) Ker. 261.

Therefore, their alleged entry was illegal. Destruction of public property is to be viewed very seriously. Very often, under the guise of strikes, hartals and other political adventures, public properties are being destroyed unmindful of the consequences. Public property means the property belonging to the public. Every citizen has a right in the public property. It cannot be destroyed by anybody under the guise of strike or protest, whatever may be the reason for the strike or protest. Even if the strike or protest is for a genuine cause, nobody can say that destruction of public property would be part of that genuine cause. There can be no justification for destruction of public property, whatever may be the cause sought to be espoused for the same."

.....

8. I am of the view that in cases where public property is destroyed, the value of the same or even more should be directed to be deposited by the accused as a condition for granting bail to them. Otherwise, the loss sustained to the State would not be realised at all. Courts cannot be mute spectators to the wanton destruction of public property. Nobody should be allowed to destroy public property and claim success of the strikes on the basis of the quantum of loss sustained to the State. It is easy to destroy; but it is not so easy to make.

9. If the accused are found not guilty and they are accordingly acquitted, they would be entitled to get refund of the amount deposited by them. If the Court comes to the conclusion that the accused are liable to pay any fine, the amount in deposit can be utilised for payment of fine."

3.32. The Bail Application was allowed on conditions. One of the conditions was the following:

"The petitioners shall together deposit a sum of Rs. 50,000/- (Rupees Fifty Thousand only) before the Court of the Judicial Magistrate of the First Class, Kunnamangalam. The petitioners shall be released on bail only on such deposit. If the petitioners were to be acquitted finding that they are not guilty, they would be entitled to get refund of the amount. Otherwise, the amount would be at the disposal of the Court trying the case."

(K) *Hemachandran M. T. @ Kamalesh v. Sub Inspector of Police*⁵⁸

3.33. The offences alleged against the accused were under Sections 143, 147, 148, 332, 333, 326, 506(i), and 307 read with Section 149 of the Indian Penal Code and Section 3(2)(c) of the Prevention of Damage to Public Property Act. The prosecution alleged that about 25 political activists attacked the police party resulting in injuries to the policemen. The mob also destroyed a police jeep. The accused persons were arrested. The High Court considered their bail applications.

3.34. The Kerala High Court held, *inter alia*, thus:

"24. The PDPP Act was enacted with a view to curb acts of vandalism and damage to public property, including destruction and damage caused during riots and public commotion. The PDPP Act is an Act to provide for prevention of damage to public property and for the matters connected therewith. The Act defines "public property". S.2 (a) of the PDPP Act provides that unless the context otherwise requires, "mischief" shall have the same meaning as in S.425 of the Indian Penal Code. Chapter XVII of the Indian Penal Code deals with offences against property. S.425 to 440 of the Indian Penal Code deal with "mischief". Punishment under these Sections vary from imprisonment for a term which may extend to three months to a term which may extend to ten years. Irrespective of the term of imprisonment as punishment, all the offences under Chapter XVII of the IPC are covered by S.437 (3) CrI PC. S.5 of the PDPP Act provides that "no person accused or convicted of an offence punishable under S.3 or 4 shall, if in custody, be released on bail or on his own bond unless the prosecution has been given an opportunity to oppose the application for such release. The fourth proviso to S.437 CrI PC provides for opportunity of hearing to the Public Prosecutor only if the offence is punishable with death, imprisonment for life, or imprisonment for seven years or more. S.6 of the PDPP Act states that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. The scheme of the

⁵⁸ 2012 CrI J 1328; 2011 (4) KHC 689; 2011 (4) KLT 841; ILR 2011 (4) Ker. 841.

PDPP Act when considered along with S.437 of the Code of Criminal Procedure, it would be clear that in the matter of granting bail, a rigorous approach is contemplated when the offences alleged are under the PDPP Act. Such rigorous approach is required in the matter of imposing conditions for granting bail also. A condition for deposit of the loss sustained to the Government as a condition for granting bail to the accused would be justified under S.437 and S.439 of the Code of Criminal Procedure. The decision of the Supreme Court in In Re Destruction of Public & Private Properties v. State of Andhra Pradesh 2009 (2) KLT 552 : 2009 (5) SCC212, 2009 (2) KHC 374 : AIR 2009 SC 2266 : 2009 (1) KLD 664 : 2009 CriLJ2807 : 2009 (5) SCALE 638 would also support such a view. For the reasons mentioned above, I am not inclined to accept the contention of the Petitioners that the decision in Hemanth Kumar and Others v. Sub Inspector of Police, 2011 (4)KHC 89 : 2011 (4) KLT 288 : 2011 (2) KLD 701 : 2011 (4) KLJ 296 : ILR 2011 (4)Ker. 261 requires reconsideration.

25. As rightly pointed out by the State Prosecutor, destruction of public property cannot always be compensated in terms of money. For example, if the documents kept in a Village Office, Taluk Office, Collectorate or Surveyor's Office are destroyed, the public would be put to untold misery. Even the Civil Courts would find it difficult to decide the civil disputes between parties if such documents are destroyed. The after effect of such destruction would last even for several decades. The actual loss caused by such destruction could not be estimated in terms of money. A rigorous approach is required in the matter of granting bail and also in the matter of imposing conditions while granting bail, in the cases involving destruction of public property. Otherwise, the object sought to be achieved by the PDPP Act would become illusory."

(L) Ummer P. C. v. State of Kerala⁵⁹

3.35. The prosecution case was that the petitioner demolished the bund of a lift irrigation canal and caused a loss of Rs. 1,21,000 to the Government. The petitioner/accused filed application seeking pre-arrest

⁵⁹ 2019 (5) KHC 467 : 2019 (4) KLT 724 : ILR 2020 (1) Ker. 66.

bail before the Court of Session, Manjeri. The learned Sessions Judge allowed the application on certain conditions. One of the conditions was that the petitioner shall deposit a sum of Rs. 1,21,000 in the court below which is equal to the amount of loss caused to the Government. Aggrieved by the aforesaid condition, the accused approached the High Court under Section 482 of the Code of Criminal Procedure for modifying / deleting it.

3.36. The High Court dismissed the petition, relying on the decisions of the Kerala High Court in *Hemanth Kumar v. Sub Inspector of Police*⁶⁰ and *Hemachandran M. T. @ Kamalesh v. Sub Inspector of Police*.⁶¹

(M) *Shanif K. v. State of Kerala*⁶²

3.37. The prosecution case was that disciplinary action was initiated by the Principal of a college against certain students for indulging in ragging and for collecting money without receipts. This was questioned by a group of students owing allegiance to a particular students' organisation. The Principal, however, did not budge to their strong arm-twisting tactics. Instead of pursuing their grievance in a legal manner, the accused nos. 1 to 5 formed an unlawful assembly and in prosecution of their common object, trespassed into the college premises and went on a rampage. They destroyed glass panes of about 75 windows and brought down the notice boards installed in the college campus. The public address microphone and equipment, two computer monitors, two desktops, LED display boards and a modem were destroyed. They then targeted their attention to two cars which were parked inside the college, one of which

⁶⁰ 2012 CriLJ 1297 : 2011 (4) Kerala High Court Cases (KHC) 89.

⁶¹ 2012 CriLJ 1328 : 2011 (4) KHC 689.

⁶² 2018 (5) KHC 272 : 2018 (4) KLT 766 : ILR 2018 (4) Ker. 982.

was of the college Principal. After causing wanton destruction, they left the campus.

3.38. Disposing of the Bail Application, the Kerala High Court held:

“8. At the same time, the fact that the applicants and the Union they represent are responsible for initiating, promoting and instigating the violence inside the campus persuades me to impose a condition directing them to deposit a portion of the quantified loss caused due to such violence. Necessary directions and guidelines have been issued by the Apex Court in Destruction of Public and Private Property, In re v. State of Andhra Pradesh and Others, 2009 (2) KHC 374 : 2009 (5) SCC 212 : 2009 (1) KLD 664 : 2009 (2) KLT 552 : AIR 2009 SC 2266 : 2009 CriLJ 2807 : 2009 (5) SCALE 638 : 2009 (2) SCC (Cri) 629 with a view to put an end to the rampant destruction of public and private properties in the name of agitations, bandhs, hartals, etc.. In continuation thereto, in Kodungallur Film Society v. Union of India, 2018 KHC 6775 : 2018 SCC Online 1719 the Apex Court had issued guidelines to govern the measures that are required to be taken in addition to the recommendations / directions in In re: Destruction of Public and Private Properties (supra).....”

.....

9. Thus there cannot be any doubt that the applicants herein are entitled to conditional bail only upon deposit of the proportionate quantified loss caused due to such violence. The total loss has been tentatively calculated by the Investigating Officer as Rs.2,55,000/- as is evident from the order passed by the learned Magistrate. After going through the materials, I concur with the tentative calculation of the loss and it appears to be reasonable. The amount deposited as aforesaid can be used to mitigate the loss and damages caused to the college as per the provisions of the Code at the appropriate stage. The F.I.R in the instant case shows that five persons have been arrayed as the accused. The applicants are thus bound to deposit a sum of Rs.50,000/- each before the jurisdictional Court.”

3.39. One of the conditions for granting bail was the following:

"1). The applicants shall deposit a sum of Rs.50,000/- each before the Court having jurisdiction. If after trial, they are acquitted of all charges, the amount shall be refunded or else the amount will be at the disposal of the Court trying the case for payment of compensation and for mitigation of damages."

(N) *Amit Sahni (Shaheen Bagh, In re) v. State*⁶³

3.40. The Supreme Court in the case of *Amit Sahni (Shaheen Bagh, In re) v. State*,⁶⁴ taking a dim view of occupying public ways for protests made following observations-

"17. However, while appreciating the existence of the right to peaceful protest against a legislation (keeping in mind the words of Pulitzer Prize winner, Walter Lippmann, who said "In a democracy, the opposition is not only tolerated as constitutional, but must be maintained because it is indispensable"), we have to make it unequivocally clear that public ways and public spaces cannot be occupied in such a manner and that too indefinitely. Democracy and dissent go hand in hand, but then the demonstrations expressing dissent have to be in designated places alone. The present case was not even one of protests taking place in an undesignated area, but was a blockage of a public way which caused grave inconvenience to commuters. We cannot accept the plea of the applicants that an indeterminable number of people can assemble whenever they choose to protest. K.K. Mathew, J. in Himat Lal case [Himat Lal K. Shah v. State, (1973) 1 SCC 227 : 1973 SCC (Cri) 280] had eloquently observed that : (SCC p. 248, para 70)

"70. ... Streets and public parks exist primarily for other purposes and the social interest promoted by untrammelled exercise of freedom of utterance and assembly in public street must yield to social interest which prohibition and regulation of speech are designed to protect. But there is a constitutional difference between reasonable regulation and arbitrary exclusion."

⁶³ (2020) 10 SCC 439.

