

Justice V.C. Misra
Chairman

U.P. State Law Commission
Lucknow

Ra. Vi. Aa./Shodh-409/2009

Dated: July 08, 2009

Dear Chief Minister/Law Minister,

I have great pleasure in forwarding herewith Second Report of the State Law Commission proposing an enactment by the Legislature of the State on “**The Uttar Pradesh Prevention of Damage to Public and Private Property Act, 2009**”.

In view of the various guidelines/directions laid down by the Hon’ble supreme *Court in destruction of Public and private Property V. State of A.P. and others (writ Petition (Crl.) No.77 of 2007 with writ Petition (Crl.) No. 73 of 2007)* the Commission decided suo moto to take up the matter in the context of the Prevention of Damage to Public and Private Property with a view to curb acts of vandalism and damage to the same including destruction and damages caused during riots and public commotion by making provision for deterrent punishment, punishment, fixing accountability of the leaders and office bearers of the political parties or organization for the incident and to award compensation to the affected persons as it will also help to improve the law and order situation in the State which will attract the investors.

With kind regards,

Yours sincerely,

**(Justice V.C.
Misra)**

Sushri Mayawati,
Chief Minister/Law Minister,
Uttar Pradesh,

Encl: A Report with Draft of Proposed Legislation.

UTTAR PRADESH STATE LAW COMMISSOM

SECOND REPORT, 2009

ON
PROPOSED
BILL

OF

THE UTTAR PRADESH PREVENTION OF DAMAGE
TO PUBLIC AND PRIVATE PROPERTY
ACT, 2009

UTTAR PRADESH STATE LAW COMMISSION

SECOND REPORT, 2009

PROPOSED LEGISLATION ON UTTAR PRADESH PREVENTION OF DAMAGE TO PUBLIC AND PRIVATE PROPERTY ACT, 2009

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CHAPTER- 1

INTRODUCTION

- 1.1 Damage to public and Private property** By natural calamities is inevitable, but it is different matter when mankind intentionally damages the property and cause death or injury to persons. In recent times demonstration for cause, just or unjust, by groups of agitators who go amok and damage public and private property and cause death or injury to persons on calls given by the political parties, organizations, trade unions or associations have become a growing menace.
- 1.2 *property damage** or, criminal damage as called in the United kingdom, is damage to or the destruction of public or private property, caused either by a person who is not its owner or by natural phenomena. Property damage caused by persons is generally categorized by its cause: neglect (including oversight and human error), and intentional damage. Intentional property damage is often, but not always, malicious. Property damage caused by natural phenomena may be legally attributed to a person if that person's neglect allowed for the damage to occur.
- 1.3 *Criminal damage in English law:** In English law, causing criminal damage was originally a common law offence. The offence was largely concerned with the protection of dwellings and the food supply, and few originally restricted to the payment of damages by way of compensation.

As time passed, specific laws were introduced to deal with particular situations as they were judged to require intervention, most particularly alongside the rise of mechanization and urbanization during the Industrial Revolution,

The Malicious Damage act 1861 created numerous offences of damaging specific types of property, and the modern law of criminal damage is mostly contained in the Criminal Damage Act 1971, which redefines or

*From Wikipedia, the free encyclopedia

creates several offences protecting property rights. The Act provides a comprehensive structure covering merely preparatory acts to the most serious offences of arson and causing damage with intent to endanger life. As such punishments vary from a fixed penalty to life imprisonment, and the court may order payment of compensation to a victim.

1.4 *Protection of Government property in United States: In United States one of the principal responsibilities of the federal criminal law is the protection of government property. The property holdings of the United States, its departments and agencies are extensive and include both real and personal property in this country and abroad. In order for the Federal government to perform the wide range of duties assigned to it by law, it must have ready access to these properties and resources. Therefore it is very misappropriation.

Supervisory authority for prosecutions involving most crimes against government property rests with the office of Enforcement Operations of the Criminal Division. However, responsibility for certain violent crimes and those involving willful destruction of government property may rest with the Terrorism and Violent.

Crime Section. Prior authorization of the Criminal Division is not required for instituting these prosecutions. United States Attorneys with questions regarding the application of these laws are encouraged, however, to contact the Criminal Division for assistance.

1.5 **Intentional property damage may be considered a form of violence, albeit one usually (but not always) less reprehensible than violence which does bodily harm to other living beings. For example, allowing a pacemaker to fail or a well to become to become poisoned may qualify as both property damage and lead to bodily harm. On a similar note,

*Criminal Resource Manual 9-66.010

**From Wikipedia, the free encyclopedia

certain forms of property damage may prevent bodily harm, such as breaking a piece of machinery that was about to injure a person. Some argue that property damage signals a willingness to do bodily harm or otherwise intimidates the free flow of communication in political or economic debates. Mohandas Karamchand Gandhi was of this opinion, but nonetheless differentiated doing bodily harm from property damage, even if he thought both to be violence, which also he thought admissible in certain dire circumstances.

1.6 *The term vandalism is often used synonymously with intentional property damage, although that term is often associated with superficial or aesthetic damage, such as defacement. When property damage is undertaken for the purpose of intimidating a government or society at large, it may be categorized as terrorism. In certain contexts, the relations between these terms are inextricably politicized. For example, the Earth Liberation Front has claimed responsibility for a number of incidents of property damage, but claims to have never harmed a living being, and in fact has a doctrine forbidding members from doing so. However, the Federal Bureau of Investigation classifies them as a “terrorist” group ostensibly because they send a political and ideological message with this destruction. Meanwhile, the United States Department of Defense restricts the term “terrorist” to groups that do actual bodily harm.

1.7 *Property damage tactics have been part of the labor movement, peace movement, ecology movement, environmental movement and anti- globalization movement, among others. The infrastructural capital of loggers, miners, fishers, suburban housing developers, the mass media, employers who are subject to strike actions, and even military forces have been targeted. The property so targeted, in most cases with the notable exception of labor actions, tends to be that which is deemed to be causing or threatening some form of

*From Wikipedia, the free encyclopedia

damage to living beings. Typical examples include include Greenpeace sabotage of bulldozers, peace movement activists entering NATO bases by breaking fences, and Earth Liberation Front destruction of empty new homes that they deem to be imposing on the Arizona desert ecoregion.

1.8 With a view to curb acts of vandalism and damage to public property including destruction caused during riots and public commotion, a need was felt to strengthen the law to enable the authorities to deal effectively with cases of damage to public property, accordingly parliament enacted a law called the prevention of Damage to Public Act, 1984, (Act No. 3 of 1984). The Act only provide for penal consequences: by section 3 (mischief causing damage to public property), by section 4 (mischief causing damage to public property by fire or explosive substance), and section 6clarifies that the provisions of the Act are in addition to, and not in derogation of , any other law for the time being in force. The Act does not deal with private property- obviously because the provisions of the Indian penal Code (Chapter XVII- offences against property- Sections 378 to 462) were considered to be sufficient to deter persons from wantonly indulging in destruction/indulging in damage to private property. But recent events e.g. Gujjar agitation in Rajasthan in 2007, vandalism in the State of Punjab and Haryana due to incident on Dera Sachchkhand Gurudawara at viena (Austria) in 2009 and in Bihar where certain trains were torched by the rioters due to an order by Divisional Railway to discontinue certain non productive halts/railway stations in Bihar, which were setup by the then Railway Minister, who held from the Bihar, have shown the criminal sanction is not always an effective or sufficient deterrence. In many parts of the country there is recurrent rioting and vandalism leading not only to loss of life and injury to persons, but also extensive damage to and loss of public/private property, movable and immovable.

1.9 It is for the above reasons taking a serious note of various stances where there was large scale destruction of public and private properties in the name of agitations, bandhs, hartals and the like, the Hon'ble Supreme Court in public interest has initiated suo motu proceedings on the vandalism and

destruction of properties during the Gujjar agitation in Rajasthan in 2007, in *Destruction of Public and Private Properties vs State of A.P and others*, writ petition (Crl.) No. 77 of 2007, with W.P (Crl.) No. 73 of 2007, which has been decided by the Hon'ble Supreme Court on April 16, 2009, therein certain directions/guidelines were given by the Hon'ble Apex Court in the context of the prevention of Damage to public property Act, 1984. The Hon'ble Supreme Court observed that the recommendations shall immediately become operative as guidelines and guidelines shall cease to be operative as and when appropriate legislation consistent with the guidelines are put in place and/or any fast track mechanism is created by the Statute (S).

