

India: UP's Property Damage Ordinance Gives Tribunals Sweeping Powers, Rulings Can't Be Appealed

Friday 20 March 2020, by [The Wire \(IN\)](#) (Date first published: 16 March 2020).

The Adityanath government promulgated the ordinance a day before the high court's deadline to remove the 'name and shame' posters.

New Delhi: The Uttar Pradesh government has promulgated a new ordinance granting wide powers to a new claims tribunal for collecting compensation from people accused of vandalism, even without giving them a chance to place their defence. The Uttar Pradesh Recovery of Damage to Public and Private Property Ordinance was promulgated by governor Anandiben Patel on Sunday.

According to the *Indian Express*, the ordinance [provides for collecting compensation ex-parte](#) i.e. even without giving a hearing to the person accused of vandalism. It is being criticised on the grounds that the state's chief minister, Yogi Adityanath, has a track record of booking people, especially members of the minority community, for vandalism and initiating stringent action against them [without proper investigation or hearing](#).

The new law gives sweeping powers to the tribunal and seeks to insulate it from interventions of the courts, [which have of late pulled up the state government](#) for its actions. Very recently, the Allahabad high court ordered the Adityanath government to [remove the "name and shame" posters](#) it had put up of several anti-Citizenship Amendment Act (CAA) protesters.

An attempt to sidestep HC ruling

Incidentally, the [new law](#) has come four days after Supreme Court [refused to stay](#) the Allahabad high court's March 9 order for removing the "name and shame" posters. The new law has been brought just a day before the March 16 deadline given by the HC to implement its order.

The Allahabad high court had stated in its ruling: "On asking, learned Advocate General failed to satisfy us as to why the personal data of few persons have been placed on banners though in the State of Uttar Pradesh there are lakhs of accused persons who are facing serious allegations pertaining to commission of crimes whose personal details have not been subjected to publicity. As a matter of fact, the placement of personal data of selected persons reflects colorable exercise of powers by the Executive."

It had added that "in the present case, the cause is not about personal injury caused to the persons whose personal details are given in the banner but the injury caused to the precious constitutional value and its shameless depiction by the administration."

Ordinance tries to make tribunal ruling binding

The ordinance tries to make the orders of the tribunal binding by stating that the award of

compensation made by it will be final and cannot be appealed before any civil court. Furthermore, the new law provides for setting up of one or more tribunals to “investigate the damage caused (during protests) and to award compensation”. It also empowers these to cover the “cost of action” taken by police and administration for safeguarding public properties.

It also allows forming multiple tribunals for a single event to ensure that the proceedings are closed “preferably within three months”. There is also a provision to appoint an assessor “who is technically qualified to assess such damage from a panel appointed by the state government”.

Moreover, the law empowers the tribunals to issue ex-parte orders. The ordinance states that the tribunals will have the power to proceed ex-parte if the respondent fails to appear. Also, no concessions would be made for pleas if there was a failure to serve the notice on the respondent.

Onus of proof will on those accused of vandalism

As in draconian laws like Terrorist and Disruptive Activities (Prevention) Act (TADA), Prevention of Terrorism Act (POTA) and Maharashtra Control of Organised Crime Act (MCOCA) [in the past](#), under this ordinance too, those accused of vandalism would be required to prove their innocence and that they had no “nexus” with those involved in the protest, hartal, strike, bandh, riot or public commotion during which any destruction of public or private property was caused.

Without specifying the nature of this ‘nexus’, the law also states that it would be assumed that “the nexus with the event that precipitated the damage is established”. It also lays down that while liability will be borne by the “actual perpetrators of the crime”, anyone who “instigates” or “incites” the crime would share it as per the decision of the claims tribunal.

The tribunal will be headed by a retired district judge and may include a member of the rank of additional commissioner.

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