⁶⁴ *Id.*

18. Furthermore, we live in the age of technology and the internet where social movements around the world have swiftly integrated digital connectivity into their toolkit; be it for organising, publicity or effective communication. Technology, however, in a near paradoxical manner, works to both empower digitally fuelled movements and at the same time, contributes to their apparent weaknesses. The ability to scale up quickly, for example, using digital infrastructure has empowered movements to embrace their often leaderless aspirations and evade usual restrictions of censorship; however, the flip side to this is that social media channels are often fraught with danger and can lead to the creation of highly polarised environments, which often see parallel conversations running with no constructive outcome evident. Both these scenarios were witnessed in Shaheen Bagh, which started out as a protest against the Citizenship Amendment Act, gained momentum across cities to become a movement of solidarity for the women and their cause, but came with its fair share of chinks — as has been opined by the interlocutors and caused inconvenience of commuters.

19. We have, thus, no hesitation in concluding that such kind of occupation of public ways, whether at the site in question or anywhere else for protests is not acceptable and the administration ought to take action to keep the areas clear of encroachments or obstructions.”

(O) Kaniz Fatima v. Commissioner of Police⁶⁵

3.41. This was a review petition seeking review of the order delivered in *Amit Sahni (Shaheen Bagh, In Re) v. State*. The same was dismissed as the court was of the opinion that the impugned order did not suffer from any error apparent warranting its reconsideration. The Court observed that:

“We have considered the earlier judicial pronouncements and recorded our opinion that the Constitutional scheme comes with a right to protest and express dissent but with an obligation to have

⁶⁵ Review Petition (Civil) Diary No(s). 24552/2020 in C.A. No. 3282/2020.



certain duties. The right to protest cannot be anytime and everywhere. There may be some spontaneous protests but in case of prolonged dissent or protest, there cannot be continued occupation of public place affecting rights of others."

(emphasis added)



4. STATUTORY PROVISIONS AND JUDICIAL DECISIONS RELATING TO THE ISSUE OF WILFUL OBSTRUCTION

- 4.1. Wilful obstruction is a tough situation to define. It can be understood as a situation where a public way or place is obstructed wilfully, thus disturbing the normal course of public life at that place. There are several aspects of obstruction including the location, permanence, reason for such obstruction among others. Mostly, such obstructions are put in place with a view to compel the administration to comply with the demands of the group of protestors who have resorted to such obstruction.
- 4.2. Before going into the jurisprudence as to whether such acts can be criminalised or restricted/regulated by law, a look at the current legal scheme is important, considering the backdrop that right to protest is a right recognised under Article 19 of the Constitution. There is lack of a comprehensive legislation or a general law on wilful obstruction. There are specific laws dealing with specific situations and subject matters. In this regard, two legislations specifically provide that wilful obstruction can indeed constitute an offence, viz., the National Highways Act, 1956 and the Railways Act, 1989.

(A) National Highways Act, 1956

- 4.3. Section 8B of the National Highways Act, 1956 reads as follows:

"8B- Punishment for mischief by injury to national highway. - Whoever commits mischief by doing any act which renders or which he knows to be likely to render any national highway referred to in sub-section (1) of section 8A impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either



description for a term which may extend to five years, or with a fine, or with both.”

- 4.4. The Tripura High Court dealt with the question of whether obstruction/blocking can lead to an offence under Section 8B of the National Highways Act, 1956.⁶⁶ The Court noted that in order to appreciate the arguments of the petitioners relating to their rights under Article 19 of the Constitution, it was relevant to identify the place where the agitation had taken place. It noted that the cause of action and unlawful assembly was at National Highway-08. The Court, thereafter, noted that:⁶⁷

*“... 10. In view of the specific prohibition under Section 8B of the National Highway Act, 1956, the action of the petitioners in the manner in which they have blocked the National Highway cannot be appreciated. In the broader aspect with regard to Article 19 of the Constitution of India is concerned, there is no doubt that the petitioners are having their full fundamental rights and liberty to express their freedom of speech and as well as assemble peacefully without arms. The said fundamental right is granted by way of reasonable restrictions. In view of the said restrictions, Section 8B of the National Highway Act comes into play. **Whether any violence has taken place and whether it was an unlawful assembly is immaterial but once the National Highway itself has been blocked by the petitioners it amounts to a clear violation of Section 8B of the National Highway Act and the petitioners cannot claim immunity under Article 19(1)(a)(b) of the Constitution of India.** Further, no document is placed before this Court to say that in order to exercise their rights under Article 19 of the Constitution of India, the petitioners have approached any competent authority seeking permission to exercise their fundamental right by identifying the place, time, and date for their assembly. In absentia, any assembly in contravention to Section 8B of the National Highway Act and also unlawful assembly at any public place, this Court feels that it is a gross violation of Article (19)(1)(a)(b) and misconceiving the fundamental rights.” (emphasis added)*

⁶⁶ *Tripura People's Front v. State of Tripura*, (W.P. (CrI.) No. 02/2021).

⁶⁷ *Id.*

- 4.5. Prior to the consideration by the Tripura High Court, the Rajasthan High Court, in *Rajveer Singh v. State of Rajasthan*⁶⁸, while considering the scope of Section 8B of the National Highways Act, 1956, held that blocking the same would amount to an offence under the said section. The relevant portion is reproduced below:

"...5. A bare reading of the said provision reveals that any act, by which, the National Highway is made impassable or less safe for travelling or conveying property is an offence punishable with imprisonment of either description for a term which may extend to five years, or with a fine or with both.

6. A bare reading of the FIR reveals that the petitioner and his companions blocked the National Highway by putting stones, bricks and vehicles etc. on the road. As a result of the conduct/act of the accused, the National Highway became impassable and less safe for the public for travelling and the property also could not be conveyed thereon properly. The act of the accused thus definitely is covered under the purview of the offence defined under Section 8B of the National Highways Act, 1956.

7. As a result of the aforesaid discussion, this Court has no hesitation in arriving at a conclusion that the accused petitioner as well as his companions are prima facie responsible for the offence under Section 8B of the National Highways Act, 1956."

- 4.6. Similarly, the Gauhati High Court had commented on the issue of road blockades as part of the larger call for 'bandhs' by observing that blocking a national highway would be an offence under the National Highways Act, 1956 as enforcing a bandh or blockade may attract Section 8B of the said Act.⁶⁹

(B) Railways Act, 1989

- 4.7. Coming to the Railways Act, 1989, multiple provisions need to be adverted to in the context of the present issue. Section 146 criminalises obstruction

⁶⁸ *Rajveer Singh v. State of Rajasthan*, 2012 SCC OnLine Raj 3624.

⁶⁹ *Lower Assam Inter District Stage Carriage Bus Owner's Association v. State of Assam*, 2019 SCC OnLine Gau 1482.

of a railway servant from performing his duties.⁷⁰ Section 147 provides for the punishment of the offence of trespass and refusal to discontinue such trespass.⁷¹ Section 150 elucidates the offence of maliciously wrecking or attempting to wreck a train and the punishment thereof.⁷² Section 151 criminalises damage and destruction to certain railway properties.⁷³ Section 174 makes the obstruction of a running train an offence.⁷⁴

⁷⁰ **146. Obstructing railway servant in his duties.**— If any person wilfully obstructs or prevents any railway servant in the discharge of his duties, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

⁷¹ **147. Trespass and refusal to desist from trespass.**— 1) If a person enters upon or into any part of a railway without lawful authority, or having lawfully entered upon or into such part misuses such property or refuses to leave, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such punishment shall not be less than a fine of five hundred rupees.

2) Any person referred to in sub-section (1) may be removed from the railway by any railway servant or by any other person whom such railway servant may call to his aid.

⁷² **150. Maliciously wrecking or attempting to wreck a train.**—(1) Subject to the provisions of sub-section (2), if any person unlawfully,—

(a) puts or throws upon or across any railway, any wood, stone or other matter or thing; or

(b) takes up, removes, loosens or displaces any rail, sleeper or other matter or things belonging to any railway; or

(c) turns, moves, unlocks or diverts any points or other machinery belonging to any railway; or

(d) makes or shows, or hides or removes, any signal or light upon or near to any railway; or

(e) does or causes to be done or attempts to do any other act or thing in relation to any railway, with intent or with knowledge that he is likely to endanger the safety of any person travelling on or being upon the railway, he shall be punishable with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, where a person is punishable with rigorous imprisonment, such imprisonment shall not be less than—

(a) three years, in the case of a conviction for the first offence; and

(b) seven years, in the case of conviction for the second or subsequent offence.

(2) If any person unlawfully does any act or thing referred to in any of the clauses of sub-section (1)—

(a) with intent to cause the death of any person and the doing of such act or thing causes the death of any person; or

(b) with knowledge that such act or thing is so imminently dangerous that it must in all probability cause the death of any person or such bodily injury to any person as is likely to cause the death of such person, he shall be punishable with death or imprisonment for life.

⁷³ **151. Damage to or destruction of certain railway properties.**— (1) If any person, with intent to cause, or knowing that he is likely to cause damage or destruction to any property of a railway referred to in sub-section (2), causes by fire, explosive substance or otherwise, damage to such property or destruction of such property, he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(2) The properties of a railway referred to in sub-section (1) are railway track, bridges, station buildings and installations, carriages or wagons, locomotives, signalling, telecommunications, electric traction and block equipments and such other properties as the Central Government being of the opinion that damage thereto or destruction thereof is likely to endanger the operation of a railway, may, by notification, specify

⁷⁴ **174. Obstructing running of train, etc.**— If any railway servant (Whether on duty or otherwise) or any other person obstructs or causes to be obstructed or attempts to obstruct any train or other rolling stock upon a railway;—

a) by squatting or picketing or during any rail roko agitation or bandh; or

b) by keeping without authority any rolling stock on the railway; or

4.8. The Madras High Court had occasion to deal with the above offences. In *Ezhilarasan v. The State*,⁷⁵ the Court held:

“7. The combined reading of these provisions makes it clear that squatting on a railway track and obstructing the running of train is an offence punishable under this Act. The submission of the learned counsel for the petitioner that petitioner is not part of the agitating member and that he did not squat on the platform No. 1, cannot be considered now in the absence of any tangible and acceptable material shown to the Court.”

4.9. The Gauhati High Court also commented on rail blockades as part of a larger call for ‘bandhs’, observing that *“enforcing a railway blockade would attract provisions of the Railways Act, 1989”*.⁷⁶ Obstructing or preventing any railway servant from attending to his duties would attract Section 146, while trespassing into railway property would be an offence under Section 147.⁷⁷ In addition, in case of violence or even anticipated violence where there is an attempt to wreck a train or damage/destroy railway property, Sections 150 and 151 would become applicable.⁷⁸ In case of any attempt to cause hurt to railway passengers or which endangers safety of railway passengers, Sections 152 and 153 may be attracted.⁷⁹ That apart, in the event of any railway blockade or bandh obstructing or attempting to obstruct running of trains etc., Section 174 would be attracted.⁸⁰

c) by tampering with, disconnecting or interfering in any other manner with its hose pipe or tampering with signal gear or otherwise, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

⁷⁵ *Ezhilarasan v. The State*, CrI. O.P. No. 2611 of 2023.

