

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

NDCC-II Building, Jai Singh Road, New Delhi
Dated 22nd February 2016

**SUBJECT:-Summary of suggestions received on Amendment to the
Prevention of Damage to Public Property Act 1984 by the
Prevention of Damage to Public Property Act (Amendment) Bill,
2015- Regarding**

Reference is invited to this Ministry's OM of even number dated 20th May 2015 soliciting comments from the public and other stakeholders on the above mentioned subject.

2. This Ministry has received a number of suggestions/comments on the proposed draft PDPP Act (Amendment) Bill, 2015 and the summary of feedback/comments received thereof is put on Ministry of Home Affairs' website for information of all concerned.


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Sl No.	Comments/Suggestions
1	Draft Amendment Bill there is no provision of seizure of video recording/photo graphs that may be available with media person or private individuals especially in cases where no arrangements for video recording could be made by the Administration for any reason what so ever. In this connect provision may be incorporated in the said amendment suitably.
2	<u>Amendment of Act 3 of 1984:</u> 3 of 1984, an explanation can be inserted that the market value of property damage shall be assessed on the date on which the damage is caused.
3	<u>Amendment of Section 3:</u> An explanation may be inserted to clarify the "special reasons". This is required to avoid discretion and being less subjective
4	<u>Presumption against accused:</u> Videography of all such incidences to be done and cost recovered from the Person/s damaging the property.
5	<u>Fine amount to be equivalent to the market value of the property damaged:</u> This will be a welcome step as people will be restrained from doing mischief when heavy fines will be involved. It should also help the Government to have the loss recovered from the accused thereby compensating for loss of property. The amount so realized as fine should be deposited under particular head of treasury which may be utilized in the repair damaged property or other state orientated development activities. The proposed amendments in the Act will help to fix the liability of damaged public property. Amendment made in the PDPP Act amendment Bill, 2015. Comments in the aforesaid matter from this office is that Provision of enhanced punishment be made and damages caused recovered from the perpetrates on many field basis.
6	Amendments may be done in Section 3 of PDPP Act damage to police property during Law & order duty especially vehicle and official premises and to make the offence against such property a serious offence carrying a longer term of imprisonment.

Sl No	Comments/Suggestions
7	<p><u>Introduction of Section 4b(Abetment of mischief):</u></p> <p>This amendment shall help to punish those who encourage damage to public property from behind the scene. The fine amount on conviction should not in any case be less than the damage caused to the public property as computed in terms of money. Section 4 C of the proposed Amendment Bill which deals with the punishment for abetment of the mischief, it should have been proposed /added that the criminal court should have vested with the powers to impose fine equivalent to the value of the Property which damage/cost of damaged property should have been recovered from the individual /group or from the organization individually or they should have been made severally and jointly liable for the same. The cause damages to public property, recovery be made from the person who had caused damage to the extent of the damage caused. The more severe punishment be made for the offence and fine be enhanced in respect of the offence.</p>
8	<p><u>More stringent bail norms:</u></p> <p>Bail is an instrument which removes fear of prosecution from within the minds of people. Making bail norms stringent will certainly stop/restrain people from doing illegal acts. The amount of surety in the bail bond should not be less than twice the damage caused to public property as computed in terms of money.</p>
9	<p>The amendment made in Prevention of damage to Public Property Act 1984 should have included a provision wherein the culprit has to pay for the damage caused (both in terms of material damage as well as work hours loss) by way of illegal protest/bandh/dharna etc.</p>
10	<p>There is no provision for payment of compensation by the convict to make good of the loss of the destructed public property. So, in the view of this, the following may be inserted in the further provision of Section 4 of the Act: Further provided that the Court while passing a judgment of conviction, may award such compensation in favour of such public authority for suffering loss of the property and the compensation shall be paid by the convict.</p>
11	<p>As per the Section 167 (2) of the IPC, the period for filing challan is 60 days, which should be increased by 90 days.</p>
12	<p>Establish a separate Court to deal with PDPP Act matter.</p>
13	<p>The culprit should be punished with imprisonment with the fine, which should be 50% of the damage property.</p>
14	<p>If a person fails to pay the minimum 50% of the cost of the damages, he may be imprisoned for recovery of the cost of the damage.</p>