1.10 In the light of various directions/guidelines laid down by the Hon'ble Supreme Court in the above Writ petition (Crl) No 77 of 2007 the Commission in its meeting held on 4th May, 2009 decided suo motu to take up the matter in the context of the prevention of Damage to Public property Act, 1984 and entrusted the task to Shri Ishwar Dayal, Full Time Member of the Commission to research upon the matter in the light of directions/ guidelines laid down by the Hon'ble Supreme Court in the said Writ Petition with all possible assistance of the Ex officio Member Shri V.K. Mathur, Director, Judicial Training and research Institute Uttar Pradesh Lucknow and Part Time Member Prof. Balraj Chauhan, Vice Chancellor, Dr, Ram Manohar Lohiya National Law University Lucknow.

1.11 The Commission generally held its meetings at Commission's Head Quarter and its Camp office Allahabad on various dates. A Draft report Prepared in the light of the discussion was finally circulated to all the members of the commission and their views were invited thereon. The views on the draft report was discussed at a meeting of the Commission held on 2nd June, 2009. The report of the Commission proposing enactment of a "special law" by the Legislature of the State titled, "The Uttar Pradesh Prevention of Damage to public and private property Act, 2009," to curb Acts of vandalism and damage to public and private property, including destruction and damage caused during riots and public commotion by making with other provisions, provision for deterrent punishment for offence of mischief to

Public and private property, to make offence non bailable, special provision for bail, fixing accountability of leaders and office bearers of the political parties or organizations and to award compensation, for damage to property, to the affected persons, to be submitted to the State Government has been finally settled, approved and signed by the Chairman and the Members of the Commission at its meeting held on 30th June, 2009.

1.12 Under Article 254(2) of the Constitution if a law made by the Legislature of a State with respect to any of the matters in the Concurrent List contains any Provision repugnant to the provisions of an earlier law made by parliament or an existing law with respect to that matter, then, the law so

made by the Legislature of such State shall, if it has been reserved for the consideration of the president and has received his assent, prevail in that State. Therefore proposed Legislation shall prevail, only if it has received the presidential assent. Hence after passing the proposed legislation by the Legislature of the State Presidential assent shall also be needed.

1.13 The commission wishes to acknowledge the valuable services and assistance rendered by Shri Santosh Kumar Pandey, Secretary of the Commission, officers and officials of the commissions in the preparation of the report.

CHAPTER-2

Constitution of Committees

2.1 In the Destruction of public and Private property vs State of A.P and others case, to assist the Court Hon'ble Supreme Court appointed two following committees:-

1. Headed by the retired Judge of the supreme Court Justice K. T. Thomas
2. Headed by Mr. F.S. Nariman, a senior member of the legal profession.

CHAPTER-3

Recommendations of Committees

3.1 As per directions of the Hon'ble Supreme Court above Committees made the following recommendation:-

3.1.1 Recommendations of Justice K.T. Thomas Committee

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.**

“According to the 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 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.

(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.

Next committee 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 organizations 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 organization 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, it 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 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.”

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

“After considering various aspects to this question committee decided to recommend that prosecutions should be required to prove (i) that those accused were the leaders or office bearers of the organization 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 organization.”

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

“The Committee considered other means of adducing evidence for averting unmerited acquittals in trials involving offences under PDPP Act. Committee 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, committee 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.

- (ii) No sooner than the direct action subsides, the police officer concerned shall authenticate the video by producing the
- (iii) 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 Section 437 of the Code of Criminal Procedure, 1973 and certain other modern Criminal law statutes. So we recommend that Section 5 may be amended for carrying out the above restriction.

The committee is 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.

The committee 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 favor of the alternative imprisonment.

3.1.2 Recommendations by Nariman Committee

So far as the Committee headed by Mr. F. S. Nariman is concerned the recommendations and the views are essentially as follows:

“there is a connection between tort and crime- the purpose of the criminal law is to protect the public interest and punish wrongdoers, the purpose of tort-law is to vindicate the rights of the individual and compensate the victim for loss, injury or damage suffered by him: however – the distinction in purpose between criminal law and the law of tort is not entirely crystal-clear, and it has been developed from case-to- case. The availability of exemplary damages in certain torts (for instance) suggests an overtly punitive function-but one thing is clear: tort and criminal law have always shared a deterrent function in relation to wrongdoing.

The entire history of the development of the tort law shows a continuous tendency, which is naturally not uniform in all common law countries, to recognize as worthy of legal protection, interest which were previously not protected at all or were infrequently protected and it is unlikely that this tendency has ceased or is going to cease in future. There are dicta both ancient and modern that categories of tort are not closed and that novelty of a claim is no defense. But generally, the judicial process leading to recognition of new tort situations is slow and concealed for judges are cautious in making innovations and they seldom proclaim their creative role. Normally, a new principle is judicially accepted to accommodate new ideas of social welfare or public policy only after they have gained their recognition in the society for example in extra judicial writings and even then the decision accepting the new principle is supported mainly by expansion or restriction of existing principles which “gradually receive a new content and at last a new form”.

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 India (1987 (1) SCC 395)** that the Hon'ble Supreme Court needs to lay down principles on which liability could be fastened and damages assessed in cases in which due to behavior 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.

Damages in the law of torts in India include:

- (a) Damages based on the concept of restituito in interregnum to enable total recompense; and
- (b) Exemplary damages"

CHAPTER-4

Basic principles for measure of damages

4.1 The basic principles for measure of damages as suggested by Nariman Committee are as follows which Hon'ble Supreme Court finds to be appropriate:

(1) The basic principle for measure of damages in torts (i.e. wrongs) in property is that there should be 'restituto in interregnum' which conveys the idea of "making whole".

(2) Where any injury to property is to be compensated by damages, in settling the sum of money to be given for reparation by way of damages the Court should as nearly as possible get at that sum of money which will put the party who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

(3) In this branch of the law, the principle of restitution in interregnum has been described as the "dominant" rule of law. Subsidiary rules can only be justified if they give effect to that rule.

4.2 In actions in tort where damages are at large i.e. not limited to the pecuniary loss that can be specifically proved, the Court may also take into account the defendant's motives, conduct and manner of committing the tort, and where these have aggravated the plaintiff's damage e.g. by injuring his proper feelings of dignity, safety and pride – aggravated damages may be awarded.

4.3 Aggravated damages are designed to compensate the plaintiff for his wounded feelings-they must be distinguished from exemplary damages which are punitive in nature and which (under English Law) may be awarded in a limited category of cases.

4.4 "Exemplary damages" has been a controversial topic for many years. Such damages are not compensatory but are awarded to punish the defendant and to deter him and others from similar behavior in the future. The law in England (as restated in *Rookes v.*

Barnard affirmed in *Cassell v. Broome*) is that such damages are not generally allowed. In England they can only be awarded in three classes of cases

- (i) where there is oppressive, arbitrary or unconstitutional action by servants of the Government;
- (ii) where the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the claimant; and
- (iii) Where such damages are provided by statute.

4.5 In the decision in ***Kuddus v. Chief Constable of Leicestershire (2001) UKHL 29***- the most recent judgment of the House of Lords, the Law Lords did not say that in the future the award of exemplary damages should be restricted only in the cases mentioned in ***Rookes v. Barnard [1964] 1 All ER 367*** (as affirmed in ***Cassell v. Broome [1972] 1 All ER 801.***) Lord Nicholls in his speech at page 211 stated that:

“...the essence of the conduct constituting the Court’s discretionary jurisdiction to award exemplary damages is conduct which was such as to be an outrageous disregard of the claimant’s rights.”

4.6 In the committee’s view, the principle that Courts in India are not limited in the law of torts merely to what English Courts say or do, is attracted to the present situation. This Committee is of the view that this Hon’ble Court should evolve a principle of liability – punitive in nature-on account of vandalism and rioting leading to damages/destruction of property public and private. Damages must also be such as would deter people from similar behavior in the future: after all this is already the policy of the law as stated in the prevention of Damage to Property Act, 1984, and is foreshadowed in the order of this Hon’ble Court dated 18-06-2007 making the present reference.

