



Damages Recovery Bill

Why in News

Recently, the Government of Haryana has passed the **Haraya Recovery of Damages to Property During Disturbance to Public Order Bill, 2021**.

- It can be noted that earlier **Uttar Pradesh Government** too had **passed a similar bill named "Uttar Pradesh Recovery of Damages to Public and Private Property Act, 2020"**.

Key Points

▪ About the Bill:

- **Recovery of Damages:** The Bill provides for **recovery of damages to properties** caused by **persons during disturbances to public order by an assembly, lawful or unlawful**, including riots and violent disorder.
- **Compensation to Victims:** It also ensures compensation to the victims.
- **Comprehensive Coverage:** The recovery will not only be made from those who indulge in violence but also from those who lead the protest, the organizers, those involved in its planning and provide encouragement and the participants.
- **Establishes a Claim Tribunal:** The provision for the **constitution of Claims Tribunal to determine the liability**, to assess the damages caused and to award compensation.
- **Attachment of Property:** The power to attach property or bank account of any person against whom an award has been passed by the Claims Tribunal to pay compensation.
- **Appeal against Tribunal:** Any person aggrieved by the award passed by the Claims Tribunal may file an appeal before the High Court of Punjab and Haryana.
 - No civil court shall have the jurisdiction to entertain any question relating to the claim for the compensation

▪ Government's Stand:

- **Responsibility of Government:** It is the responsibility of the state government to protect the property of the state, whether it is private or government.
- **Balance between Rights and Responsibility:** In a democracy everyone has the right to speak and protest peacefully, but no one has the right to damage property.
- **Deterrence:** There should be a legal framework to cause deterrence in the minds of the perpetrators of violence as also the organisers, instigators etc.

▪ Criticism:

- **Against SC Guidelines:** Composition of Claim Tribunal may violate SC judgement.
 - The SC, in 2019 [struck down the Finance Act of 2017](#) which altered the appointments to 19 key judicial tribunals for not being in conformity with the principles delineated by the Supreme Court.
- **Against Fundamental Rights:** Violates the fundamental rights enshrined in Article 19 and Article 21 of the Constitution.
- **Vague and Unclear:** The Supreme Court had only issued broad guidelines and many

aspects like identifying offenders, executing a plan to recover losses, and penalties for non-compliance remains unclear.

Legal Provisions in India

- India has **no central legislation** governing **recovery of damages**. At present, action against rioters is limited to the toothless **Prevention of Damage to Public Property Act, 1984**, which prescribes a jail term and fine for convicts but has **no provision for recovery for damages**.
 - Despite a **law against the destruction of property**, incidents of rioting, vandalism, and arson have been common during protests across the country.
- **In 2007**, the Supreme Court (SC) took suo motu cognizance of the issue and set up **two Committees** headed by **Justice K T Thomas** and senior advocate **Fali Nariman** to suggest changes to the law.
- **In 2009**, the Supreme Court issued guidelines based on the recommendations of the two expert Committees.
- Like the law, the guidelines too, have had a limited impact. In **Koshy Jacob vs Union Of India, 2017** the court reiterated that the law needed to be updated.
- **Right to Protests vs Recovery of Damages:**
 - **Fundamental Rights vs. Order:**
 - While agitators point to their fundamental right to protest, the plight of the people affected by agitations and their right to continue with normal activity often get ignored.
 - **Indian Scenario:**
 - India's history of public protests derives its legitimacy from Mahatma Gandhi's path of civil disobedience and nonviolent protests, which were an integral part of our freedom struggle.
 - This legacy continued and intensified over the year and the acceptance of bandhs, and hartals became part of people's lives in many parts of the country.
 - In fact agitations and disruptions are so steeped into our culture that we often make a virtue of it.
 - **Global Example:**
 - The United States has state-wise laws with heightened penalties for protesters who block traffic and authorises law enforcement agencies to recover costs from protesters who damage or obstruct "critical infrastructure".
 - **Suggestions:**
 - Every organiser of a protest must make a clear declaration ensuring his followers will not damage public property and if they do, must be held financially liable.
 - Facial recognition technology and the databases can help the police nail down vandals in a manner that can stand court scrutiny.
 - With the increased deployment of surveillance cameras, protest organisers and frontline leaders could be monitored, subject to privacy laws.

Prevention of Damage to Public Property Act, 1984

- It punishes anyone **"who commits mischief by doing any act in respect of any public property"** with a **jail term of up to five years and a fine or both**. Provisions of this law can be coupled with those under the Indian Penal Code.
- Under this Act, public property includes "any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy; any oil installation; any sewage works; any mine or factory; any means of public transportation or of telecommunications, or any building, installation or other property used in connection therewith".

Thomas Committee

- The Thomas Committee recommended **reversing the burden of proof against protesters**. The court should have the power to draw a presumption that the accused is guilty of destroying public property, and it would then be open to the accused to rebut such presumption.
 - Such a **reversal of the burden of proof** is applicable in cases of sexual violence, among others.
 - Generally, the law presumes that the **accused is innocent until the prosecution proves its case**.
- The court accepted the suggestion.

Nariman Committee

- The recommendations of this committee dealt with **extracting damages for destruction**.
- The court accepted them and ruled that the rioters should be made strictly liable and compensation must be collected for the damage done.
- Apart from this, the Supreme Court directed High Courts to order suo motu action and to set up a machinery to investigate the damage caused and award compensation wherever mass destruction to the property takes place due to protests.

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