

Kodungallur Film Society vs Union Of India on 1 October, 2018

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.330 OF 2018

Kodungallur Film Society
& Anr.

...Petitioners

:Versus:

Union of India & Ors.

...Respondent

JUDGMENT

A.M. Khanwilkar, J.

1. The petitioners have filed the present writ petition on 25th January, 2018, in the backdrop of mob violence, protests and demonstrations which erupted across the nation in the recent past, especially against cultural programmes and establishments and the ensuing damage to public and private properties arising out of such violence. Petitioner No. 1 is a registered film society and petitioner no. 2, is a member of the petitioner no.1 film society. They have highlighted law and order problems arising out of the release of several films, especially the violence surrounding the release of the film 'Padmaavat', and submit that fundamentalist outfits and fringe groups have been issuing threats and engaging in acts of violence against people and property to disrupt and prevent public exhibitions of these films on the pretext that they offend their cultural/religious sentiments. These groups engage in violence against artistic expression, with utter impunity and show complete

disregard for the rule of law and constitutional values. The films which are protested against are certified for public exhibition in accordance with law under the Cinematograph Act and by attempting to stop their exhibition, these groups operate as 'super censors', exercising unlawful authority and power outside the control and without the sanction of the State. These attacks on films are part of a larger problem whereby private individuals and groups impose unlawful restraints by threatening violence upon citizens' artistic freedoms and thereby impinge on the freedom of speech and expression under Article 19(1)(a) of the Constitution of India. The petitioners contend that the respondent state governments then themselves ban the exhibition of such films, citing law and order problems, without clamping down on the root cause of such problems namely the individuals and groups who incite and commit violence. It is also contended that many such groups have tacit support from the political parties in power.

2. The petitioners have consequently prayed for the following reliefs:

a) Issue a writ in the nature of mandamus, or any other appropriate writ, direction or order directing the respondents to strictly follow and implement the guidelines formulated by this Hon'ble Court in In Re: Destruction of Public and Private Properties v. Govt. of AP (2009) 5 SCC 212 with regard to measures to be taken to prevent destruction of public and private properties in mass protestes 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, particularly mentioned in Paragraph 12 and 15 of SCC Report of the said judgment.

b) appoint Claims Commissioner in the manner stated in paragraph 15 of the judgment in In Re: Destruction of Public and Private Properties v. Govt. of AP (2009) 5 SCC 212 to assess damages caused to public and private properties by protestors and also to fix liability not only on the perpetrators but also on the leaders of the groups/outfits/organizations which instigated agitations with their threats against film makers and exhibitors and through their call for destroying multiplexes, malls, cinema- halls, theaters etc. in order to prevent the exhibition of films;

c) Issue a writ or order or direction in the nature of Mandamus or any other appropriate Writ or order directing all the state governments to initiate forthwith action under the Indian Penal Code 1860 and the Prevention of Destruction to Public Property Act 1984 against persons who commit, cause to commit and incite violence and acts of destruction with the intention of preventing and disrupting the screening of films which are certified for public exhibition under the Cinematograph Act, 1952 as it is violative of Article 19 (1)(a) of the Constitution of India, in the interest of justice; and ;

d) Issue a writ or order or direction in the nature of Mandamus or any other appropriate Writ or order directing the respondents to recover the additional expenditure involved in providing security to film exhibition centers from those

people who have raised threats against exhibiting certified films, in the interest of justice; and

e) Issue a writ or order or direction in the nature of Mandamus or any other appropriate Writ or order directing the respondents to complete the investigation and trial in such offences in a time bound manner, in the interest of justice; and

f) Issue a writ or order or direction in the nature of Mandamus or any other appropriate Writ or order that the bail applications, if any, moved by persons arrested for committing, causing, abetting or inciting acts of violence and destruction with the intention of preventing and disrupting the screening of films certified for public exhibition under the Cinematograph Act 1952 will be allowed only on condition that they deposit the sum equivalent to the loss quantified to have been caused by them, or furnish security for such quantified loss and also, in the interest of justice; and

g) Issue a writ or order or direction in the nature of Mandamus or any other appropriate Writ or order that the assets and properties of such arrested persons and also the leaders of protesting groups which incited or abetted violence and destruction, will remain under attachment for the loss quantified to have been caused until its realization, in the interest of justice; and

h) Issue a writ in the nature of mandamus, or any other appropriate writ, direction or order directing the respondents to file status reports regarding the implementation of actions taken by them with respect to guidelines formulated by this Hon'ble Court in strictly follow and implement the guidelines formulated by this Hon'ble Court in In Re: Destruction of Public and Private Properties v. Govt. of AP (2009) 5 SCC, particularly mentioned in Paragraph 12 and 15 of SCC Report of the said judgment.

i) Issue a writ in the nature of mandamus, or any other appropriate writ, direction or order directing the respondents to explore the options of invoking the provisions of Unlawful Activities (Prevention) Act 1967 against the outfits/groups/organizations which make brazen threats on film makers and artists, and indulge in systematic and organized acts of destruction and damage of property so as to achieve their unlawful ends by striking terror in society;

j) Please to issue any other writ or direction(s) or Order(s) as the Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case and in the interest of justice.

3. The principal relief is to issue directions to the States/Union of India to strictly implement the decision rendered by this Court in In Re: Destruction of Public and Private Properties Vs. State of Andhra Pradesh & Ors. 1 concerning the large-scale destruction of properties in the name of agitations, bandhs, hartals etc. The Court, after taking note of certain suggestions given by the

Committees appointed by the Court inter alia recommended amendments to the Prevention of Damage to Public Property Act, 1984 (for short 'the PDPP Act'), Criminal Procedure Code, 1973 and other criminal law statutes; and also set out guidelines to assess damages to property in the absence of a statutory 1 (2009) 5 SCC 212 framework. The relevant portion of the judgment is set out hereunder:

4. Two reports have been submitted by the Committees. The matter was heard at length. The recommendations of the Committees headed by Justice K.T. Thomas and Mr. F.S. Nariman have been considered. Certain suggested guidelines have also been submitted by learned Amicus Curiae.

5. 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.

(ii) The PDPP Act to contain provision to make the leaders of the organisation, which calls the direct action, guilty of abetment of the offence.

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

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

6. The recommendations of the Justice Thomas Committee have been made on the basis of the following conclusions after taking into consideration the materials.

In respect of (i)

7. According to this 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 we are of the view that 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. The PDPP Act may be amended to contain provisions to that effect. In respect of (ii)

8. Next we 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 organisations 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 organisation 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, 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 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 be 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. This requires the inclusion of a safeguard to protect such innocent leaders. In respect of (iii)

9. ☐ After considering various aspects to this question we decided to recommend that prosecutions should be required to prove (i) that those accused were the leaders or office bearers of the organisation 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 organisation. In respect of (iv)

10. ☐ The Committee considered other means of adducing evidence for averting unmerited acquittals in trials involving offences under PDPP Act. We 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, we 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.

iii) 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.

