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EXTRAORDINARY

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ARUNACHAL PRADESH
LEGISLATIVE ASSEMBLY SECRETARIAT
ITANAGAR

NOTIFICATION

The 3rd March, 2020

No. LA/Bill-2/2020.— The following Bill introduced in the Arunachal Pradesh Legislative Assembly on the 2nd March, 2020 is published under Rules 73 of the Rules of Procedure and Conduct of Business in Arunachal Pradesh Legislative Assembly for general information.

BILL No. 2 OF 2020

(As introduced in the Legislative Assembly on 2nd March, 2020)

THE ARUNACHAL PRADESH PROPERTY (PREVENTION OF DAMAGE AND LOSS) BILL, 2020

A

BILL

to provide for the prevention of damage to property, compensation for damage & loss to any property and for the matters connected therewith or incidental thereto.

BE it enacted by the Legislature of the State of Arunachal Pradesh in the seventy first year of the Republic of India as follows:-

CHAPTER-I

PRELIMINARY

1. Short title and commencement :

- (i) This Act may be called the Arunachal Pradesh Property (Prevention of Damage and Loss) Bill, 2020.
- (ii) It shall extend to the whole of the State of Arunachal Pradesh.
- (iii) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions :

In this Act, unless the context otherwise requires :

- (1) “**Act**” means Arunachal Pradesh Property (Prevention of Damage and Loss) Act, 2020;
- (2) “**Abetment**” shall have the same meaning as in section 107 of the Indian Penal Code;
- (3) “**Appellate Authority**” means an authority constituted under sub section (1) of section 18;
- (4) “**Compensation**” means quantum of damage or loss to any property as determined under sub section (3) of section 17;
- (5) “**Competent Authority**” means an authority constituted under sub-section (1) of section 17;
- (6) “**Direct action**” means the use of strikes, demonstration or other public forms of protests rather than negotiation to achieve a demand;
- (7) “**Declared direct action**” means any act of declaring direct action as defined in clause (6) of section 2 and includes announcement of such action firmly, clearly or publicly;
- (8) “**Government**” means the Government of Arunachal Pradesh;
- (9) “**Mischief**” shall have the same meaning as in section 425 of the Indian Penal Code;
- (10) “**Political party**” means a political party recognized by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968 ;

- (11) **“Prescribed”** means prescribed by Rules published in the State Gazette;
- (12) **“Property”** means any property, movable or immovable or machinery owned by or in possession of, or under the control of any person including —
- (i) the Central Government; or
 - (ii) the State Government; or
 - (iii) any Local Authority; or
 - (iv) any corporation or institution established by, or under a Central or State Act; or
 - (v) any company as defined in sub-section 20 of section 2 of the Companies Act, 2013 (Act No. 18 of 2013); or
 - (vi) any board established by, or under a Central or State Act; or
 - (vii) any society including cooperative society registered under a Central or State Act; or
 - (viii) any trust registered under a Central or State Act; or
 - (ix) any institution, concern or undertaking, which the Central Government or the State Government may, by notification in the Official Gazette, specify in this behalf ; and
 - (x) any private person, body or institution.
- (13) **“Section”** means section of this Act.

Explanation : -

For the purposes of clause (v), “company” means any body corporate and includes a trust, a firm, a society or other association of individuals.

3. Punishment for committing mischief in respect of property :

Whoever,

- (1) commits or instigates, incites or otherwise abets mischief by doing any act in respect of any property and thereby causes damage or loss to such property; or
- (2) commits mischief by doing any act which causes or which he knows to be likely to cause a diminution of the supply of water to the public or to any person for any purpose or an inundation of, or obstruction to, any public drainage; or
- (3) commits mischief by doing any act which renders any public road, bridge, navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment for a term which shall not be less than six months but which may extend to three years and shall also be liable to fine which may extend to one lakh rupees :

Provided that the Court may, for any adequate and special reasons to be recorded in the judgement, impose a sentence of imprisonment for a term of less than six months.

4. Punishment for committing mischief causing damage to property by fire or explosive substance :

Whoever commits or instigates, incites or otherwise abets mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause, damage to any property, shall be punished with rigorous imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine which may extend to three lakhs rupees :

Provided that the Court may, for any adequate and special reasons to be recorded in the judgement, impose a sentence of imprisonment for a term of less than one year.

5. Punishment for committing mischief of throwing stones, bricks, soda-bottles or any other similar material/substance upon motor vehicles in which any person or persons are travelling :

Whoever commits or instigates, incites or otherwise abets, or intentionally allows his property for the act of committing mischief of throwing stones, bricks, soda bottles or any other similar material/substance whatsoever upon motor vehicles in which any person or persons are travelling shall be punished with imprisonment for a term which shall not be less than six months but which may extend to two years and shall also be liable to fine which may extend to fifty thousand rupees:

Provided that the Court may, for any adequate and special reasons to be recorded in the Judgement, impose a sentence of imprisonment for a term of less than six months.

