



ENFORCEMENT DEPARTMENT
PRAGATI BHAWAN, JAI SINGH ROAD
NEW DELHI - 110001

No.D/ 1509 /SO(Ent.)/2018

Dated:-22.11.2018


CIRCULAR

Pursuant to the order dated 29.05.2018 passed by Hon'ble High Court of Delhi in the matter of Prashant Manchanda versus Union of India & ora in WPC No 7824/2017 and connected matters directing to frame guidelines for prevention of defacement of property during elections to the Delhi university students union and college students union of the University of Delhi.

Apart from the above, for compliance of the notification dated 02.01.2018 regarding appointment of officers for compounding of any offence of defacement committed in Govt. of NCT of Delhi under sub section (1) of section (4) of "The Delhi Prevention of Defacement of Property Act, 2007", Sub Divisional Magistrate of the respective area and Director (Enforcement) of NDMC have been appointed as Competent Authorities by Principal Secretary, Urban Development, GNCTD for compounding any offence of defacement whether committed before or after the commencement of this act, punishable under section 3 of the said Act, Secretary, NDMC issued a circular in which SDM (GNCTD) of concerned area which falls under jurisdiction of NDMC, and Director (Enforcement), NDMC have been informed to take necessary action according to this Act and shall be compounded on payment of such composition fee, which shall not be less than Rupees Five Thousand or the amount equal to expenses incurred for removing or erasing the defacement, whichever is more.

In this context, it is informed that the guidelines for prevention of defacement of property during elections to the Delhi university students union and college students union of the University of Delhi is hereby implemented in NDMC area. Non-compliance will be viewed seriously and action as per said Act shall be initiated against the delinquent.

The copy of the order dated 29.05.2018 of Hon'ble High Court is enclosed.


(V.K. Gullam)
Director (Enforcement)
22.11.2018

Copy to :-

1. PA to Chairman, NDMC for Information Please.
2. PA to Secretary, NDMC for Information please.
- ✓ 3. Director (IT) for uploading the same on NDMC website.

**GUIDELINES FOR PREVENTION OF DEFACEMENT OF PROPERTY
DURING ELECTIONS TO THE DELHI UNIVERSITY STUDENTS UNION
AND COLLEGE STUDENTS UNION OF THE UNIVERSITY OF DELHI**

(To be read with the order of the Hon'ble High Court of Delhi vide its order date 29.05.2018, attached herewith)

(I) OBJECTS AND REASONS

- (1) The University of Delhi consists of about ninety affiliated, constituent and recognized colleges. Each college has its Students Union and at the University level exists the Delhi University Students Union (DUSU). Elections to these student union bodies take place together annually.
- (2) Experience has shown that each such election process leads to large scale defacement of property, whether by pasting of pamphlets / banners or by painting of properties with slogans etc.
- (3) Defacement of property is a criminal offence. The Delhi Prevention of Defacement of Property Act, 2007 not only defines the act of defacement but also prescribes the punishment for the same. Section 2 of the Act lists the definitions which are as under:-
 2. Definitions In this Act, unless the context otherwise requires, -
 - (a) "defacement" includes impairing or interfering with the appearance or beauty, damaging, disfiguring, spoiling or injuring in any other way whatsoever and the word "deface" shall be construed accordingly;
 - (b) "Lieutenant Governor" means the Lieutenant Governor of the National Capital Territory of Delhi appointed by the President under Article 239 and designated as such under Article 239AA of the Constitution;
 - (c) "property" includes any building, hut, structure, wall, tree, fence, post, pole or any other erection;
 - (d) "writing" includes printing, painting, decoration, lettering, ornamentation etc., produced by stencil.
 - (4) It is significant to note that the definitions contained in Section 2 of the Act pertaining to '_defacement', '_property' and '_writing' are inclusive and not exhaustive. Section 2 (c) does not provide for any delineation between public and private property qua the offence of defacement as reference is made to '_any building, hut, structure, wall, tree, fence, post, pole or any other erection'.
 - (5) Thus, instances of pasting of pamphlets, banners etc. on property as well as painting of slogans would constitute acts of defacement and consequentially attract the penalty for the said offence.
 - (6) The punishment for the offence of defacement of property is contained in Section 3 of the said Act which is as under:-
- 3. Penalty for defacement of property**
 - (1) Whoever defaces any property in public view by writing or marking with ink, chalk, paint or any other material except for the purpose of indicating the name and address of the owner or occupier of such

property, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.