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.

Thus we are 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.

However, we 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 favour of the alternative imprisonment.

11. The recommendations according to us are wholesome and need to be accepted.

12. To effectuate the modalities for preventive action and adding teeth to enquiry/investigation 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 .

(VIII) 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.

13. 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) suggest 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 recognise as worthy of legal protection, interests 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 defence. 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* that this Court needs to lay down principles on which liability could be fastened and damages assessed in cases in which due to behaviour 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

14. The basic principles as suggested by Nariman Committee are as follows which we find to be appropriate:

(1) The basic principle for measure of damages in torts (i.e. wrongs) in property is that there should be 'restituito 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.

(3.1) 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. 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. (3.2) "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 behaviour 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 defendants 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.

(3.3) In the decision in *Kuddus v. Chief Constable of Leicestershire Constabulary*, 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* (as affirmed in *Cassell v. Broome*). Lord Nicholls in his speech at page 211 stated that:

"68. ...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.

(3.4) " In this 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 behaviour 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.

(3.5) In a *Winfield and Jolowicz on Tort* 17th Edn. (at pp. 948-49) the authors set out the future of exemplary damages by quoting from the decision in *Kuddus v. Chief Constable of Leicestershire Constabulary* 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 behaviour. 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 *Gleaner Co Ltd. Vs. Abrahams* AC at 54) where it was felicitously said that: (AC P.647, para 54) "54. ...oil and vinegar may not mix in solution but they combine to make an acceptable salad dressing."

(3.6) 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. 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 plaintiffs rights.

15. 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 a 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 organisers 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.

16. The recommendations of Justice K.T. Thomas Committee and Mr F.S. Nariman Committee above which have the approval of this Court shall immediately become operative. They shall be operative as guidelines.

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28. The present case is one in which guidelines are necessary:

- (i) to the police to enforce statutory duties, and
- (ii) to create a special purpose vehicle in respect of damages for riot cases.

This issue was examined by the Nariman Committee which considered:

□.. where (in such cases) there is destruction/damage to properties and loss of lives or injuries to persons—

- (i) the true measures of such damages,
- (ii) the modalities for imposition of such damages, and... (p. 2 of the Report).

29. These guidelines shall cease to be operative as and when appropriate legislation consistent with the guidelines indicated above are put in place and/or any fast track mechanism is created by the statute(s). (emphasis supplied) After having noted the recommendations made by the Committees appointed by the Court, in paragraphs 16, 28 and 29 the Court declared that the stated recommendations had the approval of the Court and shall immediately become operative.

4. Taking a cue from this decision, the petitioners have prayed for the reliefs reproduced in paragraph 2 above. To buttress the reliefs in the writ petition, the petitioners have articulated some suggestions to ameliorate and curb the occurrence of such events. The suggestions given by the petitioners read thus:

□A. Regarding protection to freedom of speech and expression

1. Any protest against creative art including movies, drama, literature, music or the like, leading to an illegal ban of the same by use of force, threat or veiled threat etc. are not permissible. Any person or group who is aggrieved by any creative expression of any sort shall only seek legal remedy by resorting to the process of law.

2. State or authorities under state are not permitted to ban or prohibit any creative expression on the ground of law and order problem.

B. Regarding modalities for preventive action

3. The organizer of any public meeting, demonstration, procession, march etc. shall intimate the police and inform the route to be taken through e-mail or letter.
4. The police officer in charge, as far as possible, shall allow the request and may review and revise the route to be taken and lay down conditions for a peaceful march or protest. There shall be absolute prohibition of possession of knives, lathis, guns or any other weapons by anyone participating in the march.
5. The police shall ensure videography of such protests and the videos thus recorded shall be transmitted to a central server under copy to the police headquarters with date and time.
6. In the event of demonstrations turning violent, the officer-in-charge shall also gather such further information from the media and others on the incidents in question, and media and public shall support police by sharing such information.
7. The police shall immediately inform the State Government with reports on the events, including damage, if any, caused.

C. Regarding reporting of cases and police action

8. The Police shall maintain an online ‘Cyber-information reception window’ on its website/app enabling people to send instances of mob violence, destructive acts and hate speech in whatever form, including the spurious videos and face news. The police shall also make their own arrangements for photographing violent protests, and take immediate steps to find out the identity of the persons involved in such activity.
9. If any such incident is reported to Police, the police shall without delay register FIR with the names of the persons so identified and arrest those persons who are involved in the violent protests or hate speech, and follow the process of law.
10. Provision shall be made by the State Police for online registration of FIR and information regarding this facility shall be widely disseminated so that the common man is encouraged to report offences without facing the hurdles of procedural formalities. For constructive use of the facility, identity proof and verification via OTP to the registered mobile number or email id of the user may be mandated.
11. The police shall immediately conduct an investigation into the genuineness of the audio and video content within a period of three days and if contents are prima facie found to be true, the accused shall be arrested again (if already released on bail) who shall thereafter be entitled for bail only in the event of depositing the amount commensurate with the loss/damage, caused by such act/s directly and indirectly, as assessed by the police.

12. State shall take steps to establish sufficient number of forensic labs to verify the authenticity of social media content and audio/video content which may be in issue in such cases.

13. If any person or organization including a political party calls for any violent protest aiming to destroy private property, or calls for any protest that subsequently results in destruction of private property, the FIR shall be registered showing the names of the leaders or persons who expressly call for such protests. In cases where such a call was made through the official spokesperson or through the official social media account/page of the individual, political party or organization, the charges shall be filed against the chief office bearers of such political party or organization as the case may be.

14. Any person who through speech, statement or otherwise appeals or calls for

(a) violent protests or

(b) destruction of property or

(c) use of force to stop citizens from exercising their fundamental rights or

(d) incitement to hatred Shall be immediately arrested and prosecuted under relevant provisions of law including S.153A, 295A read with section 298 IPC as the case may be.

15. The progress report of the investigation in the above mentioned cases shall be made to the District Collector/Chief Judicial Magistrate and shall also be uploaded on the website of the Director General of Police, on a weekly basis.

16. If anyone is acquitted in any such case, the State shall file an appeal against the acquittal.

17. The judgment of acquittal or conviction shall be uploaded on the website of the police where the progress report of investigation is uploaded.

D. Regarding liability of organizations, groups etc.

18. If any protest that resulted in destruction of property was organized by a group or by members of any organization, the office bearers of such group or organization shall within 24 hours of the incident, report to the police station/s in whose jurisdiction the disruptive activities took place.

19. The office bearers shall give all information about such protest to the police, including the call for protest and the details of the local leaders of such organization.

20. They may make a statement disowning the act of such people who were involved in such protest and in case such a statement is given, such of the members who are disowned shall be expelled from the organization with immediate effect.

21. In case no statement of disownment is tendered or disowned members are not expelled, the office bearers and leaders of such organization shall also be liable for prosecution under 120B of the IPC.