4.7 In a ***Winfield and Jolowicz (on Tort) Seventeenth Edition*** (at pages 948-949) the authors set out the future of exemplary damages by quoting from the decision in ***Kuddeus v. CC Leicestershie (supra)*** where two Law Lords Lord Nicholls and Lord Hutton expressed the view that such damages might have a valuable role to play in dealing

with outrageous behavior. The authors point out that the boundaries between the civil and criminal law are not rigid or immutable and the criminal process alone is not an adequate mechanism to deter willful wrong-doing. The acceptability of the principle of compensation with punishment appears to have been confirmed by the **Privy Council (in *The Cleaner Co Ltd. Vs. Abrahams* [2004] a AC 628 at 54)** where it was felicitously said that “oil and vinegar may not mix in solution but they combine to make an acceptable salad dressing.” The authors go on to say that exemplary damages certainly enjoy a continuing vitality in other common law jurisdictions, which, by and large, have rejected the various shackles imposed on them in England and extended them to other situations: thus punitive damages was held to be available in Australia “in cases of” outrageous” acts of negligence.

4.8 The Law Commission of Australia has also concluded – after a fairly evenly balanced consultation–that exemplary damages should be retained where the defendant “had deliberately and outrageously disregarded the plaintiff’s rights.”

CHAPTER-5

Modalities for role of media

5.1 So far as the role of media is concerned the Nariman Committee has suggested certain modalities which are essentially as follows:

a) The Trusteeship principle:-

Professional journalists operate as trustees of public and their mission should be to seek the truth and to report it with integrity and independence.

b) The Self Regulation Principles:-

A model of self- regulation should be based upon the principles of impartiality and objectivity in reporting; ensuring neutrality; responsible reporting of sensitive issues, especially crime, violence, agitations and protest; sensitivity in reporting women and children and matters relating to national security; respect for privacy.

c) Content Regulations:-

In principle, content regulation except under very exceptional circumstances, is not to be encouraged beyond vetting of cinema and advertising through the existing statues. It should be incumbent on the media to classify its work through warning systems as in cinema so that children and those who are challenged adhere to time, place and manner restraints.

d) Complaints Principle:-

There should be an effective mechanism to address complaints in a fair and just manner.

e) Balance Principle:-

A balance has to be maintained which is censorial on the basis of the principles of proportionality and least invasiveness, but which effectively ensures democratic governance and self restraint from news publications that the other point of view is properly accepted and accommodated.

5.2 It is felt that the appropriate methods have to be devised norms of **self regulation rather than external regulation** in a respectable and effective way both for the broadcasters as well as the industry. It has been stated that the steps constitute a welcome move and should be explored further. The proposed norms read as follows:

“The News Broadcasting Association (NBA) believes that media that is meant to expose the lapses in government and in public life cannot be obviously be regulated by government, else it would lack credibility. It is a fundamental paradigm of freedom of speech that media must be free from governmental control in the matter of “content” and that censorship and free speech are sworn enemies. It therefore falls upon the journalistic profession **to evolve institutional checks and safeguards, specific to the electronic media** that can define the path that would conform to the highest

Standards of rectitude and journalistic ethics and guide the media in the discharge of its solemn Constitutional duty. There are models of governance evolved in other countries which have seen evolution of the electronic media, including the news media, much before it developed in India. The remarkable feature of all these models is “self-governance”, and a monitoring by a “jury of peers”.

CHAPTER-6

Suggestions regarding role of media

- 6.1** For the role of media, the Nariman Committee has recommended the following suggestions:
- (i) India has a strong, competitive print and electronic media
 - (ii) Given the exigencies of competition, there is a degree of sensationalism, which is itself not harmful so long as it preserves the essential role of the media viz: to report news as it occurs – and eschew comment or criticism. There are differing views as to whether the media (particularly the electronic media) has exercised its right and privilege responsibly. But generalizations should be avoided. The important thing is that the electronic (and print) media has expressed (unanimously) its wish to act responsibly.
 - (iii) Regulation of the media is not an end in itself; and allocative regulation is necessary because the ‘air waves’ are public property and cannot technically be free for all but have to be distributed in a fair manner. However, allocative regulation is different from regulation per se. All regulation has to be within the framework of the constitutional provision. However, a fair interpretation of the constitutional dispensation is to recognize that the principle of proportionality is built into the concept of reasonableness whereby any restrictions on the media follow the least invasive approach. While emphasizing the need for media responsibility, such an approach would strike the correct balance between free speech and the independence of the media.
 - (iv) Although the print media has been placed under the supervision of the Press Council, there is need for choosing effective measures of supervision – supervision not control.

- (v) As far as amendments mooted or proposed to the Press Council Act, 1978 this Committee would support such amendments as they do not violate Article 19 (1) (a)- which is a preferred freedom.
- (vi) Apart from the Press Council Act, 1978, there is a need for newspapers and journals to set up their own independent mechanism.
- (vii) The pre censorship model used for cinema under the Cinematography Act, 1952 or the supervisory model for advertisements is not at all appropriate, and should not be extended to live print or broadcasting media.
- (viii) This Committee wholly endorses the need for the formation of
 - (a) Principles of responsible broadcasting
 - (b) Institutional arrangements of self regulationBut the Committee emphasized the need not to drift from self regulation to some statutory structure which may prove to be oppressive and full of litigative potential.
- (ix) The committee approved of the NBA model as a process that can be built upon both at the broadcasting service provider level as well as the industry level and recommend that the same be incorporated as guidelines issued by this Court under Act 142 of the Constitution of India –as was done on Vishaka's case

The aforesaid recommendations of Justice K.T. Thomas committee according to Hon'ble supreme Court are wholesome and need to be accepted.

CHAPTER-7**Guidelines for demonstration**

7.1 To effectuate the modalities for preventive action and adding teeth to enquiry/investigation **Hon,ble Supreme Court observed** that the 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.

7.2 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.

CHAPTER-8

Guidelines to asses damages

8.1 Hon,ble Supreme Court observed that 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 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 organizers 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.

CHAPTER-9

Recommendations of the Committees shall be operative as guidelines

9.1 The aforesaid recommendations of Justice K.T. Thomas Committee and Mr. F.S. Nariman Committees which have the approval of the Hon,ble Supreme Court shall immediately become operative. They shall be operative as guidelines.

CHAPTER-10

When Guidelines shall cease to be operative

10.1 Hon,ble Supreme Court also observed that these guidelines shall cease to be operative as and when appropriate legislation consistent with the guidelines indicated above are put in place and/or nay fast track mechanism is created by Statute (s).

CHAPTER -11

Recommendations by the Commission

11.1 In the light of above recommendations/ suggestions made by the committees and various guidelines laid down by the Hon'ble Supreme Court. The Commission gave anxious consideration and discuss it at length in its meetings on various aspects. The following position emerges from the above discussion and the guidelines of the Hon'ble Supreme Court. The commission is of the view that the State Government should enact a legislation in this regard to observe the guidelines of the hon'ble Supreme Court. It will help to improve the law and order situation by making provisions of deterrent punishment with fine, stringent provision for bail and exemplary damages in the proposed legislation.

11.1.1 Provision for rebuttable presumption

(i) **Where accused participated in direct action**

In this respect the prosecution should be required to prove,

- (a) that public property has been damage in a direct action called by an organization or political party, and
- (b) that the accused also participated in such direct action.

From that stage the burden can be shifted to the accused to prove his innocence. It means where prosecution succeeds in proving that public/private property has been damaged in direct action in which accused also participated, the court should be given the power to draw a presumption that accused is guilty of destroying public property and that it is open to the accused to rebut such presumption.

(ii) **Where accused were leaders or office bearers of the organization or political party which called out direct action**

Where prosecution proves:-

- (a) that those accused were the leaders or office bearer of the organization which called out direct actions and
- (b) that public and private 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:-

- (a) he was in no way connected with action called by his political party or that
- (b) he has taken all reasonable measures to prevent causing damage to public and private private property in the direct action called by his organization

11.1.2 Provision to make the leaders of the organization, which calls the direct action, guilty of abetment of the offence.

