

# Prevention of Damage to Public Property Act

December 26, 2019

**UPDATE: ON 22-1-2020**

## **Guidelines to seek compensation of Damages**

**Manifest pedagogy:** Right to free speech, assembly and the Right to strike are the issues in the public discourse. The provisions of the Prevention of damage to Public Property Act and the legal route taken to get the damages recovered is something which is important for UPSC mains as UPSC has gone into these kind of niche areas many a times.

**In news:** The Uttar Pradesh government's decision to ask alleged vandals to pay damages or face the seizure of their properties has been opposed.

**Placing it in syllabus:** Fundamental rights

## **Dimensions:**

- What did UP government do?
- How does UP government actions violate Supreme Court guidelines?

## **Content:**

### **What did UP government do?**

- After protests broke out across Uttar Pradesh against the Citizenship Amendment Act (CAA) in December, CM Yogi Adityanath had declared that his government would auction off the properties of protesters.
- So far the **administrations of four different districts have issued notices to over 130 people accused of rioting to pay up around Rs 50 lakh in damages.**

- The UP administration has also warned residents that **defaulting on the payment** would result in the **attachment of their properties**.
- In Sambhal, several civil society leaders, educationists and political workers have been issued notices by the UP government for the payment of Rs 15.35 lakh.
- This move has been criticised as **civil society leaders who happen to be Muslims have been targeted** and there is little or **no evidence of their involvement** in the destruction of public property.
- It is also alleged that many **damages were perpetrated by the police themselves**.

### **How does UP government actions violate Supreme Court guidelines?**

Supreme Court in a similar issue of destruction of public property had considered **Justice K.T. Thomas and Nariman committee reports** and had suggested to amend the Prevention of Damage to Public Property Act (1984).

For the destruction of public property during a riot, the **Supreme Court had taken the view that ultimately people who are instigators of such riots should be taken into account and damages should be recovered from them**. Hence the confiscation of property is normally after a criminal trial and there **cannot be any ipso facto confiscation**.

But the **UP government's "stern intention"** to ensure that "every protester will cry out" have been fulfilled at the cost of the legal process itself. Its decision to ask alleged vandals, even before their guilt has been proven, to pay damages or face the seizure of their properties has been opposed as it **lacks any backing of the law**.

Though there must be some penalties when protests descend into violence, in UP's case the state is pitting itself against those who express dissent. The **law and order machinery has**

**been used as an agent of revenge.**

Supreme Court allowed confiscation action against instigators and not perpetrators. But **recent move in UP is unconstitutional and illegal as action was taken without even a fair trial and confiscation was done to curb dissent.**

---

---

**Source:** *The Hindu*

**Manifest pedagogy:** Public property is the first target of all errate public in India. Public property takes the brunt of all issues in India. The public property act is important for both internal security and polity.

**In news:** Supreme Court has recently expressed displeasure over rioting and destruction of public property during protests against Citizenship Act.

**Placing it in syllabus:** Fundamental rights

**Dimensions:**

- Constitutional and legal safeguards for police to deal with agitations
- Provisions of the act
- SC judgements on it

**Content:** Despite a law against the destruction of property, incidents of rioting, vandalism, and arson have been common during recent protests against Citizenship Act across the country. Uttar Pradesh administration has set up a 4-member panel to assess the damage to public properties to recover the losses.

**Constitutional and legal safeguards:**

- **Articles 19(1)(a) and 19(1)(b)** give to all citizens the

right to freedom of speech and expression, and to assemble peacefully and without arms.

- Under **Articles 19(2) and 19(3)**, the right to freedom of speech is subject to “reasonable restrictions”.
- The legal provisions available to police for handling agitations, protests, and unlawful assemblies are covered by the **Code of Criminal Procedure (CrPC), 1973, the Indian Penal Code (IPC), 1860, and The Police Act, 1861.**
- Under **CrPC Section 129**, “any Executive Magistrate or officer in charge of a police station may **command any unlawful assembly, or any assembly of five or more persons** likely to cause a disturbance of the public peace, to disperse.
- If, upon being so commanded, **any such assembly does not disperse**, the Executive Magistrate or **police officer may proceed to disperse such assembly by force**, and may require the assistance of any male person, not being an officer.
- **Section 130 of the CrPC**, deals with the use of armed forces to disperse assembly.
- The **IPC’s Sections 141-158** deal with unlawful assembly, and the responsibilities, liabilities, and punishments related to this offence.
- Under **IPC Section 141**, an “**unlawful assembly**” is an assembly of five or more persons that intends to “overawe by criminal force, or show of criminal force”, or to “resist the execution of any law, or of any legal process” etc...
- **IPC Section 146** says, “Whenever force or violence is used by an unlawful assembly, or by any member thereof, every member of such assembly is guilty of the offence of rioting.”

#### **Provisions of the act:**

- The Prevention of Damage to Public Property Act, 1984

punishes anyone **“who commits mischief by doing any act in respect of any public property”**.

- **Public property under this Act includes** *“any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy, oil; any sewage works; any mine or factory; any means of public transportation or of telecommunications, or any other property used in connection therewith”*.
- It prescribes a **jail term of up to five years and a fine**.
- Provisions of this law can be coupled with those under the IPC.

### **High court and SC judgements on it:**

- In **‘Karam Singh vs Hardayal Singh And Ors’ (1979)**, the High Court of Punjab and Haryana held that **“before any force can be used, three prerequisites are to be satisfied”**.
- There should be an unlawful assembly with the object of committing violence or an assembly of five or more persons likely to cause a disturbance of the public peace.
- Such assembly is ordered to be dispersed.
- In spite of such orders to disperse, such assembly does not disperse.
- In **2007**, the **Supreme court took suo motu cognizance** of “various instances where there was large scale destruction of public and private properties in the name of agitations, bandhs.
- It set up **two Committees headed by** former apex court judge Justice **K T Thomas** and senior advocate **Fali Nariman** to suggest changes to the law.
- In **2009**, in the **case of In Re: Destruction of Public & Private Properties v State of AP and Ors**, the Supreme Court issued guidelines based on the recommendations of

the two expert Committees.

### **Thomas committee recommendations:**

**Reversing the burden of proof against protesters** – The court said that the prosecution should be required to prove that public property had been damaged in direct action called by an organisation, 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. The **law must be amended to give the court the power to draw a presumption that the accused is guilty of destroying public property.**

### **Nariman Committee recommendations:**

**It dealt with extracting damages for destruction** – The court said that the rioters would be made strictly liable for the damage, and **compensation would be collected to “make good” the damage.**

It said that when **people conduct violent protest which results in damage to private or public property**, the persons who have caused the damage, or were part of the protest **will be deemed to be strictly liable for the damage so caused.**

It **directed High Courts to order suo motu action** and to set up a machinery to investigate the damage caused and award compensation wherever mass destruction to property takes place due to protests.

### **Impact of the guidelines:**

Due to the difficulty in identification of protesters, especially in cases where there is no leader who gave the call to protest, guidelines have had a limited impact. In **Koshy Jacob vs Union Of India (2017)** case, SC opined that the law needs to be updated. However, the petitioner was not granted any compensation since the organisers of the protest were not

before the court.