⁷⁶ *Lower Assam Inter District Stage Carriage Bus Owner's Association v. State of Assam*, 2019 SCC OnLine Gau 1482.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

- 4.10. In many of the circumstances, such obstructions are either to achieve an aim which relates to an individual or a small group; which is ordinarily much smaller in comparison to the group to which inconvenience is caused due to such obstruction. The advocates of individual rights or the rights of such smaller groups may term such obstructions a necessary evil, but it has to be understood that a balance has to be struck between individual rights (smaller protesting groups treated as individuals in contrast to larger groups) and group rights.
- 4.11. It would be apt to quote Sydney Harris herein who opined, "*Once we assuage our conscience by calling something a 'necessary evil', it begins to look more and more necessary and less and less evil.*". The rights under Article 19 of the Constitution include right to protest, however, the said right does not include the right to strike.⁸¹ The Supreme Court, in a catena of decisions, has held that calling for all out 'bandhs' is illegal and unconstitutional.⁸² The rights under Article 19(1)(a) and (b) are also subject to reasonable restrictions under Article 19(2) and (3) respectively, both of which include 'public order' as a ground to impose such restrictions by law.
- 4.12. There may be situations where a road is not a designated national highway, but the blockade of the same may lead to considerable loss to the general public due to restrictions on mobility of people and goods. There may be other possible scenarios where such blockade or obstruction is not of a road, but of a public place of importance. In all such situations, there might not be actual damage in terms of damage to public property, but the loss in

⁸¹ See, *All India Bank Employees Association v. National Industrial Tribunal*, AIR 1962 SC 171; *Kameshwar Singh v. State of Bihar*, AIR 1962 SC 1166; *Radhey Shyam Sharma v. Post Master General*, AIR 1965 SC 311.

⁸² See, *Destruction of Public and Private Properties, In Re v. State of Andhra Pradesh* (2009) 5 SCC 212; *Communist Party of India (M) v. Bharat Kumar* (1998) 1 SCC 201 (affirming *Bharat Kumar K. Palicha v. State of Kerala*, AIR 1997 Ker 291).

terms of inconvenience, delay, opportunity, time etc. cannot be ignored. Further, in light of the above, attention may also be drawn to ‘The Kerala Prevention of Damage to Private Property and Payment of Compensation of Act, 2019’. Under the said Act, the definition of ‘damaging act’ includes blockade of road traffic.⁸³

4.13. In order to balance the conflicting rights, resort may be taken to the scheme contemplated in Article 19 itself. There is no denial that people have a right to protest, but such protests must be held at designated places, as held by the Supreme Court in *Amit Sahni (Shaheen Bagh, In re) v. State*.⁸⁴

4.14. Furthermore, the expression used in Clauses (2) and (3) of Article 19 is ‘in the interest of public order’, which is broader than ‘maintenance of public order’, which means that a law can be made addressing not just instances directly intended to incite disorder, but also those that have the tendency to lead to disorder.⁸⁵ When it is well established that restriction can include anticipatory action to prevent disruption or disorder,⁸⁶ then there is no ground to argue that a law cannot be made restricting an actual disruption or disorder—which is not a lawful assembly.

4.15. While wilful obstruction of national highways or the railways may be covered as an offence under the National Highways Act, 1956 and the Railways Act, 1989, it is pertinent to note that the scope of these specific legislations is very limited as they apply only to the cases where such an incident has taken place on a designated national highway or railway.

⁸³ The Kerala Prevention of Damage to Public Property and Payment of Compensation of Act, 2019, sec. 2(a).

⁸⁴ (2020) 10 SCC 439.

⁸⁵ See, *Ramji Lal Modi v. State of U.P.*, AIR 1957 SC 620.

⁸⁶ *Babulal Parate v. State of Maharashtra*, AIR 1961 SC 884; *Madhu Limaye v. Sub-Divisional Magistrate, Monghyr*, AIR 1971 SC 2486.

(C) *International Perspectives*

4.16. Legal provisions addressing wilful obstruction can be found across various jurisdictions. For instance, in the United Kingdom, the Police, Crime, Sentencing and Courts Act, 2022⁸⁷ has provisions which enhance punishment for wilful obstruction of highways⁸⁸ as provided under Section 137 of the Highways Act, 1980. The Act further prohibits obstruction of vehicular access to the Parliamentary Estate.⁸⁹ Further, in Germany, the right to peaceful assembly is restricted near the German Bundestag, the Bundesrat and the Federal Constitutional Court.⁹⁰

4.17. In the United States of America, the state of Tennessee criminalises “intentionally, knowingly or recklessly obstructing a highway, street, sidewalk, railway, waterway, elevator, aisle, or hallway to which the public, or a substantial portion of the public, has access; or any other place used for the passage of persons, vehicles or conveyances, whether the obstruction arises from the person’s acts alone or from the person’s acts and the acts of others.”⁹¹ Further, Tennessee passed a law in April 2017⁹² amending Section 307 of the Tennessee Code and introduced a further penalty of two hundred dollars if “the obstruction prevents an emergency vehicle from accessing a highway or street, the obstruction prevents a first responder from responding to an emergency, or if the obstruction prevents

⁸⁷ Police, Crime, Sentencing and Courts Act 2022, 2022 chap. 32.

⁸⁸ *Id.*, sec. 80.

⁸⁹ *Id.*, sec. 76.

⁹⁰ Annex: Questions on best practices that promote and protect the rights to freedom of peaceful assembly and of association, *available at*: <https://www.ohchr.org/sites/default/files/Documents/Issues/FAssociation/Responses2012/MemberStates/Germany.pdf> (last visited on Jan 31, 2024).

⁹¹ Tennessee Code, 2021, sec. 39-17-307, *available at*: <https://law.justia.com/codes/tennessee/2021/title-39/chapter-17/part-3/section-39-17-307/> (last visited on January 30, 2024).

⁹² Tennessee Senate Bill 902, *available at*: <https://legiscan.com/TN/text/SB0902/2017> (last visited on January 30, 2024).

access to an emergency exit.”⁹³ In the U.S. State of Arizona, the Criminal Code penalises obstructing a highway or other public thoroughfare⁹⁴ as well as the act of public nuisance⁹⁵. Public nuisance has been defined as anything that is “injurious to health, indecent, offensive to the senses or an obstruction to the free use of property that interferes with the comfortable enjoyment of life or property by an entire community or neighbourhood or by a considerable number of persons”⁹⁶; or “to unlawfully obstruct the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal or basin, or any public park, square, street or highway.”⁹⁷

⁹³ *Ibid.*

⁹⁴ Arizona Revised Statutes, sec. 13-2906, available at: <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/13/02906.htm> (last visited on January 30, 2024).

⁹⁵ Arizona Revised Statutes, sec. 13-2917, available at: <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/13/02917.htm> (last visited on January 30, 2024).

⁹⁶ *Id.*, sec. 13-2917(A)(1).

⁹⁷ *Id.*, sec. 13-2917(A)(2).

5. SOME INCIDENTS OF VIOLENCE: A TALE OF SCALE OF LOSS AND DESTRUCTION

- 5.1. Public property is the bedrock of a nation's infrastructure, providing the essential framework for economic, social, and cultural development. However, the deliberate and unlawful damage inflicted upon public assets has emerged as a huge concern highlighting a profound challenge to the legal and developmental landscape. The sustainable development of a nation is inherently linked to the health and vitality of its public infrastructure. Public property, comprising roads and bridges to public buildings and utilities, serves as the lifeline for the progress of a nation. Unfortunately, instances of damage to public property have become a growing phenomenon, posing a significant threat to the overall development of an individual as well as the whole nation. Such acts not only disrupt the smooth functioning of essential services but also undermine the collective efforts aimed at uplifting economic growth, social cohesion, and public welfare.
- 5.2. Damages to public property inflict a heavy toll on the economy of a nation. The resources required for repairing or replacing vandalized infrastructure could otherwise be allocated to development, job creation, and other avenues that contribute to economic advancement. Public property, such as transportation systems and utilities, plays a vital role in ensuring the efficient movement of goods and people. Any damage to public property leads to disruption of services, causing inconvenience to citizens, hampering daily activities, and impeding the smooth flow of commerce. The destruction of public spaces and amenities also negatively impacts the quality of life of citizens as parks, recreational areas, and cultural

landmarks contribute to the social fabric of a nation, fostering community engagement and well-being.

- 5.3. From an economic point of view, it also hampers foreign investment, as persistent damage to public property conveys an unstable and insecure environment, thereby creating a negative image in the minds of potential investors. This inevitably acts as a psychological barrier and prevents investors from investing in such an environment.
- 5.4. Another dimension of the grave national loss that is suffered on account of such indiscriminate acts of vandalism is the undermining of environmental efforts. Infrastructure projects are often designed with sustainability in mind. Damage to such structures not only undermines environmental efforts but also results in long-term ecological consequences which affects the progress towards a greener and more sustainable future.
- 5.5. The National Crime Records Bureau (hereinafter, referred to as “NCRB”), in its successive reports, has mentioned the statistics of crime involving damage to public property. The reports specifically highlight the number of cases that have been recorded under the PDPP Act. The data recorded by NCRB is year-wise and the same is shown below in form of a table:

S. No.	Year	Cases	Crime Rate
1.	2015	4941	0.4
2.	2016	5825	2.5
3.	2017 ⁹⁸	7910	0.6
4.	2018	7127	0.5

⁹⁸ National Crime Records Bureau, “Crime in India 2017” (2017).

5.	2019 ⁹⁹	6170	0.5
6.	2020	4524	0.3
7.	2021	4089	0.3
8.	2022 ¹⁰⁰	4403	0.3

5.6. It is observed that there are wide number of incidents that occur every year. The violence that happens not only affects the social fabric of different communities, but also hampers the development. These incidents involve mass destruction of public property and the inadequacies of the present legislation makes it easier for the perpetrator to get away with the crime. To emphasize the severity of the issue, some reported incidents of damage to life as well as public and private property have been discussed in this Chapter. These incidents clearly highlight the magnitude of loss suffered as a direct consequence of such violent protests and the need to strengthen the existing legal framework in order to effectively curb such disruptions.

(A) Muzaffarnagar Riots (2013)

5.7. The Muzaffarnagar riots of 2013 were a series of violent clashes that occurred in the Muzaffarnagar district of Uttar Pradesh between the Hindu and Muslim communities. This communal violence was triggered by murders of two Hindu Jat boys and a Muslim boy. The actual cause of rioting is still disputed, with contradictory claims arising from both sides¹⁰¹. The real cause alternates between an incident of eve-teasing, and

⁹⁹ National Crime Records Bureau, "Crime in India 2019" (2019).

¹⁰⁰ National Crime Records Bureau, "Crime in India 2022" (2022).

