

**POLICE**



**DEPARTMENT**

**No.U6-143831/2022/PHQ**

Police Headquarters,

Thiruvananthapuram

✉phq.pol@kerala.gov.in

☎04712721547

Dated. 18-02-2023

**Circular. 5/2023/PHQ**

**Sub :** Destruction and Damage to Public Properties in the name of agitations, bandhs, hartals etc. – directions issued by the Hon'ble Supreme Court to be strictly complied with - instructions issued – reg.

- Ref :**
1. Judgment of the Hon'ble Supreme Court dated 16-04-2009 in WP(Cr)No.77/2007 [In Re: Destruction of Public & Private Properties V. State of AP]
  2. Judgment of the Hon'ble Supreme Court dated 10-01-2018 in WP(C) No.330/2018 filed by Kodungallur Film Society Vs Union of India and others.
  3. Judgment of the Hon'ble Supreme Court dated 17-07-2018 in Tehseen S. Poonawalla Vs. Union of India [WP(C) No.754 of 2016]
  4. Letter No. U2-15932/2018-PHQ dated 02-11-2018 issued by the State Police Chief.
  5. CoB Message No. U2-15932/2019/PHQ dated 22-01-2019 issued by the State Police Chief.
  6. PHQ Circular No.22/2018 dated 07-08-2018 and Erratum dated: 17-05-2019 issued by the State Police Chief.
  7. PHQ Circular No.24/2018 dated 05-09-2018 issued by the State Police Chief.
  8. Letter No.M2/433/2022/Home dated 14/02/2023.

01. As per section 3 of the Prevention of Damage to Public Property Act, 1984 (PDPP Act) anyone who commits mischief by doing any act in respect of any public property shall be punished with imprisonment for a term which may extend up to five years and fine or both. Whenever incidents of large scale damage to public property are reported at public meetings, demonstrations, agitations, processions etc., section 3 of the PDPP Act shall be invoked by the Police along with the other relevant provisions under Indian Penal Code, 1860, as may be applicable in each case.

02. Hon'ble Supreme Court of India had laid down the guidelines with regard to the measures to be taken to prevent destruction of public and private properties in mass protests and demonstrations, and also regarding the modalities of fixing liability and recovering compensation for damages caused to public and private properties during such demonstrations and protests, vide judgment 1<sup>st</sup> cited. With regard to the preventive action of Police, to effectuate the modalities for such preventive action and adding teeth to enquiry/investigation, the Hon'ble Court In Re: Destruction of Public & Private Properties



U6-143831/2022/PHQ



fd05dd

Case, has laid down the following guidelines- 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 the 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 turning violent, the officer-in-charge shall ensure that the events are videographed through private operators and also request for 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.

The Hon'ble Apex Court, taking a serious note of various instances where there was large scale destructions of Public and Private properties in the name of agitation had directed structural and preventive measures and remedies to minimise the destruction of Public and Private properties, vide Judgment 2<sup>nd</sup> cited [Kodungallur Film Society Vs Union of India]. In this judgment, Hon'ble Supreme Court ordered that *"a person arrested for either committing or initiating, promoting, instigating or in any way causing to occur any act of violence which results in loss of life or damage to property may be granted **conditional bail upon depositing the quantified loss** caused due to such violence or furnishing security for such quantified loss"*.

**In compliance to the dictum in the Kodungallur Case, the State Police Chief had already given instructions to all the DPCs for strict implementation of the directions therein the Judgement, vide references cited 4<sup>th</sup> and 5<sup>th</sup> above. However, in view of the continuing destruction of public properties in harthals, agitations, processions etc., it has become necessary to remind once again the importance of complying with the directions of the Hon'ble Apex Court in the Kodungallur Case as an effective preventive measure of the Police.**

Hence, the following directions are issued to all the District Police Chiefs/Nodal Officers for strict compliance of the same as per the reference cited 8:

1. The Nodal Officer(s) as set out in Tehseen Poonawalla (supra) would also be responsible for creating and maintaining a list containing the various cultural establishments, including theatres, cinema halls, music venues, performance halls and centres and art galleries within the district, and pin point vulnerable cultural establishments and property which have been attacked/damaged by mob violence over the past five years. This list would be updated on a regular basis to account for any new openings/closings of establishments.
2. Any person found to be carrying prohibited weaponry, licensed or otherwise, during protests/demonstrations would prima facie be presumed to have an intention to



commit violence and be proceeded against in that regard as per law.