Explanation :-

For the purpose of this section “motor vehicle” shall have the same meaning as provided in clause (28) of section 2 of the Motor Vehicles Act, 1988.

6. Mischief causing damage to property due to direct action :

- (1) Whoever commits mischief in respect of any property due to direct action, whether declared or not shall be punished with imprisonment which shall not be less than two years but which may extend to seven years.
- (2) Whosoever commits mischief under sub-section (1) by fire or explosive substance shall be punished with rigorous imprisonment for a term which shall not be less than four years but which may extend to ten years.

Provided that the court may for special reasons to be recorded in the Court Judgement award a sentence of imprisonment for a term of less than two years or four years under Sub-section (1) and (2) above respectively.

Provided further that no person shall be guilty of an offence under Section 6 of the Act, if he proves that-

- (i) he was in no way connected with the action called by his organization, society, trust, NGO, association, union or any party whether social, religious or political as the case may be; or
- (ii) he has taken all reasonable measures to prevent causing damage to property in the direct action called by his organization, society, trust, NGO, association, union or any party whether social, religious or political as the case may be.

7. Provisions regarding videography or photography of mischief committed under this Act :

- (1) If the officer in charge of a police station or other law enforcing agency is of opinion that any mischief, has the potential of causing destruction of or damage to property, he shall avail himself of the services of videographers or photographers.
- (2) If the police officer, who has the responsibility to act on the information, has reason to apprehend that such mischief has the potential of causing destruction of or damage to property, he shall immediately avail himself of the services of any videographer/photographer to accompany him or any other police officer deputed by him to the site or any other place wherefrom video shooting/photography can conveniently be arranged concentrating on the person(s) indulging in any mischief causing destruction of or damage to any property.
- (3) No sooner than the mischief subsides, the police officer concerned shall produce the original tapes or CDs or other material capable of displaying the recorded evidence before the nearest Magistrate, who shall entrust such material to the custody of the officer-in-charge of the concerned police station for production of the same before the trial court or competent authority as prescribed under sub-section (1) of Section 17 at the appropriate stage or as and when called for.
- (4) The photographic or videographic material recorded by any individual of such mischiefs as referred to in sub-section (1), (2) and (3) above can also be considered by the magistrate subject to the authenticity of such photographic or videographic material.

8. Special provision regarding evidence :

Notwithstanding anything contained in any other law for the time being in force, the videographic or photographic version of the mischief recorded on the spot, shall be considered as sufficient evidence of the offence committed and the damage or loss caused to the property.

9. Offences to be non-bailable and special provision regarding bail :

- (1) The offences committed under this Act shall be non-bailable.
- (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), no person accused or convicted of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless the prosecution has been given an opportunity to oppose the application for such release.

10. Offences to be cognizable :

The offences committed under this Act shall be cognizable.

11. Presumption as to causing damage or loss to property or abetting thereof :

When the question is whether a person has caused damage or loss to any property and has committed offence under section 3, 4, 5 and 6 of this Act, the court may presume having regard to participation of accused or indirect or direct involvement of accused in the commission of offence and all the other circumstances of the case, that such offence has been committed or abetted, as the case may be, by such person.

12. Abetment of offences under this Act :

Whosoever is guilty of abetment of an offence under this Act shall be punished in the same manner as if he had committed such an offence.

13. Power to try offences under this Act :

- (1) No Court inferior to that of the Court of Chief Judicial Magistrate shall try offences under this Act.
- (2) In case there is no Court of Chief Judicial Magistrate existing within the concerned district, the Government, in consultation with the High Court, may transfer the case to the nearest Court of Chief Judicial Magistrate for taking cognizance and trial of offences under this Act.
- (3) In case, the Government resorts to any action under the sub-section (2) above, a notification to the effect that the said Court shall function as a Court of original jurisdiction shall be issued.

14. Trial of offences under this Act :

The offences under this Act shall be investigated and tried under the provisions of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) except the provisions of Section 357 of the said Code.

15. Liability to pay compensation in certain cases :

Notwithstanding anything contained in this Act or any other Law for the time being in force where an offence resulting into damage or loss to any property has been committed under this Act and such offence has been committed during any procession, assembly, meeting, agitation, demonstration or any other activity organized by an organization, society, trust, NGO, association, union or any party whether social, religious or political, it shall be presumed that the offence has also been committed by such organization, society, trust, NGO, association, union or party and such organization, society, trust, NGO, association, union or party shall be liable to pay compensation for damage or loss caused to the property that may be determined in accordance with the provisions of this Act.