22. Any glorification or patronization of hate speech or violence or accused by any person by means of words or acts of any form shall also be liable for contempt of court.

E. Regarding accountability of police

23. If the police fail to register FIR or conduct investigation and submit charge sheet within a period of 90 days in any of the above mentioned instances, the Director General of Police shall be personally liable for contempt of court.

24. Departmental action shall be initiated against those police officers who are apparently inactive during such protests and do not take necessary action as required within a period of one month from the date of incident.

25. Any delay in taking appropriate action by the police should be explained with reasons by the DGP and necessary communication to this effect shall be made through public notice including through official website of the Police.

F. Regarding claims tribunal and award of compensation

26. The owners of private property that is destroyed by mob violence/protestors or their representatives in interest shall be entitled to claim compensation for destruction caused to their property, movable and immovable. The claims for compensation for destruction of private property and the claim for restoration costs shall be filed before a Claims Tribunal which shall be constituted by the State Government to investigate the damage caused and to award compensation related thereto. The Claims Tribunal shall comprise of a sitting or retired High Court judge or a sitting or retired District judge (Chairperson) and such other members (Assessors) as may be prescribed by the government. The Tribunal shall follow a time bound summary procedure as may be prescribed by the Government so that the claims are disbursed within 6 months from the occurrence.

27. The State Government and Director General of Police shall hand over to the Claims Tribunal the video or other recordings from private and public sources that would enable the Claims Tribunal to pinpoint the damage and establish nexus with the perpetrators of the damage.

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

29. 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.

30. Exemplary damages may be awarded to an extent not greater than twice the amount of the damages liable to be paid.

31. The Tribunal shall specify in its award the amount towards compensation, amount towards the costs for restoration of property and exemplary damages separately.

32. The liability to pay compensation shall be apportioned by the Tribunal amongst the following persons:

- (i) persons who actually committed the act of destruction
- (ii) persons who made an appeal for such destruction
- (iii) the office bearers of the organizations in which such persons are members whereof, in case the organizations do not make statement of disownment and expel such members.

33. The person/s who is/are declared liable by the Tribunal shall also be ordered to pay 10% of the amount awarded as costs for meeting the expenses of the Tribunal.

34. It shall be the responsibility of the State Government to restore all properties so destroyed to its original position within a period of 12 months. The cost shall be realized from persons declared liable by the Tribunal as arrears of land revenue.

G. Protection of non-violent democratic form of processions, march and protests

35. All democratic protests without violence, against the government policy/action or for social causes shall be duly respected and shall not incur any liability.

36. Raising slogans against the government or its leaders shall not be treated as hate speech or as an offence. The protesters shall have the right to carry posters, banners, effigies etc. to show their mark of protest.

5. We have heard Mr. P.V. Dinesh, learned counsel for the petitioners and Mr. K.K. Venugopal, learned Attorney General for India, as also Mr. Aman Lekhi, learned Additional Solicitor General, on behalf of the respondent No.1 Union of India and the respondent States.

6. Mr. Venugopal is unequivocal in his submission that violent protests which lead to loss of life and damage to public and private properties are against the spirit of democracy. He submits that pursuant to the judgment in *In Re: Destruction of Public and Private Properties* (supra), the Union of India has advised the respondent states to follow the guidelines laid down therein vide letter dated 6th May, 2013. Further, a Bill is being introduced to bring in certain amendments to the PDPP Act in line with the said guidelines, which is currently under ANNEXURE-2 No.11034/01/2013-IS-IV Government of India Ministry of Home Affairs IS-I Division North Block, New Delhi the 6th May, 2013 To The Chief Secretaries All State Govts./UTs Subject: Destruction and Damage to Public Properties in the name of agitations, Bandhs, Hartals etc.- guidelines for prevention of such destructive activities – regarding. Sir/madam The Hon'ble Supreme Court of India taking a serious note of various instances where there was large scale destruction of public and private properties in the name of agitations, bandhs hartals and the like vide order dated 16.04.2009 in W.P. (Crl.) No.77/2007 in the matter of *Destruction of Public & Private Properties Vs. State of A.P. and Ors.* directed that the following guidelines should be observed as soon as there is a demonstration organized to effectuate the modalities for preventive action and adding teeth to enquiry/investigation:-

(i) If the officer in charge 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 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 video-grapher 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.

(iii) No sooner than the direct action subsides, the police officer concerned shall authenticate the video by producing the video grapher before the Sub divisional or Executive Magistrate who shall record his statement regarding what he did for preparing the video graph. 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.

(iv) 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.

(v) All weapons, including knives, lathis and the like shall be prohibited.

(vi) An undertaking is to be provided by the organizers to ensure a peaceful march with marshals at each relevant junction.

(vii) The police and State Government shall ensure videography of such protests to the maximum extent possible.

(viii) 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.

(ix) 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.

(x) The Police shall immediately inform the State Government with reports on the events, including damage, if any caused.

(xi) 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 reports in the High Court or Supreme Court as the case may be for the Court in question to take suo motu action.

2. Though 'Police' and 'Public Order' are State subjects under the Seventh Schedule (List-II) to the Constitution of India, the Union Government attaches highest importance to prevention of crime. Therefore has been advising the State Governments/Union Territory Administration from time to time to give more focused attention to the administration of the criminal justice system with emphasis on prevention and control of crime.

3. In view of the Hon'ble Supreme Courts directions, all the State Movements/UTs are advised to take appropriate steps for effective prevention, detection, registration, investigation and prosecution of all crimes within their jurisdiction.

Copy to:

The Pri. Secretary/Secretary (Home) of all State Govts./UTs.

The Director General of Police of all State Govt./UTs

Yours fa

(Rakesh Singh) J

Tele No.2

discussion with the stakeholders. The

Union of

letter dated 26th March, 2018³ has also requested the States and Union Territories to appoint one or more district/additional district judges, in consultation with their respective High Courts, to deal with cases of damage to public property on a whole-time or part-time basis. Pending the outcome of the aforesaid discussions, and as an interim measure, the learned Attorney General has also given certain written suggestions to increase accountability and timelines for law-enforcement bodies in relation to such acts of mob violence. We shall advert to the proposed amendments to the PDPP Act and the written suggestions shortly.

“ANNEXURE-3 No.24013/12/C.C./2013-CSR.III/3997-4105 Ministry of Home Affairs (CS Division) Major Dhyani Chand National Stadium, India Gate, New Delhi, dated the 26 th March, 2018. To, Chief Secretaries of all State Governments & UT Administrations. Subject:- Supreme Court’s Judgment in Writ Petition (Civil) No.55 of 2013 filed by Koshy Jacob Vs. Union of India & Ors.

Sir, The Hon’ble Supreme Court in its Judgment dated 28-11-2017 in the above mentioned writ petition, on the issue of dealing with cases of damage to public property has observed that one or more district/additional district judges can be appointed by the State Government in consultation with the High Court to deal with such issues either on whole-time basis or on part-time basis, as the situation may require. In such cases, cadre strength of the judicial officers may require suitable temporary or permanent increase.