- (2) When any offence is committed under sub-section (1) is for the benefit of some other person or a company or other body corporate or an association of persons (whether incorporated or not) then, such other person and every president, chairman, director, partner, manager, secretary, agent or any other officer or persons connected with the management thereof, as the case maybe, shall, unless he proves the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.
- (3) The aforesaid penalties will be without prejudice to the provisions of Section 425 and Section 434 of the Indian Penal Code, 1860 (45 of 1860) and the provisions of relevant Municipal Acts. ll
- (7) The provisions of Section 3 (2) of the Act are significant when considered vis-à-vis the objects and reasons for framing of these Guidelines. The said provision attaches strict liability upon the person for whose benefit the offence of defacement stands committed. In other words, where defacement may have been committed by pasting of banners / slogans seeking support for a particular candidate, then even though the candidate himself or herself may not have actually committed any specific act, he / she shall be deemed to be guilty of the offence so committed, unless the candidate proves that the offence was committed without his knowledge or consent.
- (8) The offence of defacement attracts a penalty of imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.
- (9) Apart from the Delhi Prevention of Defacement of Property Act, 2007, there are special statutes which deal with the offence of defacement in relation to properties covered under the special statute. One of them is the "Delhi Metro Railway (Operation and Maintenance) Act, 2002". In this regard Section 78 of the Act is significant which provides as under:-

—78. Damage to or destruction of certain metro railway properties.—

- (1) Whoever, with intent to cause or knowing that he is likely to cause damage to or destruction of any of the properties of the metro railway referred to in sub-section (2), causes by fire, explosive substance or otherwise causes damage to such property, he shall be punishable with imprisonment for a term which may extend to ten years.
 - (2) The properties of the metro railway referred to in sub-section (1) are the metro railway track, tunnels, sub-way, box-structures, station buildings and installations, carriage and wagons, rolling stock, signalling, telecommunication, airconditioning and ventilation equipments, electrical sub-station, drainage pump, escalators, lifts, lighting installations, ticket vending machine, ticket barriers, electric traction and block equipments, and such other properties as the Central Government may, by notification, specify. ll
- (10) The punishment for the offence under Section 78 of The Delhi Metro Railway (Operation and Maintenance) Act, 2002 is prescribed to be imprisonment for a term which may extend to ten years.

- (11) There have been instances where during the course of DUSU elections permanent damage has been caused to the properties of Delhi Metro whereby spray paint has been used to paint / write slogans for the purposes of electioneering.
- (12) In the heat and dust of electioneering at the college level, rarely do students have any idea that the banners and posters which they paste on walls and slogans which they paint / spray paint on properties could visit them with such penal consequences.
- (13) These Guidelines thus aim to:
 - (a) sensitize and generate awareness amongst the students of Delhi University that defacement of property is a penal offence and to apprise them of the punishment thereof; and
 - (b) suggest creation of a permanent regulatory mechanism to ensure that no defacement of property takes place during elections to student bodies in the University of Delhi.

(II) PERMANENT COMMITTEES

- (1) Every College shall have a permanent committee known as – College Committee for Prevention of Defacement of Property (College Committee) – comprising of the following:-
 - (a) Senior Faculty Member nominated by the Principal of the College
 - (b) Nominee of the SHO of the Local Police Station
- (2) There shall be a permanent committee at the University level known as – University Committee for Prevention of Defacement of Property (University Committee) – comprising of the following:-
 - (a) Senior Faculty Member nominated by the Vice Chancellor
 - (b) Police Officer not below rank of Assistant Commissioner of Police nominated by the Commissioner of Police, Delhi
 - (c) Nominee of Delhi Metro Rail Corporation
 - (d) Nominee of Commissioner of North Delhi Municipal Corporation
 - (e) Nominee of Commissioner of South Delhi Municipal Corporation
- (3) The University of Delhi and all Colleges shall constitute these Committees on the first day of the new academic session of the year. The names and contact numbers of the members of the Committee shall be prominently displayed on the notice board of the University / College. A separate section in this regard be provided for on the website of the University / College. Any changes in the constitution of these committees be notified on the notice board of the University / College and website, as and when effected.
- (4) The functions to be performed by these committees are mentioned hereinafter.