SI No	Comments/Suggestions
15	The original videography may be provided to concerned SHO and a copy of videography may also be provided to Sub-divisional/Executive Magistrate for taking appropriate action. The provision made under Section 6A and 62B may also be included.
16	<p><u>Introduction of Section 4B (Abetment of Mischief):</u></p> <p>This will go a long way in strengthening hands of Police Forces are generally grass root level workers are indicated in the offence as they are executors. But this may also deter the public spirited person from raising their voice on behalf of the society against any injustice. So a moderate stand should be there.</p>
17	<p><u>Introduction of Section 4D (videography in incidents of demonstrations):</u></p> <p>Videography is the best deterrent in situation where mob gets unruly. It is technical evidence which will stand in Court as well. Videography should be done with time stamping.</p>
18	<p><u>More stringent Bail Norms:</u></p> <p>Getting Bail easily often leads the perpetrators to believe that they have got scout free because final decision is a lengthy process. Making Bail norms stringent will save Public property.</p>
19	<p><u>Unjust Enrichment of the State:</u></p> <p>One of the changes that the proposed amendments to the Prevention of Damage to Public Property Act, 1984 intend to make is to increase the unspecified fine as part of punishment in the original Act to the market value of the public property that is damaged.</p> <p>It is obvious that the damage to the public property is generally caused by a mob, or at least, by more than one person. Under Section 3 of the original Act read with the proposed amendment, whoever commits mischief by doing any act..... shall be punishable with imprisonment for a term which may extend to five years and with fine which shall be equivalent to the market values of the public property damaged. In the result, each member of the mob that has committed the offence shall be liable to pay the market value of the property damaged. Thus, the State will be unjustly enriched much beyond the actual damage caused which is inequitable and unreasonable.</p> <p>The provision can be rephrased to the effect that the State shall be compensated by the accused jointly, with an amount equal to the market value of the public property damaged.</p>

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20	<p><u>Unjust Enrichment of the State:</u></p> <p>One of the changes that the proposed amendments to the Prevention of Damage to Public Property Act, 1984 intend to make is to increase the unspecified fine as part of punishment in the original Act to the market value of the public property that is damaged.</p> <p>It is obvious that the damage to the public property is generally caused by a mob, or at least, by more than one person. Under Section 3 of the original Act read with the proposed amendment, whoever commits mischief by doing any act..... shall be punishable with imprisonment for a term which may extend to five years and with fine which shall be equivalent to the market values of the public property damaged. In the result, each member of the mob that has committed the offence shall be liable to pay the market value of the property damaged. Thus, the State will be unjustly enriched much beyond the actual damage caused which is inequitable and unreasonable.,</p> <p>The provision can be rephrased to the effect that the State shall be compensated by the accused jointly, with an amount equal to the market value of the public property damaged.</p>
21	<p><u>Disproportionate Punishment:</u></p> <p>A new Section 4B is proposed to be added to the original law to make the abetment of mischief as a separate offence. A new Section 4 C which prescribes the punishment for the offence of "Abetment of Mischief" lays down that Whoever abets an offence punishable under this Act shall be punished with the punishment provided for that offence under this Act.</p> <p>Prescribing the same punishment for the offence of damaging the public property and the offence of abetment of that offence, on the fact of it, is disproportionate and a bit unreasonable considering the severity and gravity of the two offences, especially when the burden of proof is on the accused.</p>

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22	<p><u>Burden of proof on the accused:</u></p> <p>Section 4A and 4B puts the burden of proof on the accused persons, Section 4B making abetment of mischief an offence in itself, targets the office bearers of the organization that calls for a demonstration, hartal or bandh. They are deemed to be guilty of the commission of the offence of abetment.</p> <p>Presumption of innocence is an age old concept which is enshrined in our criminal jurisprudence. The Supreme Court of India has time and again recognized that presumption of innocence is a human right as part of Article 21 of the Constitution (Decisions in the case of Narendra Singh & Anr Vs State of MP, 2004 (10) SCC 699), Ranjit Singh Brahmajetsing Vs State of Maharashtra & Anr, 2005(5) SCC 294, and Sahara India Real Estate Corp. Ltd & Ors Vs Securities & Exchange Board of India & Anr, 2012(12)SCC 610.</p> <p>Moreover, India has ratified the United Nations Convention on the Civil and Political Rights which under Article 14(1) lays down that presumption of innocence is human right, in the following terms:</p> <p><i>"2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."</i></p> <p>As per the wording of Section 4B of the Act, an office bearer of an organization shall be held liable irrespective of whether such person is present or not at the place of incident. It is also possible that some of the office bearers may have objected or voted against such hartal or demonstrations and/ to strictly against damage to public property. The majority view prevails on such occasions and these objections of the minority, in many cases are not recorded, hence not capable of providing.</p> <p>Hence, Section 4A and 4B calls that placing onus of proof on the accused call for a serious reconsideration.</p>
23	<p><u>General Comment with the regard to new Sections 4A, 4B, 4C and 4 D</u></p> <p>The new sections have no connections with the existing Section 4 which deals with "Mischief causing damage to public property by fire or explosive substance". It would be therefore advisable to number these new Sections as Section 5, 6, 7 and 8 respectively.</p>
24	<p>Any damage to private properties also should be covered under this law</p>
25	<p>Disruptions of services by public transportation, railways etc should be considered</p>

26	Election Commission should be provided powers to de-register the culprit political parties banning them from participating in the elections.
27	Digital properties, intangible property, website hacking etc may be included
28	Bandh/Hartal organizer may be asked to deposit precautionary security deposit say Rs 10 lakh, two week in advance to seek permission.
29	Videography may be done from multiple angles for better evidentiary value
30	Live feed of Videography may be made to central place to protect the evidence in case video equipment is damaged by mob.
31	Videography should be considered evidence under Evidence Act 1872.