2. It is therefore requested that States/UTs may comply with the directions of the Supreme Court’s order.

Yours faithfully, (Krishan Kumar) Deputy Secretary (CS-I) Tel:23075291 End.- As above Copy to:-

1. Home Secretaries of all State Governments & UT Administrations

2. DGPs of all State Governments & UT Administrations.

7. The present petition highlights the disconcerting rise in the protests and demonstrations by private entities targeting, amongst others, exhibition of films and social functions and including sections of people, on moral grounds, in particular, using threats and actual violence. In addition to being patently illegal and unlawful, such acts of violence highlight a deeper malaise, one of intolerance towards others’ views which then results in attempts to suppress alternate view points, artistic integrity and the freedom of speech and expression guaranteed by the Constitution of India. Indeed, the people who perpetrate such actions, especially against private parties, do so without fear of consequence and reprisal, probably believing that private parties do not have the wherewithal to hold them accountable for such actions. In such situations, the State must step in and perform its duty by taking measures to prevent such actions from occurring in the first place, ensuring that law-enforcement agencies exercise their power to bring the guilty parties to book and imposing time-bound and adequate punishment for any lapses. This Court has time and time again underscored the supremacy of law and that one must not forget that administration of law can only be done by law-enforcing agencies recognised by law. Nobody has the right to become a self-appointed guardian of the law and forcibly administer his or her own interpretation of the law

on others, especially not with violent means. Mob violence runs against the very core of our established legal principles since it signals chaos and lawlessness and the State has a duty to protect its citizens against the illegal and reprehensible acts of such groups. Very recently, we have dealt with almost similar grievances in *Tehseen S. Poonawalla Vs. Union of India & Ors.*⁴

8. We must first advert to the exposition in *In Re:*

Destruction of Public and Private Properties (supra), and discern as to whether the guidelines enunciated therein are adequate to meet the challenges under consideration and as to what extent the said recommendations have been 4 Judgment dated 17th July, 2018 in Writ Petition (Civil) No. 754 of 2016; AIR 2018 SC 3354 implemented. We also have to examine whether this Court ought to direct any additional measures.

9. There is a broad consensus that the recommendations made and directions given in *In Re: Destruction of Public and Private Properties* (supra), at paragraph 3 hereinabove are comprehensive to deal with the issue of large-scale destruction of private and public properties which unwinds during violent protests and demonstrations. We find that the Committee's recommendations noted in the said judgment traverse the length and breadth of the issue at hand and, if implemented in their entirety, would go a long way in removing the bane of violence caused against persons and property. As far as implementation of the said recommendations, is concerned, and as stated earlier, the learned Attorney General's submission is that the Union is mindful of the dictum in *In Re: Destruction of Public and Private Properties* (supra), and has advised the States to follow the same in its letter and spirit and also drafted a bill for initiating legislative changes in conformity with the recommendations of this Court, namely, The Prevention of Damage to Public Property (Amendment) Bill, 2015, which is currently being examined in consultation with the Ministry of Law and Justice. The Bill reads as under:

“ANNEXURE – 1 THE PREVENTION OF DAMAGE TO PUBLIC PROPERTY (AMENDMENT) BILL, 2015 A BILL to amend the Prevention of Damage to Public Property Act, 1984 BE it enacted by Parliament in the Sixty-sixth year of the Republic of India as follows:-

Short title and 1. (1) This Act may be called the commencement. Prevention of Damage to Public Property (Amendment) Act, 2015.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of Act 2. In the Prevention of Damage to Public 3 of 1984 3 of 1984. Property Act, 1984 (hereinafter referred to as the principal Act), after the words “and with fine”, wherever they occur, the words “which shall be equivalent to the market value of the public property damaged” shall be inserted. Amendment of 3. In the principle Act, in section 2, after Section 2. clause (a), the following clause shall be inserted, -namely :-

(aa) "prescribed" means prescribed by rules made under this Act; .

Amendment of 4. In section 3 of the principal Act, in sub- Section 3. section (2), in the proviso, for the words "for reasons" , the words "for special reasons" shall be substituted.

Insertion of new 5. After section 4 of the principal Act the sections 4A, 4B, following sections shall be inserted, namely :-

4C and 4D [sic] Presumption "4A. Where an offence under this Act has against accused. been committed and it is shown that the public property has been damaged, as direct consequence of such offence and the accused- participated in the commission of such offence, it shall be presumed unless the contrary is shown, that the accused had committed such offence.

Abetment of 4B. Where damage to public property is caused in consequence of demonstration, hartal or bandh called by any organization, the office-bearers of such organization shall be deemed to be guilty of the commission of the offence of abetment of an offence punishable under this Act and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained to this Section shall render may such office bearer liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Punishment for 4C. Whoever abets an offence punishable abetment of under this Act shall be punished with the mischief punishment provided for that offence under this Act.

Procedure for 4D. Where a call for demonstration, hartal or videography of bandh has been given by an organization and incidents of the officer-no charge of a police station has Demonstration. reasons to believe that damage to the public property is likely to be caused or there is imminent danger of such damage, he shall,-

(i) Make such arrangements for the videography of the area where the

demonstration, hartal or bandh is proposed to be held;

(ii) Deposit the soft copies of videography, in such manner, with the concerned Sub-

Divisional Magistrate or Executive Magistrate who may entrust the same to said police officer or any other person;

(iii) Get, the statement of the Videographer recorded before the concerned Sub-Divisional Magistrate or Executive Magistrate in such manner, as may be prescribed. .

Amendment of 6. In section 5 of the principal Act-

Section 5.

(i) After the words and figure 4 for section 4 , the words and figure 4B shall be inserted;

(ii) After the words 4 for such release , the words 4 and there are reasonable grounds to believe that he is not guilty of the said offence shall be inserted.

Insertion of new 7. After section 6 of the principal Act, the sections 6A and following sections shall be inserted, namely :-

6B Power to make 6A (1) The Central Government may, by rules notification in the Official Gazette, make rules for carrying out the provisions of this Act, (2) In particular, and without prejudice to the generality of the foregoing power, such rules may 6 provide for all or any – of the following matters, namely :-

(a) the arrangement for videography under section 4D; and

(b) the manner of depositing the soft copies of videography and recording the statement of the videographer under section 4D.

Rules to be laid 6B. Every rule made by the Central before Parliament Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

For the time being, we do not wish to comment on the efficacy of the proposed legislative changes including as to whether it would fully address the points noted in the guidelines/recommendations in In Re: Destruction of Public and Private Properties (supra). We keep that issue open to be decided in appropriate proceedings if and when the occasion arises. We hope that the said Bill will be taken to its logical end in the right earnest.