(III) SENSITIZATION WORKSHOPS

- (1) Before the commencement of campaigning for elections to student union bodies, every College Committee shall hold a workshop with the students of its college including the candidates and their supporters to sensitize them about the provisions of the Delhi Prevention of Defacement of Property Act, 2007 and the Delhi Metro Railway (Operation and Maintenance) Act, 2002.
- (2) College Committees should encourage candidates and students to use e-communication platforms such as e-mail, application based messaging etc. for the purposes of campaigning during the course of elections and to move away from using paper.
- (3) Even after the conduct of elections to student bodies, the College Committee may consider conducting workshops from time to time to spread awareness amongst its students of the provisions of the above statutes.
- (4) The University Committee shall oversee and ensure compliance the provisions of clauses (1), (2) and (3) above.

NOMINATION FORMS AND FURNISHING OF WRITTEN UNDERTAKING

- (1) The University of Delhi / College shall ensure that the nomination form for elections to any office of any students union contains a clause describing the offence of defacement and a stipulation to the effect that candidates found indulging in defacement of property would be visited with the consequence of disqualification from the elections process apart from penal consequences under the applicable statutes.
- (2) Candidature of students for contesting elections to student bodies of any college be accepted only upon the student furnishing a written undertaking on affidavit to the Returning Officer / Election Officer for the elections that they and their supporters shall not indulge in defacement of property during or after the course of the elections. The undertaking should mention that where any candidate has been found to be involved in defacement of property, he / she shall stand disqualified from contesting the elections.
- (3) Similarly, at the University level undertaking on affidavit be required to be furnished to the Returning Officer / Election Officer for the elections by any student desiring to contest elections to the DUSU.
- (4) The College Committee and the University Committee shall keep a strict vigil to identify and maintain a record of any kind of defacement of property committed during the course of the elections and bring the same to the notice of the Returning Officer / Election Officer for the elections. They shall also identify and maintain a record of those students, who even before the formal announcement of the election schedule by the University / College, start circulating pamphlets / banners / cut outs to publicize their names as prospective candidates.
- (5) In addition to their role in Guideline (4) above, the Police representative on the College / University Committee shall act independently on such instances of defacement which come to his notice as per law.

(V) WALLS OF DEMOCRACY

Every College of the University of Delhi should arrange for and make available two —Walls of Democracyll within its premises to be used by

candidates and their supporters for putting up handmade banners / slogans during the elections. One wall be dedicated for candidates for elections to DUSU and the other for the students union of the particular College.

(VI) ANCILLARY MEASURES

- (1) The SHO of any Police Station within whose jurisdiction any college of Delhi University falls shall periodically conduct surveys and identify all persons / organizations involved in the business of printing of any kind of stationery including pamphlets, boards, cut outs, banners and manufacture, stocking and sale of any kind of spray paints.
- (2) The survey list of all such persons / organizations shall be made available by the SHO of the police station to the University Committee.
- (3) The University Committee shall sensitize these identified persons / organizations about the perennial problem of defacement of property during elections to various student bodies. The provisions of the Delhi Prevention of Defacement of Property Act, 2007 and the Delhi Metro Railway (Operation and Maintenance) Act, 2002 shall be brought to their notice.
- (4) The University Committee shall obtain an undertaking from such identified persons / organizations to the effect that they shall not print any material having any kind of association with elections to student union bodies of colleges of Delhi University. (5) Recommendations be made by the University of Delhi to the appropriate government to include clauses in licenses issued to printers and manufacturers, stockiest and retailers of spray paints to prevent them from printing any college / University election related material including pamphlets, cut outs, banners etc. or supplying spray paint to any person for use during college / university elections.

§-6 & 7

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7824/2017, CM APPLs. 34607/2017, 34619/2017,
34687/2017, 37129/2017, 43248-43249/2017, 45149/2017,
45178-45179/2017, 45294/2017 & 47209/2017

PRASHANT MANCHANDA Petitioner
Through Prashant Manchanda, Adv.
Petitioner in person

versus

UNION OF INDIA & ORS Respondents
Through Mr. Sanjeev Sabharwal,
Standing Counsel, North
DMC, Mr. Hem Kumar,
Adv. for R-North Zone
Ms. Bharti Raju (CGSC)
for R-1
Mr. Aman Panwar,
Mr. Sangam Kumar, Adv.
Mr. Anil Grover, Standing
Counsel with Mr. Jitender
Kumar Tripathi, ASC and
Ms. Noopur Singhal, Adv.
for New Delhi Municipal
Council
Mr. Mohinder JS Rupal and
Mr. Prang Newmai, Adv.
for University of Delhi
Mr. Pushkar Sood, Adv. for
DMRC