16. Claim for Compensation :

- (1) Any claim for compensation for damage or loss caused to any property referred to in Section 15 shall be made by -
 - (i) any person who has been affected by such damage or loss; or
 - (ii) by Governments /authorities/bodies/institutions/persons specified in sub-clauses (i) to (x) of clause (12) of Section 2 or such persons authorized by them.
- (2) Every application for claim for compensation for damage or loss caused to the property shall be in such form and contain such particulars as may be prescribed.
- (3) Claim for compensation can be made and recovered as "Public Demand" as defined under SCHEDULE-I to the Bengal Public Demand Recovery Act, 2013 as may be determined by the competent authority under sub section (3) of section 17.

17. Competent Authority :

- (1) The Government shall by notification in the State Gazette constitute an authority, to be known as the competent authority for the purposes of this Act.
- (2) The competent authority shall be headed by the Additional Deputy Commissioner of the concerned district and shall comprise such other members not exceeding two as may be prescribed.
- (3) The competent authority shall determine the quantum of compensation for damage or loss caused to any property by an offence under this Act.
- (4) Every claim for compensation for damage or loss caused to any property shall be made to the competent authority.
- (5) In arriving at the quantum of compensation for damage or loss caused to any property, the competent authority shall have regard to:
 - (i) the value of the property,
 - (ii) the extent of damage to the property; and
 - (iii) such other matters as may be prescribed.
- (6) In deciding the claim for compensation, the competent authority shall follow such procedure as may be prescribed.
- (7) The competent authority shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 for the purpose of:
 - (a) taking evidence on oath,
 - (b) enforcing the attendance of witnesses,
 - (c) discovery and production of documents and material objects; and
 - (d) for such other purposes as may be prescribed.

- (8) The compensation amount, which shall be specified in the Damage/Loss Determination Report of the competent authority, shall be deemed as "Public Demands" in terms of SCHEDULE-I of the Bengal Public Demands Recovery Act, 1913.
- (9) The competent authority, on determination of the compensation amount, shall submit its Damage/Loss Determination Report to Deputy Commissioner of the concerned district.
- (10) Upon receipt of the Damage/Loss Determination Report of the competent authority, the Deputy Commissioner of the concerned District shall recover the compensation amount as determined in the said report as if a "Public Demands" in accordance with the provisions of the Bengal Public Demands Recovery Act, 1913.

18. Appeal :

- (1) The Government shall by notification in the State Gazette constitute an authority, to be known as the appellate authority for the purposes of this Act.
- (2) The Appellate Authority shall be headed by the Divisional Commissioner of the concerned Division and shall comprise such other members not exceeding two as may be prescribed.
- (3) Any person aggrieved by an order made by the competent authority may, within a period of thirty days, appeal to the appellate authority:

Provided that no appeal shall be entertained by the appellate authority unless the appellant has deposited twenty five percent of the compensation amount specified in the Damage/Loss Determination Report of the competent authority, in the manner as directed by the appellate authority.

Provided that appellate authority may entertain the appeal after expiry of the appeal period, if it is satisfied that the appellant was prevented by sufficient cause for preferring the appeal in time.

Provided further that no appeal shall lie against an order of the appellate authority.

- (4) The appellate authority may revise any order passed by the competent authority.
- (5) In deciding the appeal, the appellate authority shall follow such procedure as may be prescribed and the decision of the appellate authority on such appeal shall be final and binding.

19. Protection of action taken in good faith :

- (1) No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government or any person authorized by the Government for anything which is in good faith done or intended to be done under this Act.
- (2) No suit or other legal proceeding shall lie against the Government or any officer of the Government or any person authorized by the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

20. Power to make rules :

- (1) The Government may, by a notification in the State Gazette, make rules for carrying out all or any of the purposes of this Act.
- (2) Without prejudice to the generality of the foregoing power, such rules may provide for -
 - (i) the officer by whom an application for compensation is to be made;
 - (ii) the form of application for compensation and particulars it may contain and fees if any, to be paid, in respect of the application for compensation;
 - (iii) the authority to whom the claim for compensation has to be made;
 - (iv) the matters to be taken into account in arriving at the quantum of compensation by the competent authority;
 - (v) the procedure to be followed in deciding the claim for compensation by the competent authority; and
 - (vi) any other matter which is to be or may be prescribed.

21. Saving :

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

Dated Itanagar,
the 3rd March, 2020.

K. Habung
Secretary,
Legislative Assembly,
Arunachal Pradesh,
Itanagar.