10. On the issue of whether additional measures need to be introduced, the learned Attorney General has also made certain suggestions which can be implemented as interim measures, pending the outcome of the aforesaid Bill, to fasten accountability and prescribe timelines for the law-

enforcement agencies. The same are set out hereunder:

□2. While the Union of India is still considering the amendments, as an interim measure, it is suggested that this Court may consider issuing the following directions:

a. The offence is covered under Section 3 of the PDPP Act, which provides that whoever commits mischief by doing any act in respect of any public property shall be punished with imprisonment and fine. Mischief has been defined under Section 425 of the Indian Penal Code as – □whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits □mischief .

b. This Court may consider the example of the Delhi Development Authority, where, in order to deal with illegal encroachments, the DDA has divided the city into various zones and placed them under different officers who would be held responsible in case there were building law violations in their respective zones. This has had the result of improving accountability and reduced instances of illegal encroachment. c. The liability for compensation has to be fixed on the organizer(s) irrespective of whether he was himself the perpetrator of the act which caused the damage. d. In addition, the actual perpetrators who caused the damage will also be liable to pay compensation. e. Accordingly, the State Governments may be directed to pin the responsibility of maintaining law and order during such protests, bands, etc. on the Senior Superintendent of police in charge of that district. If this is done, in all future cases, the Courts can seek a response directly from the SSP regarding video recordings, details of FIRs filed, steps taken etc. f. In addition, the Court may direct, each police station to maintain a panel of local video operators who could be made available at short notices to videograph the incidents of violence and damage to public property etc. g. Further, the States can consider setting up helplines to specifically deal with instances of violence or damage to property caused during such protests, and have a force that immediately deals with complaints made on such helplines.

11. At this stage, it would be apposite to also consider the judgment rendered by a three-Judge bench of this Court in *Tehseen S. Poonawalla (supra)*, where this Court had to deal with a specific type of mob violence and the resulting restraints on personal liberty and free speech. In that case, the petitioners had prayed for a writ to take measures to curb incidents of lynching and mob violence in respect of cattle trade and related activities. At the macro level, the dispensation to tackle the incidents of targeted violence and commission of offences affecting the human body and against private and public property by mobs operating under the garb of self-assumed and self-appointed protectors of law would be similar to that of damage caused due to mob violence for any other cause. Taking note of burgeoning instances of vigilantism and lynching, this Court propounded that states had the duty to ensure that individuals or groups did not take the law into their own hands to prevent untoward incidents and to prevent crime which may include damage caused to property. In that context, the Court observed:

□9. Mob vigilantism and mob violence have to be prevented by the governments by taking strict action and by the vigil society who ought to report such incidents to the state machinery and the police instead of taking the law into their own hands. Rising intolerance and growing polarisation expressed through spate of incidents of mob violence cannot be permitted to become the normal way of life or the normal state of law and order in the country. Good governance and nation building require sustenance of law and order which is intricately linked to the preservation of the marrows of our social structure. In such a situation, the State has a sacrosanct duty to protect its citizens from unruly elements and perpetrators of orchestrated lynching and vigilantism with utmost sincerity and true commitment to address and curb such incidents which must reflect in its actions and schemes.

20. Hate crimes as a product of intolerance, ideological dominance and prejudice ought not to be tolerated; lest it results in a reign of terror. Extra judicial elements and non-

State actors cannot be allowed to take the place of law or the law enforcing agency. A fabricated identity with bigoted approach sans acceptance of plurality and diversity results in provocative sentiments and display of reactionary retributive attitude transforming itself into dehumanisation of human beings. Such an atmosphere is one in which rational debate, logical discussion and sound administration of law eludes thereby manifesting clear danger to various freedoms including freedom of speech and expression. One man's freedom of thought, action, speech, expression, belief, conscience and personal choices is not being tolerated by the other and this is due to lack of objective rationalisation of acts and situations. In this regard, it has been aptly said:- "Freedom of speech is a principal pillar of a free government; When this support is taken away, the constitution of a free society is dissolved and tyranny is erected on its ruins."

21. Freedom of speech and expression in different forms is the élan vital of sustenance of all other rights and is the very seed for germinating the growth of democratic views. Plurality of voices celebrates the constitutionalist idea of a liberal democracy and ought not to be suppressed. That is the idea and essence of our nation which cannot be, to borrow a line from Rabindranath Tagore, □broken up into fragments by narrow domestic walls of caste, creed, race, class or religion. Pluralism and tolerance are essential virtues and constitute the building blocks of a truly free and democratic society. It must be emphatically stated that a dynamic contemporary constitutional democracy imbibes the essential feature of accommodating pluralism in thought and approach so as to preserve cohesiveness and unity. Intolerance arising out of a dogmatic mindset sows the seeds of upheaval and has a chilling effect on freedom of thought and expression. Hence, tolerance has to be fostered and practised and not allowed to be diluted in any manner.

22. In *S. Rangarajan v. P. Jagjivan Ram and others*, *K. Jagannatha Shetty, J.*, although in a different context, referred to the decision of the European Court of Human Rights in *Handyside v. United Kingdom* wherein it has been held thus in the context of Article 10 of the European Convention on Human Rights (ECHR):-

"The court's supervisory functions oblige it to pay the utmost attention to the principles characterizing a 'democratic society'. Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to Article 10(2), it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'."

23. In a rights based approach to constitutional legitimacy, the right to life and liberty is considered paramount and, therefore, democratic governments must propel and drive towards stronger foothold for liberties so as to ensure sustenance of higher values of democracy thereby paving the path for a spontaneous constitutional order. Crime knows no religion and neither the perpetrator nor the victim can be viewed through the lens of race, caste, class or religion. The State has a positive obligation to protect the fundamental rights and freedoms of all individuals irrespective of race, caste, class or religion. The State has the primary responsibility to foster a secular, pluralistic and multiculturalistic social order so as to allow free play of ideas and beliefs and co-existence of mutually contradictory perspectives. Stifling free voices can never bode well for a true democracy. It is essential to build societies which embrace diversity in all spheres and rebuild trust of the citizenry in the State machinery." (emphasis supplied)

12. Having observed thus, the Court issued extensive guidelines in the nature of preventive, remedial and punitive measures to curb incidents of mob lynching and vigilantism as set out hereinbelow:

40. In view of the aforesaid, we proceed to issue the following guidelines:-

A. Preventive Measures

(i) The State Governments shall designate, a senior police officer, not below the rank of Superintendent of Police, as Nodal Officer in each district. Such Nodal Officer shall be assisted by one of the DSP rank officers in the district for taking measures to prevent incidents of mob violence and lynching. They shall constitute a special task force so as to procure intelligence reports about the people who are likely to commit such crimes or who are involved in spreading hate speeches, provocative statements and fake news.

(ii) The State Governments shall forthwith identify Districts, Sub-Divisions and/or Villages where instances of lynching and mob violence have been reported in the recent past, say, in the last five years. The process of identification should be done within a period of three weeks from the date of this judgment, as such time period is sufficient to get the task done in today's fast world of data collection.

