

PREVENTION OF DAMAGE TO PUBLIC PROPERTY (KERALA AMENDMENT) BILL – 2019

Introduction

The Prevention of Damage to Public Property Act, 1984 (Act 3 of 1984) as of now, has no provision for payment of compensation to the State or other authorities which own Public property and suffer loss on account of damage or destruction caused to the same due to acts of violence.

2. The Supreme Court vide order dated 08.06.2017 (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 the modalities to be adopted to make the Prevention of Damage to Public Property Act, 1984 more effective and also suggest suitable changes which would make the statute more meaningful.

3. The Committee made certain recommendations and accepting such recommendations the Ministry of Home Affairs has proposed amendments in the PDPP Act which are in tune with the amendments in this bill.

4. In the Judgment of the Hon'ble Supreme Court in Kodungalloor Film Society V. Union of India (Writ Petition (Civil) No.330/2018), it has been held that 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. The Hon'ble Supreme Court has further held in the decision cited supra that the person/persons who has/have initiated, promoted, instigated or any way caused to occur any act of violence against cultural programmes or which results in loss of life or damage to public or private property either directly or indirectly, shall be made liable to compensate the victims of such violence and that the compensation should be with regard to the loss of life or damage done to any public or private properties, both movable and immovable. There is also a direction that the Central and State Governments shall implement the above recommendations as expeditiously as possible.

5. The State Government has already promulgated an ordinance by name, "The Kerala Prevention of Damage to Private Property and Payment of Compensation Ordinance, 2019" to address the issue relating to loss caused to private properties as a result of damaging act. But there is no law for compensating such loss in respect of damage to public properties.

6. The Government, vide letter No. A1/476/18 – Home dated 04.07.2019 has requested the Kerala Law Reforms Commission to give a recommendation regarding the possibility of bringing a new law to recover the loss caused on account of damage to Public Property. In view of the Prevention of Damage to Public property Act, 1984, it may not be possible to enact a new law by the State Government on this subject. But the above issue can be addressed by making necessary state amendments in the Central Act itself.

PREVENTION OF DAMAGE TO PUBLIC PROPERTY (KERALA AMENDMENT) BILL – 2019

A BILL

Further to amend the Prevention of Damage to Public Property Act, 1984 (Act 3 of 1984).

Preamble.- WHEREAS, it is expedient to amend the Prevention of Damage to Public Property Act, 1984 (Act 3 of 1984) within the State of Kerala for the purposes hereinafter appearing.-

BE it enacted in the Seventieth year of the Republic of India as follows:-

- 1. Short title and commencement .-** (i) This Act may be called "the Prevention of Damage to Public Property (Kerala Amendment) Act, 2019"
(ii) It shall come into force on such date as the Kerala Government may, by notification in the Official Gazette, appoint.
- 2. Amendment of Section 2.-** In Section 2 of the Prevention of Damage to Public Property Act, 1984 (hereinafter referred to as the Principal Act), after clause (a), the following shall be inserted, namely, "(aa) prescribed means "prescribed by rules made under this Act".
- 3. Amendment of Section 3.-** In Section 3 of the Principal Act, in Sub Section (1), after the words "and with fine" the following shall be inserted namely, "which shall not be less than the value of the Public Property damaged".

In Sub Section (2), after the words, “ and with fine”, the following shall be inserted namely, “which shall not be less than the value of the public property damaged”.

In the proviso to Sub Section 2, for the words “for reasons” the words “for special reasons” shall be substituted.

After the proviso to Sub Section (2) the following shall be inserted as Sub Section (3), “When a court imposes a sentence of fine under Sub Sections (1) or (2) or Section 4, the Court may while passing judgment, order the accused to pay by way of compensation, such amount as may be specified in the order to the person or authority who or which has suffered loss by reason of the act for which the accused has been so sentenced.

4. After Section 3 of the Principal Act, the following section shall be inserted, namely,-

3A. Power of Court to impose fine,- Notwithstanding any thing contained in any other law for the time being in force, the Court imposing a sentence of fine shall have power to impose the fine provided under this Act.

5. Amendment of Section 4,- In Section 4 of the Principal Act, after the words, “ and with fine”, the following shall be inserted namely, “which shall not be less than the value of the public property damaged”

6. After Section 4 of the Principal Act, the following sections shall be inserted, namely..-

4 A. 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.

4 B. Abetment of offence.- Where damage to public property is caused in consequence of demonstration, hartal or bandh called by any organization, 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 to this Section shall render any such office bearer liable to any punishment provided under 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.

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

4 D. Procedure for videography of incidents.-Where a call for demonstration, hartal or bandh has been given by an organization and the officer-in-charge of a police station has reasons to believe that damage to 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 the said police officer or any other person".

7. Amendment of Section 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 following shall be inserted namely, “on execution of bond with two solvent sureties and furnishing sufficient security in the form of bank guarantee or deposit of money in court which shall not be less than the value of the property destroyed or damaged as may be determined by the court on the basis of a report by an officer appointed by the Government by notification in the official gazette for such purpose and in the absence of such report on the basis of an estimation made by the court in this behalf.

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

6A Power to make rules.-(1) The State 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.

(3). Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislative Assembly 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 sessions immediately following the session or the successive sessions aforesaid, the State Legislative makes any modification in the rule or decides 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.”

Objects and reasons

The Supreme Court in Kodungallur Film Society V. Union of India (Writ Petition (Civil No.330/2018) has held that the persons who have initiated, promoted, instigated or any way caused to occur any act which results in loss of life or damage to public or private property either directly or indirectly shall be made liable to compensate the victims of such violence. There is further direction in the above judgment that a person arrested for either committing or initiating or in any way causing to occur any act of violence which results in loss of life or damage to Public property may be granted conditional bail upon depositing the quantified loss caused due to such violence or furnishing security for such quantified loss. There is also direction in the above judgment that the Central and State Governments shall implement the above recommendations as expeditiously as possible. The State Government has already promulgated an Ordinance empowering the Court to order payment of compensation to any person for any damage or loss or destruction caused by

the damaging act of the accused and in the matter of granting bail, stipulating a condition insisting sufficient security in the form of bank guarantee has been furnished or money is deposited in Court etc. Based on the decisions of Supreme Court and Kerala High Court, the persons accused under the provisions of PDPP Act are now being released on bail only on satisfying the condition now proposed in the Amendment bill. But this has no statutory recognition.. Since there is no law to compensate the State or other authorities for the loss sustained due to acts of violence to their Property, and no provision insisting for bank guarantee or deposit of money while releasing the accused on bail, it is expedient to bring the above amendments to the Principal Act. Hence this bill.