+ W.P.(C) 8251/2017 & CM APPLs. 33975/2017 &
34686/2017

SAHIL SHARMA Petitioner
Through

versus

GOVT. OF NCT - DELHI AND ORS. Respondents
Through Mr. Mohinder JS Rupal and
Mr. Prang Newmai, Advs.
for University of Delhi
Mr. Pushkar Sood, Adv. for
DMRC
Mr. Rajeshwar Dagar, Sr.
Standing Counsel for SDMC
Mr. Sanjay Ghose and
Mr. Rhishabh Jetley, Advs.
for GNCTD
Mr. Kanwar Kochar, Adv.
for R-10

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER
29.05.2018

%

1. W.P.(C) No.7824/2017 was filed by Mr. Prashant Manchanda, petitioner in person, a practising advocate about the extensive defacement of public property including property of the Delhi University; College Campuses; Delhi Metro Rail Corporation; Municipal properties; flyovers; boundary walls of public buildings, public streets, etc. The writ petition highlights also the extensive defacement of University Campuses and colleges which goes to the extent of the offending publicity material being posted and pasted even in classrooms by student leaders and student political outfits.

2. The writ petition has been pending before us since September, 2017. Notices were issued to various candidates who participated in the 2017 elections to the Delhi University Students' Union (DUSU).
3. So far as the statutory provisions which penalise defacement and destruction of property are concerned, our attention was drawn to Metro Rail (Operation and Maintenance) Act, 2002, a Central enactment, which empowers police officers to register cases and take action against the offenders who intend or are likely to cause damage or destruction of any of the metro properties.
4. More specifically, our attention was drawn to Sections 78 and 82 of this Enactment which read as follows:-

“78. Damage to or destruction of certain metro railway properties.- (1) Whoever, with intent to cause or knowing that he is likely to cause damage to or destruction of any of the properties of the metro railway referred to in sub-section (2), causes by fire, explosive substance or otherwise causes damage to such property, he shall be punishable with imprisonment for a term which may extend to ten years.

(2) The properties of the metro railway referred to in sub-section (1) are the metro railway track, tunnels, sub-way, box-structures, station buildings and installations, carriage and wagons, rolling stock, signaling, telecommunication, air-conditioning and ventilation equipments, electrical sub-station, drainage pump, escalators, lifts, lighting installations, ticket vending machine, ticket barriers, electric traction and block equipments, and such other

properties as the Central Government may, by notification, specify.

XXX

XXX

XXX

82. Power of arrest without warrant.- (1) *If a person commits any offence mentioned in sections 59, 61, 65 to 79, he may be arrested without warrant or other written authority by any metro railway official or by a police officer not below the rank of a head constable or by any other person whom such metro railway official or police officer may call to his aid:*

Provided that where a person has been arrested, by any person other than the police officer, he shall be made over to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

(2) A person so arrested under sub-section (1) shall be produced before the nearest Magistrate, having authority to try him or commit him for trial, as early as possible but within a period not exceeding twenty-four hours of such arrest exclusive of the time necessary for the journey from the place of arrest to the court of the Magistrate."

This law makes the offences cognizable. The punishment prescribed is extremely stringent going upto ten years of imprisonment.

5. Another Central enactment being the ***Prevention of Damage to Public Property Act, 1984*** also becomes applicable to instances of damage to public property. Sections 2 and 3 which are relevant in this regard read thus:

"2. Definitions.- In this Act, unless the context otherwise requires,-

a. "mischief" shall have the same meaning as in section 425 of the Indian Penal Code (45 of 1.860);

b. "public property" means any property, whether immovable or movable (including put any machinery) which is owned by, or in the possession of, or under the control of—

i. the Central Government; or

ii. any State Government; or

iii. any local authority; or

iv. any corporation established by, or under, a Central, Provincial or State Act or

v. any company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or

vi. any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specify in this behalf: Provided that the Central Government shall not specify, any institution, concern or undertaking under this sub-clause unless such institution, concern or undertaking is financed wholly or substantially by funds provided directly or indirectly by the Central Government or by one or more State Governments, or partly by the Central Government and partly by one or more State Governments.