The leaders of the organizations can also be charged and brought to trial, when public property is damaged in the direct action called at the behest of such organizations. Destruction of public and private property has become so rampant during such direct action called by organization in almost all such cases the top leaders of such organization who really instigate such direct actions will keep themselves in the background and only the ordinary or common members or grass root level follower of the organization would directly participate in such direct action 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 action 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 a provision in the proposed legislation to the effect that specified categories of leaders of the organization which make the call for direct actions resulting in damage to public and private property, shall be deemed to be guilty of abetment of the offence unless proved otherwise

In **Bharat Kumar vs. State of Kerala, 1997(2) KLT 287** Judgment of the full Bench of Kerala High Court was affirmed by the Apex Court in **Communist Party of India (M) vs. Bharat Kumar and Others (AIR 1998 SC 184)** it was held that, “We cannot also ignore the destruction of public and private property when a bandh is enforced by the political parties or other organizations. We are inclined to the view that the political parties and the organizations which call for such bandhs 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 organizers of such bandhs.”

In **Geroge and others vs. State of Kerala, Kerala High Court** observed, “It is also learnt 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 (supre)**.”

Division Bench of the Kerala High Court in **Kerala Vyapari Vavasayi Ekopana Samithi v State of Kerala and Ors 2000(2) KLT 430**, six concrete directions were issued. The Apex Court affirmed the directions except directions were issued. The apex Court affirmed the directions except directions (iii) and (iv) regarding cancelation of registration of political parties in **Indian National Congress vs. Institute of social Welfare and Ohters, (2002) 5 SCC 685**. In the present context direction (vi) is relevant which runs as follows,:

“vi. 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 or properly 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.”

Above decisions of the High Court and Apex Court clearly held that the political parties and the organizations in such case are really

liable to compensate, the public and private citizen and for loss suffered by them for such destruction.

At the same time, no innocent person, inspite 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.

11.1.3 Evidence through videography

For averting unmerited acquittals for trials involving offences under PDPP Act, it is felt that others means of adducing evidence be considered. One of the areas to be tapped is evidence through videography in addition to contemporaneous materials that may be available through the media such as electronic media. With amendments brought in the Evidence Act, through Act 21 of 2000 permitting evidence collected through electronic devices as admissible in evidence, following things be followed:-

(1) Panel of local video operators

Each police station shall be empowered to maintain a panel of local video operators who could be made available at short notices.

(2) Services of the videographer

If the officer incharge of a police station or other law enforcing agency or the police officer who has the responsibility to act on the information that a direct action either declared or undeclared is imminent and if he has reason to apprehend that such direct action has the potential of causing destruction or damage to public and private 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.

(3) Authentication of video

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.

11.1.4 Special provision for bail

It is 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 person should be restricted to cases where the court feels that there are reasonable grounds to presume that he is not guilty of the offence. The Act. No. 3 of 1984 makes it mandatory that accused or convicted of any offence under the Act shall not be released on bail unless the prosecution has been giving an opportunity to oppose the application for such release. The Commission is of the view that some more stringent provision should be made as such person shall not be so released if there appear reasonable grounds for believing that he has been guilty for an offence punishable with death, or imprisonment for life or he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more.

11.1.5 Provision for deterrent punishment

To curb acts of vandalism and damage to property, including destruction and damage caused during riots and public commotion the proposed legislation requires provision for deterrent punishment. The PDPP Act under section 3 makes the provision that, a person who commits mischief in respect of any public property, being any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy, or any oil

installations sewage works, mine or factory, or means of public transportation or telecommunications. etc. is punishable with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine. The Commission is of the view that instead of minimum sentence six months it should be one year while for five year it should be ten years.

The Act further provides that a person committing mischief in respect of any other public property is punishable with imprisonment for a term which may extend to five years and with fine. In this regard the Commission is of the view that here also minimum sentence should be prescribed. Therefore in such cases not less than six month imprisonment shall be appropriate.

However, under section 4 of the Act. It is provided that, a person to commits mischief against any type of public property by means of fire or explosive substances is punishable with rigorous imprisonment for a term which shall not be less than one year but which may extend to ten years and with fine. The Commission is of the view that it is one of the heinous offence therefore more deterrent punishment is needed. Hence it will be appropriate if the proposed legislation makes the provision, “----- rigorous imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and with fine,-----”

Apart from the above imprisonment the proposed legislation should also contain the provision of fine which is equivalent to the market value of the property damaged on the day of incident in default of payment of fine the offender shall undergo imprisonment for a further period of half of the sentence awarded in the offence to deter the accused from opting in favour of alternative imprisonment.

11.1.6. Discretion to reduce minimum sentence

Under section 3 of Act No. 3 of 1984 the Court may, for reasons to be recorded in its Judgments, award a sentence of imprisonment for a term of less than six month while under section 4 of the Act 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. Hon’ble Supreme Court observed that instead of reasons the court should record special reasons to reduce the minimum sentence prescribed. The

Commission is of the view that the 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.

11.1.7. Fine

In the PDPP Act no minimum fine is prescribed for any offence though provision for imprisonment with fine has been made under section 3 and section 4 of the Act. Hon’ble Apex Court has observed 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. Under these circumstances the Commission is of the view that apart from the penalty of imprisonment Court should also impose the fine which is equivalent to the market value of the property damaged on the day of incident and in default of payment of fine, the offender shall undergo imprisonment for a further period of half of the sentence awarded in the offence.

11.1.8. Duty of organizer of demonstration

As soon as there is a demonstration organized the organizer shall meet the police to review and revise the route to be taken and to lay down condition for a peaceful march or protest. All weapons including knives, lathis and the like shall be prohibited. Organizers to give an undertaking to ensure a peaceful march with marshals at each relevant junction. Any person including the organizers of hartals, bundh and protest etc. while applying for permission for processions should be required to make an undertaking to ensure that no damage will be caused to the any property and any such damage will compensated for by them while making application for permission before the authorities for the conduct of processions/ meetings. The concerned authorities shall incorporate necessary conditions in the standing instructions to include such undertaking in the permission letter issued to the organizers.

11.1.9. Duty of police and local administration

The police and local administration **shall** ensure videograph of such protest to the maximum extent possible.

11.1.10. officer incharge to supervise the demonstration and his duties

If the situation is confined to the district, the person in charge to supervise the demonstration shall be the SP, where the situation stretches beyond one district, the highest police officers in the Division shall be incharge to supervise the demonstration. In the event that demonstration turn violent, the officer incharge shall ensure that the events are videographed through private operators and for further information request may be made to the media and others on the incident in question.

11.1.11 Lodging of FIR/Complaint

- (1) As soon as Head of office, becomes aware of the damage so caused, he shall without any loss of time, lodge a First Information Report/complain with the police station having jurisdiction over the area where such damage had taken place.
- (2) On receipt of such a first Information Report/Complaint, the station House officer/station officer (SHO/SO) shall duly register a case, if not already registered and investigate the matter and furnish a report regarding the involvement of persons responsible for damages, to the Head of the office immediately.

11.1.12 Claim Petition for public property

On receipt of the report of the SHO/SO and other information gathered in the meanwhile, the head of office shall take immediate steps to file Claim Petition before the Claims Tribunals for compensation within one month of the date of causing of the damage to the public property.

11.1.13 Review of cases

The District collector/ commissioner as the case may be will review the conduct of claim petition on a quarterly basis and sent report to the Government.

11.1.14. Monitor of cases

The Head of the Department shall monitor the conduct and disposal of Claim Petition filed for compensation and give necessary directions to the Head of office periodically.

11.1.15 Review of investigation

The superintendents of police will review the investigation of the criminal cases on a quarterly basis and send report the Director General of police.

11.1.16. Claim petition for private property

Private property, owners, whose property had also damaged, in such incident, may also obtain copy of such report from the SHO /SO concerned as per rules to file their Claim petitions for compensation. They may also collect their Claim petitions for compensation. They may also collect their evidence for damage to their property through private videograph subject to its prove as per law

11.1.17 Exemplary damages

It has been a controversial topic for many years. Such damages not compulsory but are awarded punish the defendant and to deter him and others from similar behavior in future. The law in England (as restated in *Rookes v. Barnard* affirmed in *Cassell v. Broome*) is that such damages are not generally allowed. In England they can only be awarded in three classes of cases of cases (i) where there is oppressive, arbitrary or unconstitutional action by servants of the Government; (ii) where the defendants conduct has been calculated by him to make a profit for himself which may well exceed the exceed the compensation payable to the claimant; and (iii) where such damages are provided by statute.