¹⁰¹ "The Mystery of Kawwal: Were Muzaffarnagar Riots Based on Distortion of Facts?"; *NDTV*, Sept. 14, 2013, available at: <https://www.ndtv.com/india-news/the-mystery-of-kawwal-were-muzaffarnagar-riots-based-on-distortion-of-facts-534608> (last visited on Jan. 24, 2024).

an incident of traffic accident, which allegedly got out of control and led to killing, lynching and violent protests.¹⁰²

- 5.8. The riots resulted in widespread violence, with incidents of murders, brutal attacks on individuals, rape, robbery, arson and significant damage to public and private property. Both Hindu and Muslim communities suffered casualties. Around 60 persons were killed during this violence¹⁰³ and more than 60,000 people were displaced.¹⁰⁴ Public property, including houses, shops, and places of worship, suffered extensive damage during the riots. Private vehicles were also set on fire.¹⁰⁵ The violence led to the destruction of infrastructure, disrupting normal life in the affected areas. The economic impact was significant, with businesses and livelihoods being severely affected. As per reports, more than 50 commercial establishments were sealed by the Muzaffarnagar police, some of which were sold to compensate damages to public property during the riots.¹⁰⁶

(B) Patidar Reservation Agitation (2015)

- 5.9. The agitation arose in Gujarat in the month of July, 2015 by the Patidar community in order to seek the status of Other Backward Class. There were

¹⁰² "Muzaffarnagar Riots: How BJP, SP and BSP Fanned the Flames", *Firstpost*, Sept. 16, 2013, available at: <https://www.firstpost.com/politics/muzaffarnagar-riots-how-bjp-sp-and-bsp-fanned-the-flames-1110023.html> (last visited on Jan. 24, 2024).

¹⁰³ "Government Releases Data of Riot Victims Identifying Religion", *The Times of India*, Sept. 24, 2013, available at: <https://timesofindia.indiatimes.com/india/Government-releases-data-of-riot-victims-identifying-religion/articleshow/22998550.cms> (last visited on Jan. 24, 2024).

¹⁰⁴ "Has MHA Something to Hide on Muzaffarnagar Riots?", *India Today*, Feb. 17, 2014, available at: <https://www.indiatoday.in/india/story/muzaffarnagar-riot-mha-upa-government-160882-2014-01-01> (last visited on Jan. 24, 2024).

¹⁰⁵ "Timeline of Muzaffarnagar Riots: Eve-Teasing Incident Led to Murders, Then Riots", *India TV*, Sept. 08, 2013, available at: <https://www.indiatvnews.com/news/india/timeline-of-muzaffarnagar-riots-eve-teasing-incident-led-to-mur-27571.html> (last visited on Jan. 24, 2024).

¹⁰⁶ "Who Will Compensate Damage to Private Property by Cops During Muzaffarnagar Violence?: S Saiduzzaman", *Firstpost*, Dec. 24, 2014, available at: <https://www.firstpost.com/india/who-will-compensate-damage-to-private-property-by-cops-during-muzaffarnagar-violence-s-saiduzzaman-7821101.html> (last visited on Jan. 24, 2024).

large scale demonstrations in the State and the largest one was held in Ahmedabad which had the gathering of over 5 lakhs people.¹⁰⁷

5.10. Violent incidents and confrontations were reported in Ahmedabad and various parts of the State, including incidents of burning of police vehicles and local transport buses. A total of fifteen clashes and arson cases were documented. In another instance, a violent mob attempted to sabotage railway tracks near Ranip, causing damage to numerous vehicles. Additionally, there were reports of assaults on both police and media personnel. In response to the escalating unrest, a curfew was imposed in the city under Section 144 CrPC. The Ahmedabad Municipal Corporation incurred a loss of ₹12 crores, including the torching of 33 local transport buses.¹⁰⁸

5.11. Curfew had to be imposed in Surat for three days as the violent mob torched buses, ATMs, van, fire station and other public property.¹⁰⁹ It not only led to destruction of public property but also caused severe trouble to individuals. The general movement and the safety of public was jeopardized when six buses were damaged and a total of 1554 bus trips had to be cancelled.¹¹⁰ In Rajkot, several bus stations were attacked and burnt. There was a massive damage to public and private property which was estimated to be ₹1.47 crores.¹¹¹

5.12. The unlawful protests causing damage to public property led to instability in the State and a huge number of security personnel were deployed to

¹⁰⁷ "Patels Hold Massive Rally Demanding OBC Status and Reservation", *The Hindu*, Aug. 25, 2015.

¹⁰⁸ "Gujarat Tense as Patel's Rally for Reservation Turns Violent", *The Tribune*, Aug. 26, 2015.

¹⁰⁹ "Quota Violence: Two ATM Burnt: Rs. 48 Lakhs Turned into Ashes", *The Indian Express*, Sept. 08, 2018.

¹¹⁰ "Patel Agitation for OBC Quota: GSRTC Cancels 1,554 Bus Trips", *The Times of India*, Aug. 27, 2015.

¹¹¹ "Patidar Agitation: Uneasy Calm in Violence Hit Gujarat, Death Toll Rises to 10", *The Times of India*, Aug. 27, 2015.

stabilize the situation. In this particular protest, 3,500 paramilitary force personnel and 93 companies of the State reserve police were deployed and ten people lost their lives in the violence.¹¹² There was a huge disruption in the life of normal citizens. For five days, educational institutions statewide remained closed, and a six-day restriction on mobile internet services, including platforms like WhatsApp and Facebook, was implemented.¹¹³ Western Railways reported damage to tracks at eight locations due to mob activities, leading to the cancellation of 51 trains. Operations of 26 trains were impacted, with 15 trains being re-routed out of the State. A total of 340 police cases were filed across the State, with 40 cases in Ahmedabad alone, and 230 cases were on behalf of the Government. The Police department incurred damages amounting to ₹200 crores.¹¹⁴

(C) *Jat Reservation Agitation (2016)*

5.13. There were a series of protests by Jats seeking their inclusion in the OBC category in order to become eligible for reservations. These protests mainly took place in the state of Haryana, and spread out to the states of Uttar Pradesh, Rajasthan and the NCR region. Initially these protests were peaceful and only involved road blockades; however, later they turned violent when a group of counter-protesting non-Jats got involved in a violent scuffle with a group of lawyers protesting against JNU sedition controversy, mistaking it to be a pro-Jat quota protest. Later, they also clashed with a group of students protesting for Jat quota, wherein stones were pelted against each other and several vehicles, business

¹¹² "Gujarat Claims 9 Lives, State Government Seeks Army Help", *The Times of India*, Aug. 27, 2015.

¹¹³ "Internet Services Restored in Ahmedabad at Midnight", *The Indian Express*, Aug. 31, 2015.

¹¹⁴ "Anandiben Patel Hits at Patidar Quota Agitators, Invokes Cast Riots of Past", *The Indian Express*, Sept. 18, 2015.

establishments and petrol pumps were set on fire in Rohtak and adjoining districts. Police personnel were also reportedly assaulted.¹¹⁵ Railway lines were blocked and, in many places, railway tracks were damaged and uprooted. Highways and other roads were blocked. A statue of Rao Tula Ram, an Ahir king was vandalized. In Bhiwani, the house of a BJP MP was vandalized, several buses and police outposts were set on fire, ATMs, and official records of a cooperative bank were burnt. In Sonipat, a railway station, hotel and a college owned by a MP were vandalized, and the protestors also set ablaze a rice mill. Several shops and vehicles were also burnt in Sonipat. Water canals were shut down by rioters, due to which severe water crisis took place in Gurgaon and Delhi. Road and rail traffic was disrupted which hit the supply of essential commodities such as fuel, milk and vegetables.¹¹⁶

- 5.14. The army and paramilitary forces had to be deployed in large numbers across northern India to tackle the riots. Around 30 people died during these riots.¹¹⁷ The Jat quota agitation also led to a huge loss of economic activity across northern India. As per few reports, these protests led to Rs. 34,000 crores worth loss to public and private property, and economic activity in the state of Haryana. Many companies withdrew their plants from the State of Haryana leading to severe economic loss to the State.

¹¹⁵ "Jat Quota Stir: How Violence Started; a Protest on JNU Row, Hostel Raid by Cops", *The Indian Express*, Feb. 25, 2016, available at: <https://indianexpress.com/article/india/india-news-india/jat-quota-stir-how-violence-started-a-protest-on-jnu-row-hostel-raid-by-cops> (last visited on Jan. 24, 2024).

¹¹⁶ "Jat Agitation: Arson, Violence Continue Unchecked; Hope from Meeting with Home Minister", *The Tribune*, Feb. 21, 2016, available at: <https://www.tribuneindia.com/news/archive/nation/jat-agitation-arson-spreads-despite-army-6-more-dead-199157> (last visited on Jan. 24, 2024).

¹¹⁷ "2,110 FIRs, 567 Arrested for Jat Quota Violence, Haryana Tells High Court", *The Hindustan Times*, Apr. 03, 2016, available at: <https://www.hindustantimes.com/india/2-110-firs-567-arrested-for-jat-quota-violence-haryana-tells-high-court/story-4TIO7XxGgnfFM1Z7qdQYSI.html> (last visited on Jan. 24, 2024).

5.15. Further, around 2,314 trains were disrupted due to the protests which also impacted the States beyond north India. As told by the then Railway Minister Shri Suresh Prabhu in Lok Sabha, Railways suffered a loss of around Rs. 55.92 crores due to loss of property and cancellation of trains.¹¹⁸

(D) Saharanpur Violence (2017)

5.16. A series of communal clashes took place in and around Saharanpur district in the State of Uttar Pradesh. The incidents occurred between May and June 2017, resulting in significant damage to public property and a tense atmosphere in the region.

5.17. The underlying cause of the violence was reported to be longstanding social and economic tensions between the Dalit and Thakur communities in the region. The conflict occurred on May 5, 2017, when a Dalit group objected to a procession by Thakurs celebrating the birth anniversary of Rajput King Maharana Pratap. This led to confrontations between the two communities, during which two persons were killed and several others were injured. As alleged, more than 46 houses and shops were burnt. The situation worsened with incidents of stone pelting, arson and clashes between the communities, leading to a breakdown of law and order in the region. A police base and various vehicles were allegedly set ablaze.¹¹⁹ The rioters also indulged in stone pelting, forcing markets to be closed.¹²⁰ The

¹¹⁸ "Railways Suffered Rs 55.92 Cr Loss Due to Jat Agitation: Suresh Prabhu", *Business Standard*, Mar. 09, 2016, available at: https://www.business-standard.com/article/pti-stories/railways-suffered-rs-55-92-cr-loss-due-to-jat-agitation-116030900388_1.html (last visited on Jan. 24, 2024).

¹¹⁹ "Dalit Group Calls for Protest at Jantar Mantar", *The Hindu*, May 18, 2017, available at: <https://www.thehindu.com/news/national/other-states/dalit-group-calls-for-protest-at-jantar-mantar/article18476315.ece> (last visited on Jan. 24, 2024).

¹²⁰ "UP's Saharanpur Tense After Dalit Man Killed in Fresh Clashes with Thakurs", *The Hindustan Times*, May 30, 2017, available at: <https://www.hindustantimes.com/india-news/one-person-killed-in-fresh-violence-in-up-s-saharanpur/story-XfdbSs8zAVQmKIV38snHVK.html> (last visited on Jan. 24, 2024).

violence resulted in significant damage to public and private property. Public infrastructure, including roads and transportation, was also affected.