(iii) The Secretary, Home Department of the concerned States shall issue directives/advisories to the Nodal Officers of the concerned districts for ensuring that the Officer In-

charge of the Police Stations of the identified areas are extra cautious if any instance of mob violence within their jurisdiction comes to their notice.

(iv) The Nodal Officer, so designated, shall hold regular meetings (at least once a month) with the local intelligence units in the district along with all Station House Officers of the district so as to identify the existence of the tendencies of vigilantism, mob violence or lynching in the district and take steps to prohibit instances of dissemination of offensive material through different social media platforms or any other means for inciting such tendencies. The Nodal Officer shall also make efforts to eradicate hostile environment against any community or caste which is targeted in such incidents.

(v) The Director General of Police/the Secretary, Home Department of the concerned States shall take regular review meetings (at least once a quarter) with all the Nodal Officers and State Police Intelligence heads. The Nodal Officers shall bring to the notice of the DGP any inter-district co-ordination issues for devising a strategy to tackle lynching and mob violence related issues at the State level.

(vi) It shall be the duty of every police officer to cause a mob to disperse, by exercising his power under Section 129 of CrPC, which, in his opinion, has a tendency to cause violence or wreak the havoc of lynching in the disguise of vigilantism or otherwise.

(vii) The Home Department of the Government of India must take initiative and work in co-ordination with the State Governments for sensitising the law enforcement agencies and by involving all the stake holders to identify the measures for prevention of mob violence and lynching against any caste or community and to implement the constitutional goal of social justice and the Rule of Law.

(viii) The Director General of Police shall issue a circular to the Superintendents of Police with regard to police patrolling in the sensitive areas keeping in view the incidents of the past and the intelligence obtained by the office of the Director General. It singularly means that there should be seriousness in patrolling so that the anti-social elements involved in such crimes are discouraged and remain within the boundaries of law thus fearing to even think of taking the law into their own hands.

(ix) The Central and the State Governments should broadcast on radio and television and other media platforms including the official websites of the Home Department and Police of the States that lynching and mob violence of any kind shall invite serious consequence under the law.

(x) It shall be the duty of the Central Government as well as the State Governments to take steps to curb and stop dissemination of irresponsible and explosive messages, videos and other material on various social media platforms which have a tendency to incite mob violence and lynching of any

kind.

(xi) The police shall cause to register FIR under Section 153A of IPC and/or other relevant provisions of law against persons who disseminate irresponsible and explosive messages and videos having content which is likely to incite mob violence and lynching of any kind.

(xii) The Central Government shall also issue appropriate directions/advisories to the State Governments which would reflect the gravity and seriousness of the situation and the measures to be taken.

B. Remedial Measures

(i) Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that an incident of lynching or mob violence has taken place, the jurisdictional police station shall immediately cause to lodge an FIR, without any undue delay, under the relevant provisions of IPC and/or other provisions of law.

(ii) It shall be the duty of the Station House Officer, in whose police station such FIR is registered, to forthwith intimate the Nodal Officer in the district who shall, in turn, ensure that there is no further harassment of the family members of the victim(s).

(iii) Investigation in such offences shall be personally monitored by the Nodal Officer who shall be duty bound to ensure that the investigation is carried out effectively and the charge-sheet in such cases is filed within the statutory period from the date of registration of the FIR or arrest of the accused, as the case may be.

(iv) The State Governments shall prepare a lynching/mob violence victim compensation scheme in the light of the provisions of Section 357A of CrPC within one month from the date of this judgment. In the said scheme for computation of compensation, the State Governments shall give due regard to the nature of bodily injury, psychological injury and loss of earnings including loss of opportunities of employment and education and expenses incurred on account of legal and medical expenses. The said compensation scheme must also have a provision for interim relief to be paid to the victim(s) or to the next of kin of the deceased within a period of thirty days of the incident of mob violence/lynching.

(v) The cases of lynching and mob violence shall be specifically tried by designated court/Fast Track Courts earmarked for that purpose in each district. Such courts shall hold trial of the case on a day to day basis. The trial shall preferably be concluded within six months from the date of taking cognizance. We may hasten to add that this direction shall apply to even pending cases. The District Judge shall assign those cases as far as possible to one jurisdictional court so as to ensure expeditious disposal thereof. It shall be the duty of the State Governments and the Nodal Officers in particular to see that the prosecuting agency strictly carries out its role in appropriate furtherance of the trial.

(vi) To set a stern example in cases of mob violence and lynching, upon conviction of the accused person(s), the trial court must ordinarily award maximum sentence as provided for various offences under the provisions of the IPC.

(vii) The courts trying the cases of mob violence and lynching may, on application by a witness or by the public prosecutor in relation to such witness or on its own motion, take such measures, as it deems fit, for protection and for concealing the identity and address of the witness.

(viii) The victim(s) or the next of kin of the deceased in cases of mob violence and lynching shall be given timely notice of any court proceedings and he/she shall be entitled to be heard at the trial in respect of applications such as bail, discharge, release and parole filed by the accused persons. They shall also have the right to file written submissions on conviction, acquittal or sentencing.

(ix) The victim(s) or the next of kin of the deceased in cases of mob violence and lynching shall receive free legal aid if he or she so chooses and engage any advocate of his/her choice from amongst those enrolled in the legal aid panel under the Legal Services Authorities Act, 1987.

C. Punitive Measures

(i) Wherever it is found that a police officer or an officer of the district administration has failed to comply with the aforesaid directions in order to prevent and/or investigate and/or facilitate expeditious trial of any crime of mob violence and lynching, the same shall be considered as an act of deliberate negligence and/or misconduct for which appropriate action must be taken against him/her and not limited to departmental action under the service rules. The departmental action shall be taken to its logical conclusion preferably within six months by the authority of the first instance.

(ii) In terms of the ruling of this Court in *Arumugam Servai v. State of Tamil Nadu* ²¹, the States are directed to take disciplinary action against the concerned officials if it is found that (i) such official(s) did not prevent the incident, despite having prior knowledge of it, or (ii) where the incident has already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against the culprits.

41. The measures that are directed to be taken have to be carried out within four weeks by the Central and the State Governments. Reports of compliance be filed within the said period before the Registry of this Court. These recommendations comprehensively set out the manner in which the State and law-enforcement agencies are expected to deal with the menace of mob violence specifically lynching and vigilantism and further, assign responsibility and accountability to officials to curb such incidents as also punitive measures to deter law enforcement agencies from shirking their duties.

13. Our attention was also invited to the decision in *Koshy Jacob Vs. Union of India and Ors.*, ⁵ wherein an identical direction was sought for implementation of guidelines issued by this Court In *Re: Destruction of Public and Private Properties* (supra). The two-Judge Bench, after adverting to

the stand taken by the Union of India in its reply affidavit and the statement made by the Attorney General for India, disposed of the said writ petition in the following terms:

¶10. In view of the stand in the counter affidavit and the statement of learned Attorney General, we do hope that the law now proposed by the Union of India is brought into force within a reasonable time to address all concerned issues. Learned Attorney General has very fairly stated that the law may provide for speedy mechanism for criminal liability, action for administrative failures as well as remedies to the victims. A suggestion has been made that one or more district/additional district judges can be appointed by the State Government in consultation with the High Court to deal with such issue either on whole-time basis or on part- time basis, as the situation may require. In such cases cadre strength of the judicial officers may require suitable temporary or permanent increase. This suggestion can be considered in the course of making the proposed law.