3. Mischief causing damage to public property. —

1. Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

2. *Whoever commits mischief by doing any act in respect of any public property being –*

a. any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy ;

b. any oil installation;

c. any sewage work;

d. any mine or factory;

e. any means of public transportation or of tele-communications, or any building, installation or other property used in connection therewith. shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine:

Provided that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months."

(Emphasis by us)

6. So far as Delhi is concerned, the Government of NCT of Delhi has specifically legislated on the subject by way of "**The Delhi Prevention of Defacement of Property Act, 2007**" making defacement of property an offence. Section 3 of the statute reads as follows:

"3. Penalty for defacement of property (1) Whoever defaces any property in public view by writing or marking with ink, chalk, paint or any other material except for the purpose of indicating the name and address of the owner or occupier of such property, shall be punishable with imprisonment for a term which may extend to one year, or with

fine which may extend to fifty thousand rupees, or with both.

(2) When any **offence** is committed under sub-section (1) **is for the benefit of some other person** or a company or other body corporate or an association of persons (whether incorporated or not) then, **such other person and every president, chairman, director, partner, manager, secretary, agent or any other officer or persons connected with the management thereof,** as the case maybe, **shall,** unless he proves the offence was committed without his knowledge or consent, **be deemed to be guilty of such offence.**

(3) The aforesaid penalties will be **without prejudice to the provisions of Section 425 and Section 434 of the Indian Penal Code, 1860 (45 of 1860) and the provisions of relevant Municipal Acts."**

(Emphasis supplied)

7. During the pendency of the writ petition, we issued notices to several student leaders who had participated in the DUSU Elections 2017 against whom there were allegations of having defaced public property inasmuch as publicity material containing their candidature and names was available on properties all over Delhi. They have appeared before us from time to time and tendered their regrets.

8. Given the importance of the matter and the complete lack of information with regard to the seriousness with which defacement of public property has to be treated under the applicable statutory regime, at the same time, the official respondents including the DMRC, the Delhi University, all the civic agencies including NDMC,

SDMC, EDMC, Government of NCT of Delhi, Union of India, Delhi Police, New Delhi Municipal Council, etc. were issued notices. It was deemed necessary to frame Guidelines so far as unwary students who are participating in college and university elections are concerned.

9. An elaborate exercise has been undertaken by all the authorities together with student representatives as well as Mr. Prashant Manchanda, the petitioner herein, for drawing up Guidelines for prevention of the defacement of property during elections to the Delhi University Students' Union and College Students Unions. Guidelines were suggested and extensively deliberated upon.

10. By our order dated 20th February, 2018, we had drawn upon the knowledge and expertise of Mr. Reetesh Singh, Joint Registrar (Rules) to facilitate drawing-up of the Guidelines, and formatting them.

The Guidelines have since been finalized at a consensus and placed the same before us.

11. We find that as Guideline V, the following has been suggested:

**"V. ROLE OF RETURNING OFFICER/
ELECTION OFFICER AND CHIEF ELECTION
OFFICER**

(1) The Returning Officer/ Election Officer shall, on the basis of material supplied by the College/University Committee under Guidelines (C) (iv) make appropriate recommendations to the Chief Election Officer, who after examining the same, shall be empowered to:-

- *Cancel the nomination of those candidates who in the process of electioneering have publicized their photographs and/ or names through posters/ banners/ cut outs/ writing/ spray painting before the announcement of the election schedule and/ or distribution of ballot numbers for various posts.*
- *Cancel the entire election or disqualify any particular candidate."*

12. Mr. Aman Panwar, learned Counsel appearing on behalf of some of the other candidates has submitted that there is every possibility of this Guideline being misused by rivals and opponents of the candidates. It is further submitted that misuse is very easy to undertake and almost impossible to detect as such, if this Guideline was operationalised, the candidature of students who have not compromised the provisions of law in any manner may be cancelled for no fault of theirs. We find substance in this apprehension and are inclined to agree with the submissions made by Mr. Aman Panwar. It is, therefore, directed the Guideline suggested at serial no. V shall not to be incorporated in the Guidelines.