In the decision in *Kuddus v. Chief Constable of Leicestershire* (2001) UKHL 29 the most recent judgment of the House of Lords, the Law Lords did not say that in the future the award of exemplary damages should be restricted only in the cases mentioned in *Rookes v. Barnard* [1964] 1 All ER 367 (as affirmed in *Cassell v. Broome* [1972] 1 all ER 801.)

As per Nariman committee the courts in India are not limited in the law of torts merely to what English courts say or do, is attractive to the present situation. Hon'ble Court should evolve a principle of liability-punitive in nature –on account of vandalism and rioting leading to

damages/ destruction of property public and private. Damages must also be such as would deter people from similar behavior in the future: after all this is already the policy of the law as stated in the Prevention of Damage to Property Act, 1984,

In a Winfield and Jolowicz (on Tort) Seventeenth Edition (at pages 948-949) the authors set out the future of exemplary damages by quoting from the decision in *Kuddeus v. CC Leicestershie* (supra) where two Law Lords Nicholls and Lord Hutton expressed the view that such damages might have a valuable role to play in dealing with outrageous behavior. The authors point out that the boundaries between the civil and criminal law are not rigid or immutable and the criminal process alone is not an adequate mechanism to deter willful wrong- doing. The acceptability of the principle of compensation with punishment appears to have been confirmed by the Privy Council (in the *Cleaner Co Ltd. Vs. Abrahams* [2004] a AC 628 at 54) where it was felicitously said that “oil and vinegar may not mix in solution but they combine to make an acceptable salad dressing. “The authors go on to say that exemplary damages certainly enjoy a continuing vitality in other common law jurisdictions, which, by and large, have rejected the various shackles imposed on them in England and extended them to other situations thus punitive damages was held to be available in Australia” in cases of “outrageous” acts of negligence.

Hon’ble Supreme Court in its guidelines observed that “exemplary damages may be awarded to an extent not greater than twice the amount of the damages liable to be paid”

The Commission is of the view that in this regards following provision may be made in the proposed legislation:-

“The Claims Tribunals may, for reasons to be recorded, award and Exemplary Damages to an extent not greater than twice the amount of compensation liable to be paid.”

11.1.18 Forum to award compensation

It shall also be expedient to consider that what will be the appropriate forum to assess the damages and award the compensation, where persons, whether jointly or otherwise, are part of a protest which turns violent, resulting in damage to property, the person who has caused the damage, or was part of the protest or who has organized the

demonstration or abetted or instigates or incites the offence as leader or office bearer of the political party or organization shall be deemed to be strictly liable for the damage so caused. Hon'ble Supreme Court has observed that this damage may be assessed by the ordinary courts or by any special procedure created to enforce the right. To ease the burden on the State exchequer by creating separate infrastructure to assess the damages and aware the compensation, the commission is of the view that damages may be assessed by the Claims Tribunal at district level whose Chairman should be a sitting District Judge of the district concerned. It means that such type of cases may be instituted in the Claims Tribunal having the jurisdiction. The case may also be transferred to the court of Additional District Judges for disposal according to law be the Chairman of the Claims Tribunal if he thinks it proper. In this regard provisions may be made in made in the proposed enactment.

11.1.19. Constitution of Claims Tribunal

The State Government shall, by notification, constitute one or more damage to property Claims Tribunal hereinafter referred to as Claims Tribunal, as required, at district level, whose Chairman shall be a sitting District Judge of the district concerned to perform the functions assigned to it under the Act.

11.1.20 Function and powers of the Claims Tribunal

- (1) It shall be the duty of the Claims Tribunal to investigate the damages caused to public and private property in the incidents occurred under section 3 or section 4 and to award compensation related thereto
- (2) The Claims Tribunal may, if it thinks fit appoint a sitting or retired Member of Uttar Pradesh Higher Judicial Service as a Claims Commissioner to estimate the damages and investigate liability to assist it in holding the inquiry.
- (3) The Claims Tribunal may, if it thinks fit, also appoint an assessor to assist the claims Commissioner.

- (4) The remuneration, to be paid the person or persons under sub section (2) and sub section (3) shall in every case be determined by the Claims Tribunal.
- (5) The Claims Commissioner and the Assessor may seek instructions from the claims tribunal 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.
- (6) The Claims Commissioner will make a report to the claims Tribunal within a period of three months or within the extended time, if any, granted by the claims Tribunal. The claims Tribunal will determine the liability after hearing the parties.
- (7) If Chairman (District Judge) of the Claims Tribunal thinks it proper he may transfer the claims petition to the Court of Additional District Judge. In such cases all powers of the Chairman of the Claims Tribunal shall be exercised by that court and the claims commissioner will make his report to that court.
- (8) The Claims Tribunals may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.
- (9) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of criminal Procedure, 1973 (2 of 1974).

11.1.21. Procedure of Claims Tribunal

(1) Application for compensation

- (i) Every application/ Claim Petition for compensation be accompanied by a fee of rupees twenty five in the form of court- fee stamps:
- (ii) All applications, before the Claims tribunal, other than application mentioned in clause (i) shall be stamped with a court- fee stamp of rupees five. A process fee of rupees ten shall be in the form of court – fee stamps paid for each witness or party summon;
- (iii) An application under this section shall be presented before the Claims Tribunal by the petitioner unless he is prevented by sufficient cause from appearing personally, in which case the application may be presented by his agent authorized in writing in this behalf.

(2) Cause of action to claim damage to property

The cause of action for initiating steps would be acts causing damage to property.

(3) Who may initiate the action for claiming compensation for public and private property and its time limit

Wherever a destruction, or loss or damage to public and private property takes place due to hartal, bundh, riots, public commotion, protests or thereof, the primary responsibility for initiating the action for claiming compensation before the Claims Tribunal, constituted under the Act, of competent jurisdiction, within a month of occurrence of the incident;

(i)For the public property, would vest with the Head of the office exercising control over the property damaged during and as a result of the bundhs, strikes, riots, public commotion and protests etc. In the case of public sector undertakings, the Head of the office or the Chief

Executives shall take necessary steps to file Claim petition for compensation.

(ii) For the private property would vest with the owner of the private property, having exclusive and absolute legal rights and who is not trespasser of the property damaged, may file claim petition for payment of compensation.

(4) Who may be joined as respondents

In such a Claim petition for damages, the Head of office of owner of the private property as the case may be will include as respondents, the persons who within his knowledge had exhorted or committed such Acts, the persons who are so named in the report of the police. The names and designation of the person who exhorted or perpetrated the acts leading in the destruction or damages, and leaders and office bearer of the organization or political party of whatever description and at whatever level , who sponsored, called for or exhorted the agitation.

(5) Notice to parties

The Claims tribunal shall send to the respondents a copy of application together with a notice of the day on which it will bear the application

(6) Appearance of parties and filing of written statement

The respondents, at or before the first hearing or within such further time as the Claims Tribunal may allow, which shall not be later than ninety days from the date of service of notices, file a written statement dealing with the damages claimed in the application. Any such written statement shall form part of the record.

(7) Framing of Issues

After considering the application and the written statements and the documents, the Claims Tribunal shall proceed to frame the issues that arise in the case.

(8) Summoning of witnesses

Where an application is presented by any party to the proceeding for summoning of witnesses, the Claims Tribunal shall on payment of the expenses involved, if any, issue summons for the appearance of such witnesses, unless it considers that their appearance is not necessary in the case.

(9) Determination of issues

After framing the issues the Claims Tribunal shall proceed to record evidence thereon which each party may like to produce.

(10) Method of recording evidence

The Claims Tribunal shall, as examination of a party or a witness proceeds, make a brief memorandum of the substance of what is deposed and such memorandum shall be written and signed by the Claims Tribunal and shall form part of the record.

Provided that where the Claims Tribunal is unable to make a memorandum it shall cause the reason of such inability to be recorded and shall cause the memorandum to be made in writing from its dictation.

(11) Power of examination

The Claims Tribunal may if it thinks necessary examine any person likely to be able to give information relating to the incident, irrespective of the fact whether such person has been or is to be called as a witness or not.

(12) Local inspection

- (1) The Claims Tribunal may, at any stage of an inquiry before it, and after due notice to the parties, visit and inspect the site of the incident or any other place or thing which in its opinion is necessary to view.