(E) Riots After Conviction of Gurmeet Ram Rahim Singh (2017)

5.18. In 2017, Gurmeet Ram Rahim Singh, the religious leader of Dera Sacha Sauda, was convicted for the offence of rape, after which riots erupted in north Indian states of Haryana, Punjab, Uttar Pradesh and Delhi. Even before pronouncement of the judgment, around 2,00,000 supporters of Ram Rahim gathered in Panchkula, due to which some parts of Haryana, Punjab and Chandigarh were put under a security lockdown, and heavy armed contingent was deployed. Mobile internet services were also suspended and Section 144 CrPC was imposed in these areas.¹²¹

5.19. After the judgment was pronounced, the supporters of Ram Rahim went on a rampage, and set fire to vehicles including public buses and trains, government buildings, petrol pumps, television vans and railway stations. The violence also spread to other areas of Haryana, Punjab and Delhi. In Rajasthan, the office of station master of Bohra railway station was set on fire. Armed forces were deployed in Haryana in large numbers to prevent loss of life and damage to public/private property.¹²² Around 101 companies of paramilitary were deployed in the State of Haryana.¹²³ Two railway stations were set ablaze at Malout and Balluana in Punjab and two

¹²¹ "Ram Rahim Conviction Leads to Violence; 30 Killed; Dera Chief Jailed in Rohtak", *The Hindustan Times*, Aug. 25, 2017, available at: <https://www.hindustantimes.com/punjab/gurmeet-ram-rahim-rape-verdict-live-dera-sacha-sauda-chief-to-appear-in-panchkula-court-punjab-haryana-on-high-alert/story-YO4q3FLriRRV8zpaL0ZfAO.html> (last visited on Jan. 24, 2024).

¹²² "Ram Rahim Singh's Supporters Riot After Rape Conviction", *Al Jazeera*, Aug. 25, 2017, available at: <https://www.aljazeera.com/news/2017/8/25/ram-rahim-singhs-supporters-riot-after-rape-conviction> (last visited on Jan. 24, 2024).

¹²³ "Death Toll in Haryana Violence Rises to 36, Thirteen Bodies Identified", *Huffpost*, Aug. 27, 2017, available at: https://www.huffpost.com/archive/in/entry/death-toll-in-haryana-violence-rises-to-36-thirteen-bodies-identified_in_5c11f420e4b0508b21364c28 (last visited on Jan. 24, 2024).

empty train coaches of Rewa Express were set on fire in Delhi. A telephone exchange was also torched by protestors in Barnala in Punjab.¹²⁴ An Income Tax building and two police vehicles were set on fire in Mansa in Punjab.¹²⁵ A local government office was torched near Faridkot. A Vita milk plant and a power station were also destroyed in Sirsa in Haryana.¹²⁶

5.20. News Reporters of channels like PTC News and NDTV News were attacked. In these protests, around 38 people were killed,¹²⁷ and more than 300 others were injured.¹²⁸ As per official estimates, public and private properties worth Rs. 118 crores were destroyed in the violence that took place after conviction of Gurmeet Ram Rahim. This figure includes loss of revenue and expenses for providing services, including security and paramilitary forces in the State of Haryana.¹²⁹

(F) Incidents of Arson and Vandalism After Release of Movie 'Padmaavat' (2018)

5.21. Before the release of the movie 'Padmaavat' in 2018, there were incidents of vandalism and arson, primarily led by fringe groups opposing the film.

¹²⁴ "Ram Rahim Guilty of Rape: What Happened Through the Day", *India Today*, Aug. 25, 2017, available at: <https://www.indiatoday.in/india/story/live-updates-gurmeet-ram-rahim-dera-sacha-sauda-panchkula-sirsa-1031287-2017-08-24> (last visited on Jan. 24, 2024).

¹²⁵ "Dera Sacha Sauda Chief Gurmeet Ram Rahim Found Guilty of Rape", *The Times of India*, Aug. 25, 2017, available at: <https://timesofindia.indiatimes.com/india/dera-sacha-sauda-chief-gurmeet-ram-rahim-found-guilty-of-rape-cbi-court-ruling-comes-after-14-years/articleshow/60221119.cms> (last visited on Jan. 24, 2024).

¹²⁶ "In Sirsa, 4 Killed, 6 Hurt in Police Firing", *The Tribune*, Aug. 26, 2017, available at: <https://www.tribuneindia.com/news/archive/haryana/in-sirsa-4-killed-6-hurt-in-police-firing-457419> (last visited on Jan. 24, 2024).

¹²⁷ "Families Torn Apart in Haryana Violence", *The Hindu*, Aug. 27, 2017, available at: <https://www.thehindu.com/news/national/other-states/families-torn-apart-in-haryana-violence/article62041179.ece> (last visited on Jan. 24, 2024).

¹²⁸ "Baba Behind Bars, Followers Run Riot", *The Times of India*, Aug. 26, 2017, available at: <https://timesofindia.indiatimes.com/india/baba-behind-bars-followers-run-riot/articleshow/60228213.cms> (last visited on Jan. 24, 2024).

¹²⁹ "2017 Dera Violence: 2 Years On, No Damages Recovered for Destruction of Property Worth Rs 118-Crore", *The Indian Express*, Jan. 01, 2020, available at: <https://indianexpress.com/article/cities/chandigarh/dera-sacha-sauda-2017-violence-property-damage-6194051/> (last visited on Jan. 24, 2024).

These groups, mainly associated with the Rajput community, objected to the portrayal of historical characters, particularly Rani Padmini, which was alleged to be inappropriate. Protests were held in several states including the states of Rajasthan, Uttar Pradesh, Haryana, and Madhya Pradesh. Film sets were vandalized in pursuance of the protest and the director of the movie was also assaulted on the film set.¹³⁰ The film set where the movie was being shot was attacked by several people and was set ablaze, also injuring animals and destroying several costumes. In the State of Haryana, several vehicles including a school bus were attacked. In Ahmedabad, roads were blocked, more than 150 vehicles including public buses were damaged, around 4 malls and theatres were attacked. Extra forces were deployed for the release of the movie in the States of Rajasthan and Uttarakhand.¹³¹

(G) Bhima Koregaon Riots (2018)

5.22. In 2018, the commemoration of the bicentenary of the Battle of Bhima Koregaon¹³² sparked tensions and initiated violence between different groups. The incidents led to protests, arrests, and massive violence in that area. During the violence, there were reports of destruction and loss to property. The violence primarily affected the villages surrounding Bhima Koregaon in Maharashtra. Several vehicles were damaged or set on fire, and there were instances of stone-pelting and clashes as well.

¹³⁰ "Padmaavat: Why a Bollywood Epic Has Sparked Fierce Protests", *BBC News*, Jan. 25, 2018, available at: <https://www.bbc.com/news/world-asia-india-42048512> (last visited on Jan. 24, 2024).

¹³¹ "Padmaavat Release: Ahmedabad Malls Vandalised, Vehicles Set on Fire; Section 144 in Gurgaon", *The Hindustan Times*, Jan. 24, 2018, available at: <https://www.hindustantimes.com/india-news/padmaavat-release-ahmedabad-malls-vandalised-vehicles-set-on-fire-section-144-in-gurgaon/story-4vSNjtuPx5TFnQfLOSqAFJ.html> (last visited on Jan. 24, 2024).

¹³² The Battle of Bhima Koregaon took place on January 1, 1818, between the British East India Company and the Peshwa faction of the Maratha Confederacy. The British, with a predominantly Dalit (lower-caste) contingent, successfully defended against the Peshwa forces. Over the years, the battle has come to be seen as a symbol of Dalit pride and resistance.

5.23. The violence led to disruptions in normal life, and there were economic implications for businesses and individuals in the affected areas. The violence led to a halt in business as well. It was stated by the president of the Federation of Retail Welfare Association that more than Rs. 700 crores worth of business was lost due to the protest. It was estimated that more than Rs. 35 lakhs licensed businesses in the city were affected by the strike due to this. It also affected the movement as the protests blocked 350 to 400 trucks.¹³³

5.24. A PIL was filed before the Bombay High Court to recover the loss or damage caused to public property. A total of Rs. 9 crores was estimated to be the cumulative loss due to the strike and bandh that were imposed during the protest.¹³⁴

(H) Anti-CAA Protests (2019)

5.25. The Citizenship Amendment Act (CAA) protests were a response to the enactment of the Citizenship Amendment Act on December 11, 2019. The CAA intended to provide expedited citizenship to undocumented non-Muslim migrants from Afghanistan, Bangladesh, and Pakistan who had entered India before December 31, 2014.

5.26. The demonstrations took place in various cities across the country, with notable protest sites such as Shaheen Bagh in Delhi. The protesters demanded the repeal of the CAA, the withdrawal of the proposed National

¹³³ "Business Suffers as Mumbai Comes to Halt", *NDTV News*, Jan. 04, 2018.

¹³⁴ "Bhima Koregaon Violence: PIL Seeks Action Against Those Involved in Bandh, Violence", *India Today*, Mar. 07, 2018.

Register of Citizens (NRC), and the rejection of the National Population Register (NPR).

5.27. The violent protests in New Delhi against the CAA claimed 53 lives and left 473 civilians and 108 cops injured. In addition to the tragic loss of life and injuries, the protests and riots resulted in extensive destruction of public infrastructure, with rioters setting vehicles, shops, and citizens' homes on fire. The protests significantly disrupted essential public services, such as those provided by the Delhi Metro Rail Corporation (DMRC) and Delhi Transport Corporation (DTC), leading to substantial financial losses for these Government-run entities. In a PIL filed before the Delhi High Court pertaining to compensation on account of damage caused to public property during the anti-CAA/NRC protests, the counter affidavit filed by the Delhi Police before the Court had stated that there were 518 cases registered against the people for causing damage to public property.¹³⁵ Furthermore, the unrest forced the postponement of CBSE Board exams for Class X and XII at numerous centers in North-East Delhi. There were a total of 242 arson calls that were received by the fire department. It is also reported that five buses were damaged which resulted in a loss of more than Rs. 2.5 lakhs and almost the same amount was lost due to disruption in services.

5.28. The data was received from the Sub-divisional Magistrates by the Delhi Police, wherein estimated loss incurred by a few north-eastern districts was given. The data is as follows:¹³⁶

¹³⁵ "535 Cases for Damage to Public and Private Properties Registered During Anti-CAA/NRC Protests: Delhi Police to HC", *The Indian Express*, Sept. 22, 2022.

¹³⁶ "Delhi Riots Chargesheet: Govt suffered a loss of over Rs 20 crore due to Anti-CAA Riots" *Swarajya*, Oct. 5, 2020.

S. No.	Locality	Amount Disbursed by the State Govt. Against the Damage
1.	Yamuna Vihar	Rs. 6,49,67,539
2.	Shahdara	Rs. 69,68,590
3.	Seelampur	Rs. 65,00,000 (In total for deceased) Rs. 12,00,000 (In total for injured)

S. No.	No. of Incidents	Nature of Property	Valuation for Damages
1.	241	Commercial	Rs. 3,82,21,637
2.	124	Residential	Rs. 3,09,70,000

5.29. In addition to that, there were 117 cases still left to be assessed for claims which amounted to more than Rs. 1.4 crores.

