Recovering the Cost of Damage for Destruction of Properties

What is the issue?

The UP government's push to recover money for property damage from those identified as anti-CAA protesters in Lucknow was stayed by the High Court's Lucknow bench in 2020.

What measures were taken against vandalism?

> *Vandalism is the action involving deliberate destruction of or damage to public or private property.*

- **Prevention of Damage to Public Property Act, 1984-** The act punishes anyone who commits mischief by doing any act in respect of any public property with a jail term of up to 5 years and a fine or both.
- Provisions of this law can be coupled with those under the Indian Penal Code.
- **Committees**- In 2007, the Supreme Court took note of various instances where there was large scale destruction of public and private properties in the name of agitations, bandhs and hartals.
- The Court appointed two Committees headed by
    1. Justice KT Thomas
    2. Senior Advocate Fali Nariman
- **Supreme Court guidelines-** In 2009, the Court issued guidelines based on the recommendations of the expert committees.
    1. High Courts may set up a machinery to investigate the damage caused and award compensation wherever mass destruction of property takes place due to protests.
    2. The rioters can be made strictly liable to pay compensation for any damage caused to property once the nexus between the accused person and the incident is established.
    3. A claims commission headed by a retired judge may be appointed to estimate the damage and investigate liability.
- The Supreme Court in the *Destruction of Public and Private Properties versus State of Andhra Pradesh, 2009* held that the cost of damage must be recovered by those responsible through a judicial process and not by the state.
- **Allahabad High Court ruling**- In 2010, the district authorities of Lucknow put up banners displaying the names, photographs and addresses of certain people who were accused of damaging property during protests, seeking compensation.
- The Allahabad High Court held that the publication of personal details of people violated **Article 21** (right to life) of the Constitution.
- The court also contradicted with the Supreme Court ruling by asking the state to assess the damage to public property and realising the amount from those responsible.
- **U.P. Recovery of Damage to Public and Private Property Act**
    1. Empowers state government to set up tribunals to decide claims for damage to property.
    2. Tribunal to be headed by retired District Judge (as Chairperson) and officer of the rank of Additional Commissioner (as member).

3. In addition to compensation, tribunal may also seek attachment of the person's properties along with publication of his personal details.
4. The principle of absolute liability will apply where the liability will be borne by the person who committed the crime along with those who instigated or incited its commission.
5. All orders passed by the tribunals will be final and cannot be appealed before any court.

What about the High Court stay?

- In 2020, the Additional District Magistrate (ADM) in Lucknow had issued an order against Syed Saif Abbas Naqvi, one among the nine persons, to recover Rs 67.73 lakh for damage caused to property during the protests in the Hazratganj area.
- The ADM's recovery order stated that it was applying the **doctrine of joint and several liability** in which the amount can be recovered either jointly from all those held liable or from any of them individually.
- Naqvi was served a recovery notice by the Tehsildar in Lucknow requiring him to pay the entire amount and failure to deposit the amount within a week would lead to seizure of his property.
- On December 3, 2020, in its stay order, High Court's Lucknow bench stated that the Executive Officer/ ADM has no power to issue such a notice in view of the decision of the Supreme Court's ruling in 2009.
- Following this stay order, at least 35 pleas were filed in the Allahabad High Court, all praying for similar protection from recovery orders issued by Tehsildars across UP and the High Court has extended the stay in each of those cases.

References

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