However, on notice;

- (i) Party to proceeding or his representative may be present at the time of the local inspection by the Claims Tribunal.
- (ii) as soon as may be after the local inspection the Claims Tribunal shall record memorandum of any relevant fact observed at such inspection, and such memorandum shall form part of the inquiry.

(13) Adjournment of hearing

The Claims Tribunal may for reasons to be recorded, on the application of a party or otherwise, adjourn the hearing from time to time. When adjournment is granted on application the Claims Tribunal may, make such order as it thinks fit with respect to the costs occasioned by the adjournment. In any case not more than three adjournments shall be given to a party.

(14) Appearance through legal practitioner

The Claims Tribunal may, in its discretion, allow any party to appear before it through a legal practitioner during hearing of the case.

(15) Judgment and award of compensation

- (i) The Claims Tribunal, in passing order, shall record concisely in judgment the finding on each of the issues framed and the reasons for such finding and make an award, specifying the amount of compensation to be paid and shall also specify the

Person or persons jointly or severally as the case may be to whom damages shall be payable.

Provided that if any amount as compensation has been paid to the owner of the private property damaged in incident by the State government or Central Government or Insurance company or any other agency in this behalf, the Claims Tribunal shall adjust such amount from the amount of compensation so awarded.

- (ii) Where compensation is awarded to two or more person, under sub section (i) the Claims Tribunal shall also specify the amount payable to each of them.
- (iii) The Claims Tribunal may while disposing of the claim for compensation, make such orders regarding costs and expenses incurred in the proceeding as it thinks fit.

(16) Award of interest where any claim is allowed

Claims Tribunal may take time to decide the claim petition. Petitioner has to wait for years together for final award. Therefore commission is of the view that for such period from the institution of the Claim petition, petitioner should get interest also. In this regard following provision may be made in the proposed legislation.

Where any Claims Tribunal allows a claim petition for compensation made under this Act, such tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

11.2. Appeal

Commission is of the view that against the award of damages by the claims tribunal following provision for appeal be also made in the proposed legislation;

(1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court

Unless he has deposited with it fifty percent of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than fifty thousand rupees.

11.3. Recovery of money as arrear of land revenue

Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

11.4. Bar on jurisdiction of Civil Courts

Where any claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.

11.5. Principles relating to assess the amount of damage to property and its liability

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

(2) The liability will be borne by the actual perpetrators of the crime as well as organizers of the event giving rise to the liability to be shared, as finally determined by the Tribunal.

(3) Damages shall be assessed for:

- i. damages to public property;
- ii. damages to private property;
- iii. damages causing injury or death to a person or persons;
- iv. Cost of the actions by the authorities and police to take preventive and other actions.

11.6. Whether Act No. 3 of 1984 is to be amended or a new legislation be made by the State Government

In view of the above discussion and various guidelines laid down by the Hon'ble Supreme Court aforesaid provisions have to be incorporated in the prevention of Damage to Public Property Act, 1984 by amendments or by new enactment by the State Government. So far as amendment of Act No. 3 of 1984 is concerned, it is a Central Act, enacted by the parliament. As per guidelines of the Apex Court many provisions have to be inserted or omitted from the said Act. Thus it will change the very shape of the Act. Under these circumstances it will be better for the State Government to enact a separate State Legislation in this regard wherein aforesaid provisions based on the guidelines laid down by the Hon'ble Supreme Court may be incorporated, as this matter is directly related with the law and order situation of the State, to meet

situation 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 bandhs, strikes, protests, riots and Civil commotions. One of the principal responsibilities of the State Government is to protect the loss of properties, public or private and loss of life, injury occasioned to innocent persons, maintain the law and order situation and punish the wrongdoers.

11.7. Proposed Legislation should also be applicable to the private property

Parliament enacted a law called the Prevention of Damage to Public Property Act, 1984, (Act No. 3 of 1984). The Act only provides for penal consequences: by section 3 (mischief causing damage to public

property), by section 4 (mischief causing damage to public property by fire or explosive substance), and section 6 clarifies that the provisions of the Act are in addition to, and not in derogation of, any other law for the time being in force. The Act does not deal with private property—obviously because the provisions of the Indian Penal Code (Chapter XVII—offences against property—sections 378 to 462) were considered to be sufficient to deter persons from wantonly indulging in destruction/damage to private property. But recent events e.g. Gujjar agitation in Rajasthan in 2007, vandalism in the State of Punjab and Haryana due to an incident on Dera Sachchkhanda Gurudawara at Vienna (Austria) in 2009 and in Bihar where certain trains were torched by the rioters due to an order by Divisional Railway to discontinue certain non-productive halts / railway stations in Bihar, were setup by the then Railway minister, who held from the Bihar, have shown that the criminal sanction is not always an effective or sufficient deterrent. In many parts of the country there is recurrent rioting and vandalism leading not only to loss of life and injury to persons, but also extensive to and loss of public/private property, movable and immovable.

There may be certain cases where some amount of compensation might have been paid to the owners of property damaged during such incidents by State Government or Central Government or insurance company or any other agency in this behalf, but it is not sufficient relief as required. There are several cases where entire property of an individual have damaged/ destroyed during hartals, bundhs, riots and protests etc. but owners of the private property do not compensated. Therefore some method is to be evolved to give relief in such cases also to the owners of the private property, which has been damaged during such incidents. As for as above payment is concerned we are of the view that such amount may be adjusted from the award.

Maharashtra Government has enacted a special law by promulgating an ordinance no. V of 2009 on 30th March 2009 to provide for the prevention of violence against Medicare Service Persons and Prevention of Damage or Loss of Property of Medicare Service Institutions from violent activities in the State of Maharashtra, titled, “Maharashtra Medicare Service Persons and Medicare Service

Institutions (Prevention of Violence and Damage or Loss to Property) Ordinance, 2009.”

Consequent on the incidents of burning of Motor vehicles, looting, damage of public and private property in Bangalore city and elsewhere and considering the fact that during the last few years agitational methods are being resorted to increasingly by students, laborers, antisocial elements to achieve these objects, Karnataka Government enacted, “The Prevention of Destruction and Loss of Property Act, 1981” in this Act apart from the provision for punishment, special provision regarding bail and power of State Government to impose collective fine were also made.

Under these circumstances the commission is of the view that private property owners may also be given the benefit of proposed legislation. However, provision may be made in the proposed legislation to adjust such

amount which has already been paid by the insurance company or the State Government or the Central Government or any other agency in this behalf.

11.8 The role of media

After going through the recommendations of Nariman Committee Commission is of the view that in this regards no provision is needed in the proposed legislation. Should we mention about the role of media in the successes of the hartal? Just imagine what will happen if people doesn't come to know about a hartal being called!! The media may not admit this.. But the truth is that, if the print and electronic media decides to exercise self- restraint and choose not to render undue importance to the hartal calls, the problem would be solved without any legislative or judicial interventions. Media only requires self-restraint and self regulation.

CHAPTER -12**Conclusion**

12.1. In the light of above discussion and guidelines by the Hon'ble Supreme Court on various aspects Commission is of the view that the State Government should enact a Legislation in this regard, titled, "Uttar Pradesh Prevention of Damage to Public and private Property Act, 2009" to observe the guidelines of the Hon'ble Supreme Court. It will also help to improve the law and order situation in the State. A draft of proposed bill has been prepared and is annexed with this report.

12.2 The provisions of the proposed legislation are a "special law" as defined in section 41 of the Indian Penal Code, 1860. The object of the proposed legislation is to provide enhanced punishment for the offence of mischief to public and private property and to make the offence a non-bailable one and to award compensation for damage to property. Certain provision of the proposed legislation will effect the provisions of Indian penal Code, 1860, which is existing law, the Code of Criminal procedure, 1973 and the Prevention of Damage to Public Property Act, 1984 are laws made by Parliament. The power of a Legislature of a State to make laws in respect of a matter covered by the Concurrent List is subject to the power of the Parliament to legislate on an entry in the said list. The matter in question is also related to Entry I of List III of the VIIth Schedule to Constitution of India.

12.3 Under Article 254(2) of the Constitution if a law made by the Legislature of a State with respect to any of the matters in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then,

the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has resident and has received his assent, prevail in that State. Therefore proposed Legislation shall prevail, only if it has received the Presidential assent.