5.30. Moreover, these numbers do not account for the damage incurred by the DMRC or the personal hardships faced by millions of citizens as a result of road blockages which lasted for more than three months. It also excludes the financial impact on businesses in areas like Shaheen Bagh which remained shuttered for several weeks. Moreover, compensation has not been extended to all victims of the riots, nor to the families of those who lost their lives or suffered injuries. When these additional factors are taken into consideration, the government's financial responsibility is naturally expected to be increased.

(I) Farm Laws Repeal Protests (2020)

5.31. The protests against farm laws in India have been a contentious issue. The protests revolved around three agricultural reform laws passed in September 2020, i.e., the Farmers Produce Trade and Commerce (Promotion and Facilitation) Act, the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, and the Essential Commodities (Amendment) Act. A significant section of the farming community, especially in states like Punjab and Haryana, vehemently opposed these laws.

5.32. There are different modes to protest, wherein some may take violent means while other might pursue it peacefully. Even when a peaceful medium is pursued, the repercussion of the same leads to widescale disruption due to *bandh* and obstruction on public ways. In this particular case, there were massive protests in state of Haryana and Punjab. It was reported that railway services had to remain suspended in Punjab for over two months.¹³⁷ The protestors took over highway toll plazas in Haryana and held their protests from there itself.¹³⁸

5.33. Another major incident of disruption relates to the parade with a large convoy of tractors heading towards the Red Fort. The protestors not only exceeded the time limit as was permitted by the Delhi police but also breached the designated route. There were around 7000 tractors that had gathered, and more than 2,00,000 people had participated. The forceful

¹³⁷ Editorial, Explained: "The Railways network in Punjab and how it has been impacted by the ongoing protests" *The Indian Express*, Nov. 25, 2020.

¹³⁸ "Farmers lay siege on toll plazas in Haryana, allow free movement of vehicles" *Hindustan Times*, Dec. 12, 2020.

entry in the Red Fort was made through breaking barricades which led to a clash, wherein 394 policemen were reported injured and 30 police vehicles were damaged.¹³⁹

(J) Violence After Remarks Made on Prophet Mohammad (2022)

5.34. After some derogatory remarks were made about Prophet Muhammad on May 27, 2022 by one of the spokespersons of a political party, violent protests took place in some parts of India, leading to several deaths and injuries.

5.35. In Kanpur, Uttar Pradesh, stone-pelting was done by Muslim protestors at police personnel and vehicles. Crude-bombs were thrown at the police. Around six police officers were injured in this violence.¹⁴⁰ In Prayagraj, after Friday prayers, a mob allegedly pelted stones and hurled bombs on police vehicles and a truck and several motorcycles were set on fire.¹⁴¹ In the incident, some police personnel also sustained injuries, public property was damaged, and law and order was severely disturbed.¹⁴² As per reports, punitive demolition of illegal buildings and homes of people accused of involvement in riots in Uttar Pradesh was done by the State Government as a consequence of violence in the State.¹⁴³

¹³⁹ "Farmer leaders betrayed Delhi Police, 394 cops injured, 19 arrests made: Commissioner", *India Today*, Jan. 28, 2021.

¹⁴⁰ "Kanpur Violence: 36 Arrested, 3 FIRs Filed, Property to Be Bulldozed, Say Cops", *The Hindustan Times*, June 04, 2022, available at: <https://www.hindustantimes.com/india-news/kanpur-violence-36-arrested-property-will-be-demolished-says-top-cop-report-101654317134374.html> (last visited on Jan. 24, 2024).

¹⁴¹ "2022 Prayagraj Violence: HC Grants Interim Bail to Javed Mohd for Daughter's Wedding", *Legally Speaking*, Oct. 19, 2023, available at: <https://legally-speaking.in/high-court/2022-prayagraj-violence-hc-grants-interim-bail-to-javed-mohd-for-daughters-wedding/> (last visited on Jan. 24, 2024).

¹⁴² *Javed Mohammad @ Pump v. State of Uttar Pradesh*, Criminal Miscellaneous Application No. 53834 of 2022.

¹⁴³ Nupur Sharma: Houses of Muslims Demolished in Uttar Pradesh After Protests", *BBC News*, June 13, 2022, available at: <https://www.bbc.com/news/world-asia-india-61777306> (last visited on Jan. 24, 2024); "Indian State Razes Muslim Homes After Riots Over Prophet Remarks", *The Guardian*, June 12, 2022, available at: <https://www.theguardian.com/world/2022/jun/12/indian-state-demolish-muslim-homes-riots-prophet-remarks> (last visited on Jan. 24, 2024).



5.36. In Ranchi, Jharkhand, stones were pelted on a temple by a mob.¹⁴⁴ In Howrah, West Bengal, arson and violent protests were reported, as a consequence of which roads and railway tracks were blocked. Stones were pelted by a mob causing damage to vehicles on highways. Burning tyres were placed on roads, and a police kiosk and some local party offices of a political party were set on fire. Highways and railway tracks were also blocked by protestors, interrupting traffic.¹⁴⁵

(K) Protests Against Agnipath Scheme (2022)

5.37. In 2022, the Central government unveiled the 'Agnipath' scheme for recruitment of soldiers in the Army, Navy and Air Force, on a contractual basis for a short four-year period, without any pensionary benefits. Soon after the announcement of Agnipath scheme, violent protests erupted against the scheme by Army aspirants in several States including Bihar, West Bengal, Uttar Pradesh, Haryana and Madhya Pradesh.

5.38. In Bihar, national highways were blocked, and train bogeys were set ablaze in Kaimur and Chhapra districts, disrupting the road and rail movement. Around 22 trains were cancelled in a day in the State. The protestors burnt railway station furniture on the tracks and damaged other railway properties. Stones were pelted on the police and railway personnel posted at the railway stations.¹⁴⁶ The house of Deputy Chief Minister was

¹⁴⁴ "A Muslim Teenager Was Killed at a Protest in India. His Family Wants Answers", *CNN*, June 22, 2022, available at: <https://edition.cnn.com/2022/06/22/india/muslim-teenager-shot-islam-protest-police-intl-hnk-dst/index.html> (last visited on Jan. 24, 2024).

¹⁴⁵ "Bengal: Violence Erupts During Protests Over Prophet Remarks, Gov Appeals for Peace", *The Print*, June 10, 2022, available at: <https://theprint.in/india/bengal-violence-erupts-during-protests-over-prophet-remarks-gov-appeals-for-peace/992010/> (last visited on Jan. 24, 2024).

¹⁴⁶ "Protests Continue in Bihar Over Central Government's 'Agnipath' Scheme", *The Hindu*, June 16, 2022, available at: <https://www.thehindu.com/news/national/other-states/protest-erupts-across-bihar-over-central-governments-agnipath-scheme/article65532441.ece> (last visited on Jan. 24, 2024).

attacked. Internet services were suspended in 18 districts of Bihar during the protests.

- 5.39. In the State of Uttar Pradesh, a mob set fire to a coach of a train and also damaged the property of the railway station in Ballia. Protests also took place in Varanasi, Firozabad and Amethi districts, wherein government buses and other public properties were also damaged. Protestors blocked roads and also targeted private vehicles.¹⁴⁷ In Varanasi, around 36 buses were damaged by the protestors which led to a loss of over Rs. 12 lakhs to the government.¹⁴⁸ A 19-year-old boy was shot dead and over 15 people got injured in Telangana.¹⁴⁹ In the state of Haryana, protestors pelted stones at vehicles in Ballabgarh, squatted on railway tracks in Jind, thus disrupting the railway movement in the State, and burnt tyres in Rohtak.¹⁵⁰
- 5.40. As reported by the Railways, 5 trains, coaches of around 60 trains, along with 11 engines were set on fire in Bihar. Vandalism was reported in more than 15 districts of Bihar. Movement of over 300 trains was affected. 214 trains were cancelled, 11 trains were diverted and 90 were terminated short of their destination. More than 60 crore passengers cancelled their railway tickets.¹⁵¹ Disruption of rail movement and damage to railway property

¹⁴⁷ "12 Trains Burnt, Stations Vandalised in 'Agnipath' Protests: 10 Facts", *NDTV*, June 18, 2022, available at: <https://www.ndtv.com/india-news/agnipath-protest-2-coaches-of-passenger-train-set-on-fire-by-mob-in-bihar-3074583> (last visited on Jan. 24, 2024).

¹⁴⁸ "Agnipath Stir: Damage to Public Property Will Be Recovered from Protesters, Says Varanasi DM", *India Today*, June 20, 2022, available at: <https://www.indiatoday.in/india/story/agnipath-protest-varanasi-administration-to-recover-damages-to-public-properties-from-protesters-1964504-2022-06-20> (last visited on Jan. 24, 2024).

¹⁴⁹ "12 Trains Burnt, Stations Vandalised in 'Agnipath' Protests: 10 Facts", *NDTV*, June 18, 2022, available at: <https://www.ndtv.com/india-news/agnipath-protest-2-coaches-of-passenger-train-set-on-fire-by-mob-in-bihar-3074583> (last visited on Jan. 24, 2024).

¹⁵⁰ "Agnipath' Protests: Defence Minister Holds Meeting with Service Chiefs", *NDTV*, June 18, 2022, available at: <https://www.ndtv.com/india-news/agnipath-protests-buses-targeted-during-bihar-bandh-260-arrested-in-up-3077902> (last visited on Jan. 24, 2024).

¹⁵¹ "Agnipath Protests: Railway Property Worth Nearly Rs 700 Crore Damaged, 718 Arrested in Bihar", *India Today*, June 19, 2022, available at: <https://www.indiatoday.in/india/story/agnipath-protests-railway-property-damaged-bihar-1964060-2022-06-18> (last visited on Jan. 24, 2024).

resulted in huge financial loss of Rs. 259.44 crores to the Indian Railways.¹⁵²

(L) Haryana Riots (2023)

5.41. On July 31, 2023, communal clashes broke out in Nuh district of Haryana during a Vishwa Hindu Parishad procession. Stones were pelted on the procession. Homes and shops of local Hindu community were set ablaze, liquor shops were looted and around 50 vehicles were also set on fire by an armed mob.¹⁵³ The participants in the procession were forced to flee to a temple, which was later besieged by the mob and shots were fired and stones were thrown on the temple.¹⁵⁴ Roads were blocked by the mob. A bus was rammed into a cyber-police station of Nuh district.¹⁵⁵ Various public locations including local bus stand, local market and local grain market were also attacked by the rioters who pelted stones and robbed shops at these places.¹⁵⁶ Two mosques in Nuh district were also attacked on which bombs were hurled.¹⁵⁷ In Gurugram, a mosque was set ablaze by

¹⁵² "Indian Railways Suffer Rs 259.44 Cr Loss Due to Agitations Against Agnipath Scheme", *The Economic Times*, July 22, 2022, available at: <https://infra.economictimes.indiatimes.com/news/railways/indian-railways-suffer-rs-259-44-cr-loss-due-to-agitations-against-agnipath-scheme/93054458> (last visited on Jan. 24, 2024).

¹⁵³ "Nuh Temple Priest Refutes Haryana Home Minister's Claim that People Were 'Held Hostage'", *The Wire*, Aug. 01, 2023, available at: <https://thewire.in/communalism/nuh-temple-priest-refutes-haryana-home-ministers-claim-that-people-are-held-hostage> (last visited on Jan. 24, 2024).