13. We have given our considered thought to the other Guidelines suggested and hereby approve the same.

14. For expediency, we extract the approved Guidelines hereunder:

**"GUIDELINES FOR PREVENTION OF
DEFAACEMENT OF PROPERTY DURING
ELECTIONS TO THE DELHI UNIVERSITY
STUDENTS UNION AND COLLEGE STUDENTS
UNION OF THE UNIVERSITY OF DELHI**

(I) OBJECTS AND REASONS

(1) *The University of Delhi consists of about ninety affiliated, constituent and recognized colleges. Each college has its Students Union and at the University level exists the Delhi University Students Union (DUSU). Elections to these student union bodies take place together annually.*

(2) *Experience has shown that each such election process leads to large scale defacement of property, whether by pasting of pamphlets / banners or by painting of properties with slogans etc.*

(3) *Defacement of property is a criminal offence. The Delhi Prevention of Defacement of Property Act, 2007 not only defines the act of defacement but also prescribes the punishment for the same. Section 2 of the Act lists the definitions which are as under:-*

"2. Definitions

In this Act, unless the context otherwise requires, -

(a) *"defacement" includes impairing or interfering with the appearance or beauty, damaging, disfiguring, spoiling or injuring in any other way whatsoever and the word "deface" shall be construed accordingly;*

(b) *"Lieutenant Governor" means the Lieutenant Governor of the National Capital Territory of Delhi appointed by the President under Article 239 and designated as such under Article 239AA of the Constitution;*

(c) *"property" includes any building, hut, structure, wall, tree, fence, post, pole or any other erection;*

(d) "writing" includes printing, painting, decoration, lettering, ornamentation etc., produced by stencil."

(4) It is significant to note that the definitions contained in Section 2 of the Act pertaining to 'defacement', 'property' and 'writing' are inclusive and not exhaustive. Section 2 (c) does not provide for any delineation between public and private property qua the offence of defacement as reference is made to 'any building, hut, structure, wall, tree, fence, post, pole or any other erection'.

(5) Thus, instances of pasting of pamphlets, banners etc. on property as well as painting of slogans would constitute acts of defacement and consequentially attract the penalty for the said offence.

(6) The punishment for the offence of defacement of property is contained in Section 3 of the said Act which is as under:-

"3. Penalty for defacement of property

(1) Whoever defaces any property in public view by writing or marking with ink, chalk, paint or any other material except for the purpose of indicating the name and address of the owner or occupier of such property, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.

(2) When any offence is committed under sub-section (1) is for the benefit of some other person or a company or other body corporate or an association of persons (whether incorporated or not) then, such other person and every president, chairman, director, partner, manager, secretary, agent or any other officer or persons connected with the management thereof, as the case maybe, shall, unless he proves the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

(3) The aforesaid penalties will be without prejudice to the provisions of Section 425 and Section 434 of the Indian Penal Code, 1860 (45 of 1860) and the provisions of relevant Municipal Acts.”

(7) The provisions of Section 3 (2) of the Act are significant when considered vis-à-vis the objects and reasons for framing of these Guidelines. The said provision attaches strict liability upon the person for whose benefit the offence of defacement stands committed. In other words, where defacement may have been committed by pasting of banners / slogans seeking support for a particular candidate, then even though the candidate himself or herself may not have actually committed any specific act, he / she shall be deemed to be guilty of the offence so committed, unless the candidate proves that the offence was committed without his knowledge or consent.

(8) The offence of defacement attracts a penalty of imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.

(9) Apart from the Delhi Prevention of Defacement of Property Act, 2007, there are special statutes which deal with the offence of defacement in relation to properties covered under the special statute. One of them is the “**Delhi Metro Railway (Operation and Maintenance) Act, 2002**”. In this regard Section 78 of the Act is significant which provides as under:-

“78. Damage to or destruction of certain metro railway properties.—(1) Whoever, with intent to cause or knowing that he is likely to cause damage to or destruction of any of the properties of the metro railway referred to in sub-section (2), causes by fire, explosive substance or otherwise causes damage to such property, he shall be punishable with imprisonment for a term

which may extend to ten years.

(2) The properties of the metro railway referred to in sub-section (1) are the metro railway track, tunnels, sub-way, box-structures, station buildings and installations, carriage and wagons, rolling stock, signalling, telecommunication, air-conditioning and ventilation equipments, electrical sub-station, drainage pump, escalators, lifts, lighting installations, ticket vending machine, ticket barriers, electric traction and block equipments, and such other properties as the Central Government may, by notification, specify."