(Justice V.C. Misra)
Chairman

(V.K. Mathur)
Ex-officio Member

(Prof. Balraj Chauhan)
Part Time Member

(Ishwar Dayal)
Full Time Member

UTTAR PRADESH STATE LAW COMMISSION

PROPOSED DRAFT OF

**THE UTTAR PRADESH PREVENTION OF DAMAGE TO PUBLIC AND
PRIVATE PROPERTY BILL, 2009**

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PROPOSED DRAFT

OF

THE UTTAR PRADESH PREVENTION OF DAMAGE TO PUBLIC AND PROPERTY BILL, 2009

(MODEL)

an Act to provide for prevention of damage to public and private property and for punishment of certain acts in respect of property and imposition of exemplary damages and fine which is equivalent to the market value of the property damaged and to recover the loss or damage sustained by such acts as compensation and for matters connected therewith

IT IS HEREBY enacted in the sixtieth year of republic of India as follows:-

CHAPTER-I **PRELIMINARY**

1. Short title extent and commencement

- (1) This Act may be called the Uttar Pradesh Prevention of Damage to Public and private Property Act, 2009
- (2) It extends to the whole of Uttar Pradesh.
- (3) It shall come into force on such date as the State Government may by notification appoint in this behalf.

2. Definitions

In this Act, unless the context otherwise requires:-

- (a) **“Claims Tribunal”** means established under this Act.
- (b) **“Mischief”** shall have the same meaning as in Section 425 of the Indian Penal Code.
- (c) **“Person”** shall have the same meaning as in Section 11 of the Indian Penal Code.
- (d) **“Private Property”** means tangible and intangible things owned by individuals or firms over which their owners have exclusive and absolute legal rights, such as land, buildings, money, copyrights, patents, etc., they are not trespasser of the property damaged and which is not public property under clause (d) of section 2 of the Act.

- (e) **“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 State Government; or
 - (II) any local authority; or
 - (III) any corporation or a company as defined in section 617 of the companies Act, 1956, established by, or under, a State Act; or
 - (IV) any institution, concern or undertaking which the State Government may, by notification in the Official Gazette, specify in this behalf;

Provided that the State 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 State Government or any other State Government or partly by the State Government and partially by the Central Government or any other State Government.

- (f) **“State”** means the State of Uttar Pradesh.

CHAPTER- II

OFFENCES AND PUNISHMENT

3. Mischief causing damage to public property

- (1) Whoever commits, or attempts to commits, or instigates, incites or otherwise abets the commission of mischief and causes loss of damage of any public and private property, other than public property of the nature referred to in sub-section (2), 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, 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 under go imprisonment for a further period of half of the sentence awarded in the offence.

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 six month

(2) Whoever commits or attempts to commits, or instigates, incites or otherwise abets the commission of mischief by doing any act in respect of any public property being-

- (a) any building, installation or other property used in combination with the production, or supply of water, light, power or energy;
- (b) any oil installation;
- (c) any sewage works;
- (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 one year, but which may extend to ten years and with 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 of half of the sentence awarded in the offence.

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.

4. Mischief causing damage to public and private 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 three years but which may extend to imprisonment for life and with 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 of half of the sentence awarded in the offence.

CHAPTER-III

BAIL

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 whether with or without sureties unless the prosecution has been afforded an opportunity to oppose the application for such release.

Provided that such person shall not be so released if there appear reasonable grounds for believing that he has been guilty for an offence punishable with death, or imprisonment for life or he had been previously convicted or an offence punishable with death, imprisonment for life or imprisonment for seven years or more or he has previous criminal record.

CHAPTER- IV

PRESUMPTION OF GUILTY

6. Rebuttable Presumption

Where prosecution succeeds in proving under section 3 or section 4

(1) In cases where accused participated in direct action

- (i) that the public property has been damaged in direct action called by the political party or an organization; and
- (ii) that the accused also participated in such direct action;

the court shall draw a presumption that the accused is guilty of destroying the public property however it would be open to the accused to rebut such presumption.

(2) In cases where accused were leaders or office bearers of the organization or political party which called out direct action

- (i) that the leaders or office bearers of the political party or an organization which make the call for direct action or instigates or incites; and
- (ii) that the public and private property has been damaged in or during or in the aftermath of such direct action called;

at that stage of trial leaders or office bearers of an organization or the political party shall be deemed to be guilty of abetment of the offence, even if they were not found at the place of incident.

Explanation, that the accused were the leaders or office bearers of the political party or an organization which called out the direct action and public and private property has been damaged in or during or in the aftermath of such direct action, at that stage of trial it would 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 sub section 2 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 organization or that (ii) he has taken all reasonable measures to prevent causing damage to public property in the direct action called by his political party or organization.

CHAPTER-V

DUTY OF ORGANIZER AND POLICE

7. Duty of the organizer of demonstration

- (1) As soon as there is a demonstration organized, the organizer shall meet the local police and administration concerned to review and revise the route to be taken and to lay down conditions for a peaceful march and protest.
- (2) During such demonstration all weapons including knives, lathies and the like shall be prohibited. An undertaking is also to be provided by the organizers to the local police and administration to ensure a peaceful march with marshals at each relevant junction.
- (3) Any person including the organizers of hartals, bundhs and protest etc. while applying for permission for processions should be required to make an undertaking to ensure that no damage will be caused to the public and private property and if any such damage is caused the same will be compensated for by them while making application for permission before the authorities for the conduct of processions/ meeting. The concerned authorities shall incorporate necessary conditions in the standing instructions to include such undertaking in the permission letter issued to such organizer.

8. Duty of Police /officer incharge

- (1) The police concerned shall ensure videograph of such hartals, bundhs and protests etc. to the maximum extent possible.
- (2) In the event that demonstrations turn violent, the officer- incharge 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.

9. Person to supervise the demonstration

The person incharge to supervise the demonstration shall be the SP (if the situation is confined to the district) and the highest police officer of the division, where the situation stretches beyond one district;

10. Lodging of first information report and investigation

- (1) As soon as Head of Office becomes aware of the damages so caused, he shall without any loss of time, lodge a first Information Report (FIR)/ Complaint with the police station having jurisdiction over the area where such damage had taken place.
- (2) On receipt of such a First Information Report /Complaint, the station House officer/ station officer (SHO/SO) shall duly register a case, if not already registered and investigate the matter and furnish a report regarding the involvement of persons responsible for damages, to the Head of the office immediately.

CHAPTER- VI**CLAIM PETITION, REVIEW OF CASES ANS INVESTIGATION****11.Claim petition for public property**

On receipt of the report of the SHO/SO and other information gathered in the meanwhile, the Head of office shall take immediate steps to file claim petition before the Claims Tribunal for compensation, within one month of the date of causing of the damage to the public property.

12.Review of cases

The District collector / Commissioner as the case may be will review the conduct of Claim cases filed for compensation on a quarterly basis and send its report to the Government.

13.Monitor of cases

The Head of the Department shall monitor the conduct and disposal of claim petition filed for compensation and give necessary directions to the Head of office periodically.

14.Review of Investigation

The superintendent of police will review the investigation of the criminal cases on a quarterly basis and send its report to the Director General of police.

15.Claim petition for private property

Private property owners, whose property had also damaged in such incident, may also obtain copy of such report from the SHO / SO concerned as per rules to file their Claim petitions for compensation. They may also collect their evidence for damage to their property through their private videograph subject to its prove as per law.

CHAPTER –VII
VEDIO OPERATOR, VEDIOGRAPH AND AUTHENTICATION

16. Panel of local video operator

- (1) Each police station shall maintain a panel of local video operators who could be made available at short notice.
- (2) If the officer incharge of a police station or other law enforcing agency is of the 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 the video operators for video shooting the acts of violence or other acts causing destruction or damage to any property.

17. Authentication of video

- (1) 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.
- (2) The original tapes or CD or other material capable of displaying the recorded evidence shall be produced before the said magistrate.
- (3) 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 or tribunal at the appropriate stage or as and when called for.

CHAPTER- VIII
CLAIMS TRIBUNAL, FUCTION AND POWERS

18. Constitution of Claims Tribunal

The State Government shall, by notification, constitute one or more damage to property Claims Tribunal hereinafter referred to as Claims Tribunal, as required, at district level, whose Chairman shall be a sitting District judge of the district concerned to perform the functions assigned to it under the Act.