5 (2018) 11 SCC 756

11. As far as the individual claim of the petitioner is concerned, the organizers of the agitation are not before this Court. The petitioner is at liberty to take his remedy at appropriate forum in accordance with law.

The writ petition is accordingly disposed of.

14. In Tehseen Poonawalla (supra), the Court adverted to the decision in Shakti Vahini Vs. Union of India and Ors.,⁶ wherein the Court was called upon to address the issue of honour killing and other forms of honour crimes inflicted on young couples/families by Khap Panahcayats. In paragraph 55, the Court issued directions to the States to take measures to evolve a robust mechanism to meet the challenges of the agonizing effect of honour crimes by Khap Panchayats.

Paragraph 55 reads thus:

¶55. Mr Raju Ramachandran, learned Senior Counsel being assisted by Mr Gaurav Agarwal, has filed certain suggestions for issuing guidelines. The Union of India has also given certain suggestions to be taken into account till the legislation is made. To meet the challenges of the agonising effect of honour crime, we think that there has to be preventive, remedial and punitive measures and, accordingly, we state the broad contours and the modalities with liberty to the executive and the police administration of the States concerned to add further measures to evolve a robust mechanism for the stated purposes:

55.1. Preventive steps 55.1.1. The State Governments should forthwith identify districts, sub-divisions and/or villages where instances of 6 (2018) 7 SCC 192 honour killing or assembly of khap panchayats have been reported in the recent past, e.g., in the last five years. 55.1.2. The Secretary, Home Department of the States concerned

shall issue directives/advisories to the Superintendent of Police of the districts concerned for ensuring that the officer in charge of the police stations of the identified areas are extra cautious if any instance of inter-caste or inter-religious marriage within their jurisdiction comes to their notice.

55.1.3. If information about any proposed gathering of a khap panchayat comes to the knowledge of any police officer or any officer of the District Administration, he shall forthwith inform his immediate superior officer and also simultaneously intimate the jurisdictional Deputy Superintendent of Police and Superintendent of Police. 55.1.4. On receiving such information, the Deputy Superintendent of Police (or such senior police officer as identified by the State Governments with respect to the area/district) shall immediately interact with the members of the khap panchayat and impress upon them that convening of such meeting/gathering is not permissible in law and to eschew from going ahead with such a meeting. Additionally, he should issue appropriate directions to the officer in charge of the jurisdictional police station to be vigilant and, if necessary, to deploy adequate police force for prevention of assembly of the proposed gathering.

55.1.5. Despite taking such measures, if the meeting is conducted, the Deputy Superintendent of Police shall personally remain present during the meeting and impress upon the assembly that no decision can be taken to cause any harm to the couple or the family members of the couple, failing which each one participating in the meeting besides the organisers would be personally liable for criminal prosecution. He shall also ensure that video recording of the discussion and participation of the members of the assembly is done on the basis of which the law-enforcing machinery can resort to suitable action.

55.1.6. If the Deputy Superintendent of Police, after interaction with the members of the khap panchayat, has reason to believe that the gathering cannot be prevented and/or is likely to cause harm to the couple or members of their family, he shall forthwith submit a proposal to the District Magistrate/Sub-Divisional Magistrate of the District/Competent Authority of the area concerned for issuing orders to take preventive steps under CrPC, including by invoking prohibitory orders under Section 144 CrPC and also by causing arrest of the participants in the assembly under Section 151 CrPC.

55.1.7. The Home Department of the Government of India must take initiative and work in coordination with the State Governments for sensitising the law enforcement agencies and by involving all the stake holders to identify the measures for prevention of such violence and to implement the constitutional goal of social justice and the rule of law. 55.1.8. There should be an institutional machinery with the necessary coordination of all the stakeholders. The different State Governments and the Centre ought to work on sensitisation of the law enforcement agencies to mandate social initiatives and awareness to curb such violence. 55.2. Remedial

measures 55.2.1. Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that the khap panchayat has taken place and it has passed any diktat to take action against a couple/family of an inter-

caste or inter-religious marriage (or any other marriage which does not meet their acceptance), the jurisdictional police official shall cause to immediately lodge an FIR under the appropriate provisions of the Penal Code including Sections 141, 143, 503 read with Section 506 IPC. 55.2.2. Upon registration of FIR, intimation shall be simultaneously given to the Superintendent of Police/Deputy Superintendent of Police who, in turn, shall ensure that effective investigation of the crime is done and taken to its logical end with promptitude.

55.2.3. Additionally, immediate steps should be taken to provide security to the couple/family and, if necessary, to remove them to a safe house within the same district or elsewhere keeping in mind their safety and threat perception. The State Government may consider of establishing a safe house at each District Headquarter for that purpose. Such safe houses can cater to accommodate:

(i) young bachelor-bachelorette couples whose relationship is being opposed by their families/local community/khaps, and

(ii) young married couples (of an inter-caste or inter-religious or any other marriage being opposed by their families/local community/khaps).

Such safe houses may be placed under the supervision of the jurisdictional District Magistrate and Superintendent of Police.

55.2.4. The District Magistrate/Superintendent of Police must deal with the complaint regarding threat administered to such couple/family with utmost sensitivity. It should be first ascertained whether the bachelor-bachelorette are capable adults. Thereafter, if necessary, they may be provided logistical support for solemnising their marriage and/or for being duly registered under police protection, if they so desire. After the marriage, if the couple so desire, they can be provided accommodation on payment of nominal charges in the safe house initially for a period of one month to be extended on monthly basis but not exceeding one year in aggregate, depending on their threat assessment on case- to-case basis.

55.2.5. The initial inquiry regarding the complaint received from the couple (bachelor-bachelorette or a young married couple) or upon receiving information from an independent source that the relationship/marriage of such couple is opposed by their family members/local community/khaps shall be entrusted by the District Magistrate/Superintendent of Police to an officer of the rank of Additional Superintendent of Police. He shall conduct a preliminary inquiry and ascertain the authenticity, nature and gravity of threat perception. On being satisfied as to the authenticity of such threats, he shall immediately submit a report to the Superintendent of Police in not later than one week. 55.2.6. The District Superintendent of Police, upon receipt of such report, shall direct the Deputy Superintendent of Police in charge of the sub-division concerned to cause to register an FIR against the persons threatening the couple(s) and, if necessary, invoke Section 151 CrPC

Additionally, the Deputy Superintendent of Police shall personally supervise the progress of investigation and ensure that the same is completed and taken to its logical end with promptitude. In the course of investigation, the persons concerned shall be booked without any exception including the members who have participated in the assembly. If the involvement of the members of khap panchayat comes to the fore, they shall also be charged for the offence of conspiracy or abetment, as the case may be.