¹⁵⁴ "Rioters on Hillocks, Shots and Stones Fired: Nuh Temple's Hours of Horror", *NDTV*, Aug. 01, 2023, available at: <https://www.ndtv.com/india-news/gurugram-clashes-nuh-communal-violence-haryana-communal-clash-monu-manesar-50-km-from-torched-haryana-mosque-a-mob-attacked-2-500-trapped-in-temple-4258306> (last visited on Jan. 24, 2024).

¹⁵⁵ "Exclusive: Intel Oversights, Anger Against Cow Vigilante Fueled Violence in Haryana's Nuh", *India Today*, Aug. 01, 2023, available at: <https://www.indiatoday.in/india/story/haryana-nuh-communal-clashes-intel-oversight-inadequate-force-fueled-violence-2414928-2023-08-01> (last visited on Jan. 24, 2024).

¹⁵⁶ "Nuh Violence: Temple, Hospital, Police Station Targeted by Unruly Mob", *The Statesman*, Aug. 01, 2023, available at: <https://www.thestatesman.com/india/nuh-violence-temple-hospital-police-station-targetted-by-unruly-mob-1503207129.html#> (last visited on Jan. 24, 2024).

¹⁵⁷ "Haryana Nuh Violence Highlights: 141 Arrested, 55 FIRs Registered", *Mint*, Aug. 05, 2023, available at: <https://www.livemint.com/news/india/haryanas-nuh-violence-live-updates-stones-pelted-at-religious-procession-sohna-mewat-schools-shut-in-gurugram-11690850667688-page-2.html> (last visited on Jan. 24, 2024).

a mob which also killed the mosque's naib imam.¹⁵⁸ Over four shops were vandalized and cars were set on fire.¹⁵⁹

5.42. Section 144 CrPC was imposed in Gurgaon, Faridabad and Palwal. All educational institutes were ordered to be closed in these areas¹⁶⁰. Seven persons including two homeguards were killed,¹⁶¹ and over 70 were allegedly injured.

(M) Manipur Violence (2023)

5.43. An ethnic violence erupted in the State of Manipur between Meitei people and the Kuki-Zo tribal community. The issue originated out of an order by the Manipur High Court, wherein it was directed to the State Government to send a recommendation to the Central Government for a demand of Meitei community to get the status of a Schedule Tribe. In reaction to this, a peaceful protest march was conducted by All Tribal Students Union on 3rd May, 2023, which later turned violent.

5.44. The issue caught fire across the State and the situation got so drastic that a curfew had to be imposed across 8 districts and a shoot at sight order was issued the next day itself.¹⁶² This involved mass scale destruction of public

¹⁵⁸ "Haryana Communal Violence Updates | CM Khattar Seeks Additional Central Forces", *The Hindu*, Aug. 02, 2023, available at: <https://www.thehindu.com/news/national/haryana-communal-violence-live-updates-delhi-police-increases-security-in-sensitive-areas/article67148963.ece> (last visited on Jan. 24, 2024).

¹⁵⁹ "Nuh Violence Spreads to Gurugram", *The Tribune*, Aug. 01, 2023, available at: <https://www.tribuneindia.com/news/haryana/nuh-violence-spreads-to-gurugram-530811> (last visited on Jan. 24, 2024).

¹⁶⁰ "Clashes Break Out Between Two Groups During VHP Procession in Haryana's Nuh; Prohibitory Orders Imposed", *The Hindu*, Aug. 01, 2023, available at: <https://www.thehindu.com/news/national/other-states/haryana-nuh-gurugram-clashes-violence-july-31-2023/article67142736.ece> (last visited on Jan. 24, 2024).

¹⁶¹ "Hindu-Muslim Riots Expose Risk at Major Indian Business Hub", *Reuters*, Aug. 03, 2023, available at: <https://www.reuters.com/world/india/hindu-muslim-riots-expose-risk-major-indian-business-hub-2023-08-03/> (last visited on Jan. 24, 2024).

¹⁶² "Many killed in Manipur riots: State government issues shoot at sight order" *The Hindu*, May. 4, 2023.

properties, houses and religious structures, leading to a major deployment of army and CAPF.¹⁶³

¹⁶³ "175 killed, over 1100 injured in four months of Manipur violence: Police" *The Hindu*, Sept. 15, 2023.



6. CONCLUSION: URGENT NEED TO AMEND THE PREVENTION OF DAMAGE TO PUBLIC PROPERTY ACT, 1984

- 6.1. It cannot be disputed that destruction of public property is unfortunately rampant in our country. Public property means the property belonging to the people. The resources of the common man constitute the foundation for the existence of any public property. Tax payers' money is utilized for acquiring, making, constructing or procuring public property. Apart from it being the fundamental duty of every citizen to safeguard public property, it is in his interest also to secure and safeguard public property. Public property cannot be allowed to be destroyed by anybody, whatever may be the reason for the same. It is easy to destroy; but it is not easy to make. Public property is our national asset. Every citizen has a share in it. Destruction of public property should be viewed seriously and the culprits should be punished. Apart from punishing the guilty, it is also in the interests of the State to recover the loss sustained from the person who is instrumental in the destruction of concerned public property.
- 6.2. Time and again, the Supreme Court of India and various High Courts have voiced against the menace of destruction of public property. The Supreme Court has issued several guidelines to deal with the instances of destruction of public property and as to how it should be prevented. The courts have expressed the view that cases relating to destruction of public property should be viewed seriously. The courts have even held the position that the loss occasioned to the State should be recovered from the culprits.
- 6.3. In most of the bandhs, hartals and public agitations, it is an undeniable fact that public property is the casualty. In utter disregard of law and order, the organisers of such agitations seem to be unconcerned about the destruction

of public property in furtherance of such agitations. There must be a mechanism to recoup the loss occasioned to the State as a result of destruction of public property.

- 6.4. In the State of Kerala, as a result of the decisions of the Kerala High Court in *Hemanth Kumar v. Sub Inspector of Police*¹⁶⁴ and *Hemachandran M. T. @ Kamalesh v. Sub Inspector of Police*,¹⁶⁵ the criminal courts insisted on depositing the estimated value of the public property damaged as a condition for granting bail. As a result of this, instances of destruction of public property in connection with bandhs, hartals and other public agitations have become practically nil. The political parties started instructing their followers not to destroy public property under any circumstances, since the political parties were compelled to shoulder the burden of depositing money for getting their followers released on bail.
- 6.5. Fear of conviction and sentence in criminal cases relating to the offences under the PDPP Act may not act as a sufficient deterrence against destruction of public property. Compelling the offenders to deposit the estimated value of the public property as a condition for granting bail would definitely be a sufficient deterrent against destruction of public property.
- 6.6. In the light of the decisions of the Supreme Court and various High Courts mentioned above, it is highly expedient to suitably amend the PDPP Act.

¹⁶⁴ 2012 CriLJ 1297 : 2011 (4) Kerala High Court Cases (KHC 89 : 2011 (4) Ker.LT 288 : ILR 2011 (4) Ker. 261.

¹⁶⁵ 2012 CriLJ 1328 : 2011 (4) KHC 689 : 2011 (4) KLT 841 : ILR 2011 (4) Ker. 841.

7. RECOMMENDATIONS

- 7.1. Majority of the amendments suggested hereunder are those contained in The Prevention of Damage to Public Property (Amendment) Bill, 2015.
- 7.2. In the Prevention of Damage to Public Property Act, 1984, (hereinafter, referred to as "the Principal Act"), in Section 2, after clause (b), the following clauses shall be inserted, namely:

(c) "prescribed" means prescribed by rules made under this Act.

(d) "fine" shall mean and include the amount which shall be equivalent to the market value of the public property damaged or where the value of the property damaged is not capable of being assessed in terms of money, such amount as the Court may fix taking into account the facts and circumstances of the case.

- 7.3. In Section 3 of the Principal Act, in sub-section (2), in the proviso, for the words "for reasons", the words "*for special reasons*" shall be substituted.
- 7.4. After Section 4 of the Principal Act, the following sections shall be inserted, namely:

4A. Presumption against accused.- *Where an offence under this Act has been committed and it is shown that public property has been damaged as direct consequence of such offence and the accused participated in the commission of such offence, it shall be presumed unless the contrary is shown that the accused had committed such offence.*

4B. Abetment of mischief.- *Where damage to public property is caused in consequence of demonstration, hartal or bandh called by any organisation, the office bearers of such organisation, shall be deemed to be guilty of the commission of the offence of abetment of*

an offence punishable under this Act and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this section shall render any such office bearer liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

4C. Punishment for abetment of mischief.- *Whoever abets an offence punishable under this Act shall be punished with the punishment provided for that offence under this Act.*

4D. Procedure for videography of incidents of demonstration etc.- *Where a call for demonstration, hartal or bandh has been given by an organisation and the officer-in-charge of a police station has reasons to believe that damage to the public property is likely to be caused or there is imminent danger of such damage, he shall,-*

- (i) make such arrangements for the videography of the area where the demonstration, hartal or bandh is proposed to be held;*
- (ii) deposit the soft copies of videography in such manner, with the Sub-Divisional Magistrate or Executive Magistrate concerned who may entrust the same to the said police officer or any other person;*
- (iii) get the statement of the videographer recorded before the Sub-Divisional Magistrate or Executive Magistrate in such manner as may be prescribed."*

7.5. In Section 5 of the Principal Act:

- (i) after the words and figure "or section 4", the words and figure "or section 4B" shall be inserted;*
- (ii) after the words "for such release", the words "and there are reasonable grounds to believe that he is not guilty of the said offence" shall be inserted.*
- (iii) Section 5 of the Principal Act shall be numbered as sub-section (1), and the following shall be inserted as sub-section (2):*

“(2) A person accused of an offence punishable under section 3 or section 4 or section 4B shall be released on bail on condition of his depositing in Court the amount equal to the estimated market value of the property damaged, within such time as the court directs.

Provided that where the value of the property damaged is not capable of being assessed in terms of money, such amount as the Court may fix taking into account the facts and circumstances of the case, shall be deposited as a condition for releasing such person on bail;

Provided further that where there are two or more accused persons in the case, the amount to be deposited by each of them shall be in proportion between or among them;

Provided also that the amount, if any, deposited as aforesaid shall be taken into account by the Court while imposing fine and if the accused is acquitted of the charges under the Act, the amount deposited by him shall be refunded to him.”

