

Fourteenth Kerala Legislative Assembly

Bill No. 224

**THE KERALA PREVENTION OF DAMAGE TO
PRIVATE PROPERTY AND PAYMENT OF
COMPENSATION BILL, 2019**

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[Translation in English of “2019-ലെ കേരള സ്വകാര്യസ്വത്തിനുള്ള നാശനഷ്ടം തടയലും നഷ്ടപരിഹാരം നൽകലും ബിൽ” published under the authority of the Governor.]

**THE KERALA PREVENTION OF DAMAGE TO PRIVATE
PROPERTY AND PAYMENT OF COMPENSATION**

BILL, 2019

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BILL

to provide for the prevention of frequent and rampant damage to private property by damaging acts and for payment of compensation and for matters connected therewith or incidental thereto.

Preamble.—WHEREAS, it is expedient to provide for the prevention of frequent and rampant damage to private property by damaging acts and for payment of compensation and for matters connected therewith or incidental thereto;

BE it enacted in the Seventieth year of Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Prevention of Damage to Private Property and Payment of Compensation Act, 2019.

(2) Sections 3A and 5A of this Act shall be deemed to have come into force on the 6th day of July, 2019 and the remaining provisions shall be deemed to have come into force on the 8th day of January, 2019.

2. *Definitions.*—(1) In this Act, unless the context otherwise requires,—

- a) “damaging act” means an act, causing damage or loss or destruction to any private property due to communal riot, hartal, bandh, demonstration, march, procession, blockade of road traffic or similar assembly by

whatever name called, committed by an individual, group of individuals or organisation whether social, religious or political;

- b) "prescribed" means prescribed by rules made under this Act;
- c) "private property" means any property whether movable or immovable including any machinery, other than public property as defined under the Prevention of Damage to Public Property Act, 1984 (Central Act 3 of 1984), which is owned by or in the possession of or under the control of any person or organisation or institution or entity.

3. *Prohibition of committing damaging act.*—No person participating in communal riot, hartal, bandh, demonstration, march, procession, blockade of road traffic or similar assembly by whatever name called, shall cause any damaging act.

3A. *Police may make video recording.*—The Police may make video recording of the commission of an offence under this Act and such video recording shall be admissible in any proceedings subject to the provisions in sections 65A and 65B of the Indian Evidence Act, 1872 (Central Act 1 of 1872).

4. *Punishment for committing damaging act.*—Whoever commits a damaging act shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

5. *Punishment for committing damaging act by fire or explosive substance.*—Whoever commits a damaging act by fire or explosive substance shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

5A. *Offences shall be cognizable and non-bailable.*—Offences under this Act shall be cognizable and non-bailable.

6. *Bail.*—No person convicted or accused of an offence punishable under section 4 or section 5 shall, if in custody, be released on bail unless the prosecution has been given an opportunity to oppose the application for such release on execution of bond by two solvent sureties and sufficient security in the form of bank guarantee has been furnished or money is deposited in court which shall not be less than one-half the value of the property destroyed or damaged, as may be determined by the court on the basis of a report by the Deputy Collector (General) having jurisdiction over the place of occurrence or in his absence the officer in-charge of the Deputy Collector (General).

7. *Trial of offences.*—(1) The offences under this Act shall be investigated and tried under the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(2) When a court on conviction for an offence under this Act imposes a sentence it shall order payment of compensation to any person for any damage or loss or destruction caused by the commission of offence, such compensation shall be determined by the court as provided in section 357 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) and the same shall also be recoverable as if an arrear of public revenue due on land under the provisions of the Kerala Revenue Recovery Act, 1968 (15 of 1968).

8. *Saving.*—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force, and nothing contained in this Act shall exempt any person from any proceeding (whether by way of investigation or otherwise) which might apart from this Act, be instituted or taken against him.

9. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules either prospectively or retrospectively to carry out the provisions of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or

the session immediately following, the Legislative Assembly makes any modification in the rule or decides 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.

10. *Repeal and saving.*—(1) The Kerala Prevention of Damage to Private Property and Payment of Compensation Ordinance, 2019 (33 of 2019) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the said Ordinance shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

In the State due to riot, hartal, bandh, demonstration, march, procession, blockade of road traffic or similar assembly organised by various organisations, individual or group of individuals, large number of private properties get destroyed in addition to public properties. The Government consider it necessary to bring in a legislation to prevent the frequent and rampant damage to private property and for payment of compensation.

As the Legislative Assembly of the State of Kerala was not in session and the above proposals had to be given effect to immediately, the Kerala Prevention of Damage to Private Property and Payment of Compensation Ordinance, 2019 was promulgated by the Governor of Kerala on the 8th day of January, 2019 and the same was published as Ordinance No. 5 of 2019 in the Kerala Gazette Extraordinary No. 44 dated 8th January, 2019.

A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the 14th Kerala Legislative Assembly during its session which commenced on the 25th day of January, 2019 and ended on the 12th day of February, 2019.

In order to keep alive the provisions of the said Ordinance, the Kerala Prevention of Damage to Private Property and Payment of Compensation

Ordinance, 2019 was promulgated by the Governor of Kerala on the 25th day of February, 2019 and the same was published as Ordinance No. 10 of 2019 in the Kerala Gazette Extraordinary No.487 dated 26th February, 2019.

A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the 14th Kerala Legislative Assembly during its session which commenced on the 27th day of May, 2019 and ended on the 4th day of July, 2019.

In order to keep alive the provisions of the said Ordinance, the Kerala Prevention of Damage to Private Property and Payment of Compensation Ordinance, 2019 was promulgated by the Governor of Kerala with certain modifications on the 6th day of July, 2019 and the same was published as Ordinance No. 33 of 2019 in the Kerala Gazette Extraordinary No. 1503 dated 6th July, 2019.

The Bill seeks to replace Ordinance No. 33 of 2019 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill empowers the Government to make rules by notification for the purpose of carrying out the provisions of this Act.

2. Matters in respect of which rules may be made are regarding matters of procedures or of routine or administrative in nature. Further the rules, as so made, are subject to the scrutiny by the Legislative Assembly. The delegation of legislative power is, therefore, of a normal character.

PINARAYI VIJAYAN.