55.3. Punitive measures 55.3.1. Any failure by either the police or district officer/officials to comply with the aforesaid directions shall be considered as an act of deliberate negligence and/or misconduct for which departmental action must be taken under the service rules. The departmental action shall be initiated and taken to its logical end, preferably not exceeding six months, by the authority of the first instance.

55.3.2. In terms of the ruling of this Court in Arumugam Servai⁷, the States are directed to take disciplinary action against the officials concerned if it is found that:

(i) such official(s) did not prevent the incident, despite having prior knowledge of it,
or

(ii) where the incident had already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against the culprits.

55.3.3. The State Governments shall create Special Cells in every district comprising of the Superintendent of Police, the District Social Welfare Officer and District Adi-Dravidar Welfare Officer to receive petitions/complaints of harassment of and threat to couples of inter-caste marriage. 55.3.4. These Special Cells shall create a 24-hour helpline to receive and register such complaints and to provide necessary assistance/advice and protection to the couple. 55.3.5. The criminal cases pertaining to honour killing or violence to the couple(s) shall be tried before the designated court/fast track court earmarked for that purpose. The trial must proceed on day-to-day basis to be concluded preferably within six months from the date of taking cognizance of the offence. We may hasten to add that this direction shall apply even to pending cases. The District Judge concerned shall assign those cases, as far as possible, to one jurisdictional court so as to ensure expeditious disposal thereof.

15. We are conscious of the fact that the crimes committed by groups of self-appointed keepers of public morality may be on account of different reasons or causes, but the underlying purpose of such group of persons is to exercise unlawful power of authority and that too, without sanction of State and create fear in the minds of the public or, in a given situation, section of the community. The dispensation for preventing occurrences of such crimes or remedial measures and punitive measures would vest in the same police in the State.

Therefore, a comprehensive structure will have to be evolved in the respective States so that the issues of accountability and efficiency in curbing incidents of peaceful protests turning into mob violence, causing damage to property including investigation, remedial and punitive measures, are

duly addressed. While doing so, the directions given by this Court in *In Re: Destruction of Public and Private Properties* (supra), *Shakti Vahini* (supra) and *Tehseen Poonawalla* (supra), must be borne in mind.

16. There are overlapping areas of directions which albeit apply to the situations referred to in the concerned decision.

For the purpose of the present writ petition, we have no hesitation in observing that the dispensation can be similar to the one decided recently in *Tehseen Poonawalla* (supra), for which reason the guidelines delineated in the said decision must apply *proprio vigore* in respect of peaceful protests turning into mob violence, causing damage to public and private properties.

A. *Ex abundanti cautela*, we may hasten to clarify that similar interim measures will operate in respect of any peaceful protest turning into mob violence, causing loss of life or damage to public and private properties, including violence designed to instill fear in the minds and terrorise the common man, in the absence of any law to that effect. The recommendations / directions elucidated hereunder are not exhaustive but only to set out broad contour of the measures required to be taken and are in addition to the recommendations/directions given in *In Re: Destruction of Public and Private Properties* (supra):

A. Structural and preventive measures

a) In addition to the responsibilities ascribed to the Nodal Officer(s) as set out in *Tehseen Poonawalla* (supra), the said Nodal Officer(s) 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 5 (five) years. This list would be updated on a regular basis to account for any new openings/closings of establishments.

b) In addition to the prohibition against weaponry laid down in paragraph 12 (II) of *In Re: Destruction of Public and Private Properties* (supra), 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 in that regard as per law.

c) The State governments should set up Rapid Response Teams preferably district-wise which are specially trained to deal with and can be quickly mobilized to respond to acts of mob violence. These teams can also be stationed around vulnerable cultural establishments as mentioned hereinabove.

d) The State governments should set up special helplines to deal with instances of mob violence.

e) The State police shall create and maintain a cyber-

information portal on its website and on its internet-based application(s) for reporting instances of mob violence and destruction of public and private properties.

B. Remedies to minimize, if not extirpate, the impending mob violence

a) 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.

b) The authorities must consider the use of 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.

c) The authorities must ensure that arrests of miscreants found on the spot are done in the right earnest.

d) The Nodal Officer(s), may consider taking appropriate steps as per law including to impose reasonable restrictions on the social media and internet-based communication services or mobile applications, by invoking enabling provisions of law during the relevant period of mob violence, if the situation so warrants.

e) The Nodal Officer(s) must take coordinated efforts and issue messages across various audio-visual mediums 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. C. Liability of person causing violence

a) 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.

b) 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 physically present themselves for questioning, on their own, within 24 (twenty four) hours, in the police station within whose jurisdiction the violence and damage 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.

c) 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 (supra), after hearing the submissions of the State/agency prosecuting the matter in that regard.

D. Responsibility of police officials

a) 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 investigations within the statutory period without sufficient cause should be considered as dereliction of duty on behalf of the concerned officer and can be proceeded against by way of departmental action in right earnest.

b) Since the Nodal Officer(s) holds the overall responsibility in each district to prevent mob violence against cultural establishments and against property, any unexplained and/or unsubstantiated delay in filing FIRs and/or conducting investigations in that regard should also be deemed to be inaction on the part of the said Nodal Officer(s).

c) With reference to the videography mentioned in paragraphs 5(iv), 10 and 12 of In Re: Destruction of Public and Private Properties (supra), 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.

d) Status reports of the investigation(s)/trial(s) concerning such offences as set out hereinabove, including the results of such trial(s), shall be uploaded on the official website of the concerned State police on a regular basis.

e) In the event of acquittal of any person(s) accused of committing such offences as set out hereinabove, the Nodal Officer(s) must coordinate with the Public Prosecutor for filing appeal against such acquittal, in the right earnest.

E. Compensation

a) The person/persons who has/have initiated, promoted, instigated or any way caused to occur any act of violence against cultural programmes or which results in loss of life or damage to public or private property either directly or indirectly, shall be made liable to compensate the victims of such violence.

b) Claims arising out of such acts of violence should be dealt with in the manner prescribed in paragraph 15 of In Re:

Destruction of Public and Private Properties (supra).

c) This compensation should be with regard to the loss of life or damage done to any public or private properties, both movable and immovable.

17. The recommendations that we have made hereinabove be implemented by the Central and State governments as expeditiously as possible, preferably within a period of 8 (eight) weeks from today.

18. While parting, we place on record our sincere appreciation for the able assistance and constructive suggestions given by the learned Attorney General for India, the Additional Solicitor General, counsel for the petitioners and other counsel appearing in this case.

19. We accordingly dispose of the writ petition in the aforementioned terms.

.....CJI.

(Dipak Misra)J. (A.M. Khanwilkar)J. (Dr. D.Y. Chandrachud) New Delhi;

October 01, 2018.