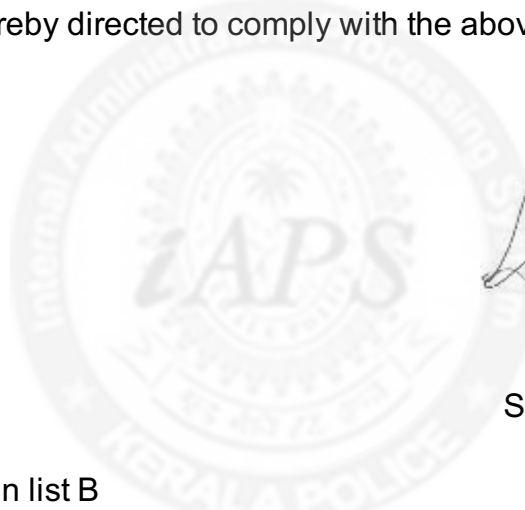
3. ADGP Cyber Operations should takes steps to re-design the cyber information portal so as to include on its internet-based application(s) provision for reporting instances of mob violence and destruction of public and private properties.
4. The Nodal Officer(s) will coordinate with local emergency services, including Police Stations, fire brigades, hospital and medical services and disaster management authorities during incidents of mob violence in order to have a comprehensive and consolidated response to the situation.
5. The non-lethal crowd-control devices, like water cannons and tear gas, which cause minimum injury to people but at the same time, act as an effective deterrent against mob force should be used.
6. The miscreants found on the spot should be arrested in the right earnest.
7. Reasonable restrictions on the social media and internet-based communication services or mobile applications may be imposed by the Nodal Officers, as per law, during the relevant period of mob violence, if the situation so warrants.
8. Coordinated efforts shall be made by the Nodal Officers by issuing messages across various audio-visual medias to restore peace and to stop/control rumours. This can extend to issuing communications on local TV channels, radio stations, social media like Twitter, etc.
9. If a call to violence results in damage to property, either directly or indirectly, and has been made through a spokesperson or through social media accounts of any group/organization(s) or by any individual, appropriate action should be taken against such person(s) including under Sections 153A, 295A read with 298 and 425 of the Indian Penal Code, 1860.
10. In instances where a group/organisation has staged a protest or demonstration resulting in violence and damage to property, the leaders and office bearers of such group/organisation should be physically present themselves for questioning or on their own, within 24 (twenty four) hours, in the police station within whose jurisdiction the violence and damage has occurred. Any such person(s) failing to present himself/herself in such manner without any sufficient reason should be proceeded against as a suspect and legal process must be initiated forthwith against him/her including for being declared an absconder in accordance with law.
11. A person arrested for either committing or initiating, promoting, instigating or in any way causing to occur any act of violence which results in loss of life or damage to property may be granted conditional bail upon depositing the quantified loss caused due to such violence or furnishing security for such quantified loss. In case of more than one person involved in such act of violence, each one of them shall be jointly, severally and vicariously liable to pay the quantified loss. If the loss is yet to be quantified by the appropriate authority, the Judge hearing the bail application may quantify the amount of tentative damages (which shall be subject to final determination thereof by the appropriate authority) on the principle stated in paragraph 15 of the decision in In Re: Destruction of Public and Private Properties Case (supra), after hearing the submissions of the State/agency prosecuting the matter in that regard.
12. When any act of violence results in damage to property, concerned police officials should file FIRs and complete investigation as far as possible within the statutory period and submit a report in that regard. Any failure to file FIRs and conduct investigation within the statutory period without sufficient cause should be considered as dereliction of duty of the concerned officer and is to be proceeded against by way of departmental action at the right earnest.



13. The Nodal Officer(s) holds the overall responsibility in each district to prevent mob violence against cultural establishments and against property. Hence, any unexplained and/or unsubstantiated delay in filing FIRs and/or conducting investigations in that regard will be deemed to be inaction on the part of the said Nodal Officer(s).
14. The officer-in-charge should first call upon from the panel of local video operators maintained by the concerned police station to video-record the events. If the said video operators are unable to record the events for whatever reason or if the officer-in-charge is of the opinion that supplementary information is required, then he/she can also call upon private video operators to record the events and request the media for information on the incident in question, if need be.
15. Status reports of the investigation(s)/trial(s) concerning such offences as set out herein above, including the results of such trial(s), shall be uploaded on the official website of State Police by IGP SCRB on a regular basis.
16. In the event of acquittal of any person(s) accused of committing offences of the nature aforesaid, the Nodal Officer(s) must coordinate with the Public Prosecutor for filing appeal against such acquittal, within the limitation period.

The above directions are to be read along with the directions of the Hon'ble Apex Court in Kodungallur Film Society Case, In Re: Destruction of Public & Private Properties Case, Tehseen S. Poonawalla Case, PHQ Circulars No 22/2018, its erratum and 24/2018.

All officers are hereby directed to comply with the above directions.



Anil Kant IPS  
State Police Chief

To : All Officers in list B  
ADGP (L&O) / ADGP (Int) / ADGP CB/ ADGP SCRB/ IsGP Zones /DIsG  
Ranges / All DPCs

Copy : All Officers in PHQ  
To : CAs to SPC/ADGP HQ/AIG (PG &LA)  
Circular Register



U6-143831/2022/PHQ



fd05dd