19. Function and powers of the Claims Tribunal

- (1) It shall be the duty of the Claims Tribunal to investigate the damages caused to public and private property in the incidents occurred under section 3 or section 4 and to award compensation related thereto
- (2) The Claims Tribunal may, if it thinks fit, appoint a sitting or retired Member of Uttar Pradesh Higher Judicial Service as a Claims Commissioner to estimate the damages and investigate liability to assist it in holding the inquiry.
- (3) The Claims Tribunal may, if it thinks fit, also appoint an Assessor to assist the claims Commissioner.

- (4) The remuneration, to be paid the person or persons under sub section (2) and sub section (3) shall in every case be determined by the Claims tribunal.
- (5) The Claims Commissioner and the Assessor may seek instructions from the claims Tribunal 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.
- (6) The Claims Commissioner will make a report to the claims Tribunal within a period of three months or within the extended time, if any, granted by the Claims Tribunal. The Claims Tribunal will determine the liability after hearing the parties.
- (7) If Chairman (District Judge) of the claims Tribunal thinks it proper he may transfer the claim petition to the Court of Additional District Judge. In such cases all powers of the Chairman of the Tribunal shall be exercised by that court and the claims commissioner will make his report to that court.
- (8) The Claims Tribunals may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.
- (9) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

CHAPTER- IX

PROCEDURE OF CLAIMS TRIBUNAL

20. Application / Claim petition for compensation

- (1) Every application /Claim petition for compensate be accompanied by a fee of rupees twenty five in the form of court- fee stamps.
- (2) All applications, before the Claims Tribunal, other than application mentioned in clause (i) shall be stamped with a court- fee stamp of rupees five. A process fee of rupees ten shall be in the form of court-fee stamps paid for each witness or party summoned.

- (3) An application under this section shall be presented before the Claims Tribunal by the petitioner unless he is prevented by sufficient cause from appearing personally, in which case the application may be presented by his agent authorized in writing in this behalf.

21. Cause of action to claim damage to property

The cause of action for initiating steps would be acts causing damage to public and private property

22. Who may initiate the action for claiming compensation for public and private property and its time limit

Wherever a destruction, or loss or damage to public and private property takes place due to hartal, bundh, riots, public commotion, protests or thereof, the primary responsibility for initiating the action for claiming compensation before the Claims Tribunal, constituted under the Act, of competent jurisdiction, within a month of occurrence of the incident;

- (1) **For the public property**, would vest with the Head of the office exercising control over the property damaged during and as a result of the bundhs, strikes, riots, public commotion and protests etc. In the case of public sector undertakings, the Head of the office or the Chief Executives shall take necessary steps to file claim petition for compensation.
- (2) **For the private property** would vest with the owner of the private property, having exclusive and absolute legal rights and who is not trespasser of the property damaged, may file claim petition for payment of compensation.

23. Who may be joined as respondents

In a Claim Petition for damages to property the Head of office or owner of the private property as the case may be will include as respondents, the persons who within his knowledge had exhorted or committed such Acts, the persons who are so named in the report of the police. The names and designation of the person who exhorted or perpetrated the acts leading in the destruction or damages, and leaders and office bearer of the organization or political party of whatever description and at whatever level, who sponsored, called for or exhorted the agitation.

24. Notice to parties

The Claims Tribunal shall send to the respondents a copy of application together with a notice of the day on which it will hear the application.

25. Appearance of parties and filing of written statement

The respondents, at or before the first hearing or within such further time as the Claims Tribunal may allow, which shall not be later than ninety days from the date of service of notices, file a written statement dealing with the damages claimed in the claim petition and any such written statement shall form part of the record.

26. Framing of Issues

After considering the application/claim petition, the written statements and the documents, the Claims Tribunal shall proceed to frame the issue that arises in the case.

27. Summoning of witnesses

Where an application is presented by any party to the proceeding for summoning of witnesses, the Claims Tribunal shall on payment of the expenses involved, if any, issue summons for the appearance of such witnesses, unless it considers that their appearance is not necessary in the case.

28. Determination of issues

After framing the issues the Claims Tribunal shall proceed to record evidence thereon which each party may like to produce.

29. Method of recording evidence

The Claims Tribunal shall, on examination of a party or a witness proceeds, make a brief memorandum of the substance of what is deposed and such memorandum shall be written and signed by the Claims Tribunal and shall form part of the record.

Provided that where the Claims Tribunal is unable to make a memorandum it shall cause the reason of such inability to be recorded and shall cause the memorandum to be made in writing from its dictation.

30. Power of examination

The Claims Tribunal may, if it thinks necessary, examine any person likely to be able to give information relating to the incident, irrespective of the fact whether such person has been or is to be called as a witness or not.

31. Local inspection

The Claims Tribunal may, at any stage of an inquiry before it, and after due notice to the parties, visit and inspect the site of the incident or any other place or thing which in its opinion, is necessary to view for a proper decision of the claim petition.

However, on a notice to;

- (1) a party to proceeding or his representative may be present at the time of the local inspection by the Claims Tribunal.
- (2) as soon as may be after the local inspection the Claims Tribunal shall record memorandum of any relevant fact observed at such inspection, and such memorandum shall form part of the inquiry.

32. Adjournment of hearing

The Claims Tribunal may for reasons to be recorded, on the application of a party or otherwise, adjourn the hearing from time to time. When adjournment is granted on application the Claims Tribunal may, make such order, as it thinks fit, with respect to the costs occasioned by the adjournment. In any case not more than three adjournments shall be given to a party.

33. Appearance through legal practitioner

The Claims Tribunal may, in its discretion, allow any party to appear before it through a legal practitioner during hearing of the case.

34. Judgment and award of compensation

- (1) The Claims Tribunal, in passing order, shall record concisely in judgment the finding on each of the issues framed and the reasons for such finding and make an award, specifying the amount of compensation to be paid and shall also specify the person or persons jointly or severally as the case may be to whom compensation shall be payable.

Provided that the Claims Tribunal may, for reasons to be recorded, award an 'Exemplary Damages' to an extent not greater than twice the amount of the compensation liable to be paid.

Provided further that if any amount as compensation has been paid, to the owner of the private property damaged in incident, by the State Government or Central Government or Insurance company or any other agency in this behalf, the Claims Tribunal shall adjust such amount from the amount of compensation so awarded.

- (2) Where compensation is awarded to two or more person, under sub section (i) the Claims Tribunal shall also specify the amount payable to each of them.
- (3) The Claims Tribunal may while disposing of the claim for compensation, make such orders regarding costs and expenses incurred in the proceeding as it thinks fit.

35. Award of interest where any claim is allowed

Where any Claims Tribunal allows a claim for compensation made under this act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

36. Principles relating to assess the amount of damage to property and its liability

- (1) The principles of absolute liability shall apply once the nexus with the event that precipitated the damage is established.
- (2) The liability will be borne by the actual perpetrators of the crime as well as organizers of the event giving rise to the liability to be shared, as finally determined by the Claims Tribunal.
- (3) Damages shall be assessed for:
 - (i) damages to public property;
 - (ii) damages to private property;
 - (iii) damages causing injury or death to a person or persons;
 - (iv) cost of the actions by the authorities and police to take preventive and other actions

37. Appeal

- (1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court

unless he has deposited with it fifty percent of the amount so awarded, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than fifty thousand rupees.

38. Recovery of money as arrear of land revenue

Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

39. Bar on jurisdiction of Civil Courts

Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.

CHAPTER-X MISCELLANEOUS

40. Power to make rules

The State Government may, by notification, make rules for carrying out the purposes of this Act.

41. Power to remove difficulty

(1) If any difficulty arises in giving effect to the provision of this Act the State Government may by a notified order, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.

(2) No order under sub-section (1) shall be made after the expiration of a period of two year from the commencement of this Act.

(3) Every order made under sub-section (1) shall be laid, as soon as may be, before both Houses of the State Legislature and the provisions of sub-section (1) of section 23-A of the Uttar Pradesh General

(4) Clauses Act, 1904 shall apply as they apply in respect of rules made by the State government under any Uttar Pradesh Act.

42.Savings

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.