- 7.6. After Section 6 of the Principal Act, the following sections shall be inserted, namely:

“6A. Power to make rules.- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely,

- (a) the arrangement for videography under section 4D; and*
- (b) the manner of depositing the soft copies of videography and recording the statement of the videographer under section 4D.”*

6B. Rules to be laid before Parliament.- Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any

modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

- 7.7. In order to address the issue of damage to private property, a separate law can be brought in such as the Kerala Prevention of Damage to Private Property and Payment of Compensation Act, 2019 enacted in the State of Kerala. The same can also be achieved by amending and adding to the applicable sections of IPC or the Bharatiya Nyaya Sanhita.
- 7.8. Another related aspect that remains ignored is the prolonged obstruction of public spaces and property such as highways, roads, railway lines, etc. This also causes widespread inconvenience to the general public and economic loss. While the scope and ambit of the PDPP Act does not cover acts of "obstruction" as the Act has been enacted with the view to "*prevention of damage to public property and for matters connected therewith*", however, there are other Acts that deal with obstruction of public property or spaces. Blockade of a highway will attract the National Highways Act, 1956¹⁶⁶ and that of railways will attract the Railways Act, 1989.¹⁶⁷ Blockade of railways and highways undoubtedly attracts penal consequences under special laws enacted for the same.¹⁶⁸ While there are some state laws as well that deal with the issue of obstruction of state highways, however, the penalty prescribed therein for removing the encroachment is woefully inadequate.¹⁶⁹ Further, it is also pertinent to note that many states do not

¹⁶⁶ The National Highways Act, 1956, Act No. 48 of 1956.

¹⁶⁷ The Railways Act, 1989, Act No. 24 of 1989.

¹⁶⁸ *Tripura People's Front v. State of Tripura*, (W.P. (Crl.) No. 02/2021); *Lower Assam Inter District Stage Carriage Bus Owner's Association v. State of Assam and Ors.*, 2019 SCC OnLine Gau 1482; *Rajveer Singh v. State of Rajasthan*, 2012 SCC OnLine Raj 3624.

¹⁶⁹ The West Bengal Highways Act, 1964, sec. 16; The Maharashtra Highways Act, 1955, sec. 57; The Gujarat Highways Act, 1955, sec. 57.

even have a law dealing with the obstruction or encroachment of state highways.

- 7.9. The question that arises for consideration is what if the public pathway being wilfully obstructed is neither a national highway, a railway or a state highway. The utility of the same cannot be said to be less than that of a national highway or railway. Such prolonged obstructions often end up causing huge inconvenience to the smooth movement of even essential and emergency services such as availing of medical facilities, mobility of ambulance and fire brigade, efficient discharge of administrative and judicial functions, schools, colleges, etc. In such a scenario, it is worthwhile to consider if such a prohibition on protracted obstructions can also be enforced with respect to public properties and pathways apart from national or state highways and railways.
- 7.10. Wherever, such protests are not in designated places and tend to create wilful obstruction and blockade of public spaces and roads for prolonged periods, a comprehensive law should be put in place to address them so that they cannot get ignored and continue to cause tremendous hardships to the general public in the guise of absence of legislation.
- 7.11. The Commission, therefore, recommends that either a new comprehensive law dealing with the same be enacted or a specific provision pertaining to the same may be introduced in the IPC/BNS by way of an amendment.

The Commission recommends, accordingly.

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31.1.2024

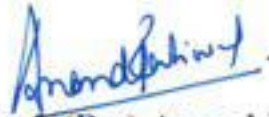
[Justice Ritu Raj Awasthi]

Chairperson



[Justice K.T. Sankaran]

Member



[Prof. (Dr.) Anand Paliwal]

Member



[Prof. D.P. Verma]

Member



[Dr. Niten Chandra]

Member (*Ex-Officio*)



[Dr. Rajiv Mani]

Member (*Ex-Officio*)



[Mr. M. Karunanithi]

Part-time Member



[Prof. (Dr.) Raka Arya]

Part-time Member

Annexure-A

F No. 24013/12/C.C./2013-CSR.III
Government of India
Ministry of Home Affairs
(CS Division)

NDCC-II Building, Jai Singh Road, New Delhi
Dated 20th May 2015

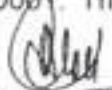
SUBJECT:-Suggestions regarding Amendment to the Prevention of Damage to Public Property Act 1984 by the Prevention of Damage to Public Property Act (Amendment) Bill, 2015

The Supreme Court vide an order dated 18-06-2007 (in the matter of Writ Petition (Crl.) No. 77/2007), had set up a Committee under the Chairmanship of Mr. Justice K T Thomas, former Judge of the Supreme Court, to examine modalities to be adopted to make the Prevention of Damage to Public Property Act, 1984 (PDPP Act, 1984) more effective and also suggest suitable changes, which could make the Statute more meaningful.

2. The Committee concluded that the present law was inadequate and ineffective to deal with the increasing number of instances of public property damages and made some recommendations for amendment in the Prevention of Damage to Public Properties Act, 1984. Accepting the recommendations of the Justice K T Thomas Committee, the Ministry of Home Affairs has proposed amendments in the PDPP ACT, 1984. Proposed amendments seek to deter the prospective violators from vandalizing and destroying public/private property during agitations and other forms of protests. Importantly, the proposed amendments will also deter the office-bearers of these organizations.

3. The present provision of the Prevention of Damage to Public Property Act, 1984 is at Annexure-I and the proposed draft Prevention of Damage to Public Property Act (Amendment) Bill, 2015 is at Annexure-II

4. The suggestions/comments on the proposed draft PDPP Act (Amendment) Bill, 2015 from the Public and other stakeholders are solicited on or before 20th July 2015 and the same may be sent to the Ministry of Home Affairs, CS Division, 5th Floor, NDCC Building, Jai Singh Road, New Delhi-110001. The suggestion could also be sent on e-mail: dircs1-mha@mha.gov.in.


(Kumar Adok)
Joint Secretary



PREVENTION OF DAMAGE TO PUBLIC PROPERTY ACT, 1984 (3 OF 1984)

An Act to provide for prevention of damage to public property and for matters connected therewith.

Be it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows :-

1. Short title, extent and commencement. –

1. This Act may be called the Prevention of Damage to Public Property Act, 1984.
2. It extends to the whole of India except the State of Jammu and Kashmir .
3. It shall be deemed to have come into force on the 28th day of January, 1984.

2. Definitions.-

In this Act, unless the context otherwise requires,-

- a. "mischief" shall have the same meaning as in section 425 of the Indian Penal Code (45 of 1.860);
- b. "public property" means any property, whether immovable or movable (including put any machinery) which is owned by, or in the possession of, or under the control of –
 - i. the Central Government; or
 - ii. any State Government; or
 - iii. any local authority; or
 - iv. any corporation established by, or under, a Central, Provincial or State Act or
 - v. any company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or
 - vi. any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government shall not specify, any institution, concern or undertaking under this sub-clause unless such institution, concern or undertaking is financed wholly or substantially by funds provided directly or indirectly by the Central Government or by one or more State Governments, or partly by the Central Government and partly by one or more State Governments.

3. Mischief causing damage to public property. –(1)Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

(2) Whoever commits mischief by doing any act in respect of any public property being –

2. The Prevention of Damage to Public Property Act, 1984

- a. any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy ;
- b. any oil installation;
- c. any sewage work;
- d. any mine or factory;
- e. any means of public transportation or of tele-communications, or any building, installation or other property used in connection therewith shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine:

Provided that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.

4. Mischief causing damage to public property by fire or explosive substance.-

Whoever commits an offence under sub-section (1) or sub-section (2) of section 3 by fire or explosive substance shall be punished with rigorous imprisonment for a term which shall not be less than one year, but which may extend to ten years and with fine:

Provided that the court may, for special reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than one year.

5. Special provisions regarding bail.-

No person accused or convicted of an offence punishable under section 3 or section 4 shall, if in custody, be released on bail or on his own bond unless the prosecution has been given an opportunity to oppose the application for such release.

6. Saving.-

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force, and nothing contained in this Act shall exempt any person from any proceeding (whether by way of investigation or otherwise) which might apart from this Act, be instituted or taken against him.

7. Repeal and saving.-

1. The Prevention of Damage to Public Property Ordinance, 1984 (Ord. 3 of 1984), is hereby repealed.
2. Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

DRAFT BILL TO AMEND THE PREVENTION OF DESTRUCTION OF PUBLIC PROPERTY ACT (PDPPA), 1984

Provisions of PDPPA	THE PREVENTION OF DAMAGE TO PUBLIC PROPERTY (AMENDMENT) BILL, 2015	
	A BILL	
	to amend the Prevention of Damage to Public Property Act, 1984	
	BE it enacted by Parliament in the Sixty-fifth year of the Republic of India as follows:-	
Short title and commencement	1 (1) This Act may be called the Prevention of Damage to Public Property (Amendment) Act, 2015	
	(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.	
Amendment of Act 3 of 1984.	2. In the Prevention of Damage to Public Property Act, 1984 (hereinafter referred to as the principal Act), after the words "and with fine", wherever they occur, the words "which shall be equivalent to the market values of the public property damaged" shall be inserted.	3 of 1984
Amendment of section 2	3. In the principle Act, in section 2, after clause (a), the following clause shall be inserted, namely:-	
	'(aa) "prescribed" means prescribed by rules made under this Act;'	
Amendment of section 3.	4. In section 3 of the principal Act, in sub-section (2), in the proviso, for the words "for reasons", the words "for special reasons" shall be substituted.	
Insertion of new sections 4A, 4B, 4C and 4D	5. After section 4 of the principal Act, the following sections shall be inserted, namely:-	
Presumption against accused	"4A. Where an offence under this Act has been committed and it is shown that public property has been damaged as direct consequence of such offence and the accused participated in the commission of such offence, it shall be presumed unless the contrary is shown that the accused had committed such offence.	
Abetment of mischief	4B. Where damage to public property is caused in consequence of demonstration, hartal or bandh called by any organisation, the office-bearers of such organization, shall be deemed to be guilty of the	

	commission of the offence of abetment of an offence punishable under this Act and shall be liable to be proceeded against and punished accordingly.	
	Provided that nothing contained in this section shall render any such office bearer liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.	

Punishment for abetment of mischief	4C. Whoever abets an offence punishable under this Act shall be punished with the punishment provided for that offence under this Act.	
Procedure for Videography of incidents of demonstration etc	4D Where a call for demonstration, hartal or bandh has been given by an Organisation and the officer-in-charge of a police station has reasons to believe that damage to the public property is likely to be caused or there is imminent danger of such damage, he shall,- (i) make such arrangements for the videography of the area where the demonstration, hartal or bandh is proposed to be held; (ii) deposit the soft copies of videography in such manner, with the concerned Sub-Divisional Magistrate or Executive Magistrate who may entrust the same to said police officer or any other person; (iii) get the statement of the videographer recorded before Sub-Divisional Magistrate or Executive Magistrate in such manner, as may be prescribed.:"	
Amendment of Section 5	6. In Section of the principal Act:- (i) after the words and figure "or section 4", the words and figure "or section 4B" shall be inserted; (ii) after the words "for such release", the words "and there are reasonable grounds to believe that he is not guilty of the said offence" shall be inserted.	
Insertion of new sections 6A and 6B	7. After section 6 of the principal Act, the following sections shall be inserted, namely:-	
Power to	"6A. (1) The Central Government may, by notification in the Official	

make rules	Gazette, make rules for carrying out the provisions of this Act.	
	(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-	
	(a) the arrangement for videography under section 4D; and (b) the manner of depositing the soft copies of videography and recording the statement of the videographer under Section 4D.	
Rules to be laid before Parliament	6B. Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."	