(10) The punishment for the offence under Section 78 of The Delhi Metro Railway (Operation and Maintenance) Act, 2002 is prescribed to be imprisonment for a term which may extend to ten years.

(11) There have been instances where during the course of DUSU elections permanent damage has been caused to the properties of Delhi Metro whereby spray paint has been used to paint / write slogans for the purposes of electioneering.

(12) In the heat and dust of electioneering at the college level, rarely do students have any idea that the banners and posters which they paste on walls and slogans which they paint / spray paint on properties could visit them with such penal consequences.

(13) These Guidelines thus aim to:

(a) sensitize and generate awareness amongst the students of Delhi University that defacement of property is a penal offence and to apprise them of the punishment thereof; and

(b) suggest creation of a permanent regulatory mechanism to ensure that no defacement of property takes place during elections to student bodies in the University of Delhi.

(II) PERMANENT COMMITTEES

(1) Every College shall have a permanent committee known as – College Committee for Prevention of Defacement of Property (College Committee) – comprising of the following:-

- (a) Senior Faculty Member nominated by the Principal of the College*
- (b) Nominee of the SHO of the Local Police Station*

(2) There shall be a permanent committee at the University level known as – University Committee for Prevention of Defacement of Property (University Committee) – comprising of the following:-

- (a) Senior Faculty Member nominated by the Vice Chancellor*
- (b) Police Officer not below rank of Assistant Commissioner of Police nominated by the Commissioner of Police, Delhi*
- (c) Nominee of Delhi Metro Rail Corporation*
- (d) Nominee of Commissioner of North Delhi Municipal Corporation*
- (e) Nominee of Commissioner of South Delhi Municipal Corporation*

(3) The University of Delhi and all Colleges shall constitute these Committees on the first day of the new academic session of the year. The names and contact numbers of the members of the Committee shall be prominently displayed on the notice board of the University / College. A separate section in this regard be provided for on the website of the University / College. Any changes in the constitution of these committees be notified on the notice board of the University / College and website, as and when effected.

(4) The functions to be performed by these committees are mentioned hereinafter.

(III) SENSITIZATION WORKSHOPS

(1) Before the commencement of campaigning for elections to student union bodies, every College Committee shall hold a workshop with the students of its college including the candidates and their supporters to sensitize them about the provisions of the Delhi Prevention of Defacement of Property Act, 2007 and the Delhi Metro Railway (Operation and Maintenance) Act, 2002.

(2) College Committees should encourage candidates and students to use e-communication platforms such as e-mail, application based messaging etc. for the purposes of campaigning during the course of elections and to move away from using paper.

(3) Even after the conduct of elections to student bodies, the College Committee may consider conducting workshops from time to time to spread awareness amongst its students of the provisions of the above statutes.

(4) The University Committee shall oversee and ensure compliance the provisions of clauses (1), (2) and (3) above.

NOMINATION FORMS AND FURNISHING OF WRITTEN UNDERTAKING

(1) The University of Delhi / College shall ensure that the nomination form for elections to any office of any students union contains a clause describing the offence of defacement and a stipulation to the effect that candidates found indulging in defacement of property would be visited with the consequence of disqualification from the elections process apart from penal consequences under the applicable statutes.

(2) Candidature of students for contesting elections to student bodies of any college be accepted only upon the student furnishing a written undertaking on affidavit to

the Returning Officer / Election Officer for the elections that they and their supporters shall not indulge in defacement of property during or after the course of the elections. The undertaking should mention that where any candidate has been found to be involved in defacement of property, he / she shall stand disqualified from contesting the elections.

(3) Similarly, at the University level undertaking on affidavit be required to be furnished to the Returning Officer / Election Officer for the elections by any student desiring to contest elections to the DUSU.

(4) The College Committee and the University Committee shall keep a strict vigil to identify and maintain a record of any kind of defacement of property committed during the course of the elections and bring the same to the notice of the Returning Officer / Election Officer for the elections. They shall also identify and maintain a record of those students, who even before the formal announcement of the election schedule by the University / College, start circulating pamphlets / banners / cut outs to publicize their names as prospective candidates.

(5) In addition to their role in Guideline (4) above, the Police representative on the College / University Committee shall act independently on such instances of defacement which come to his notice as per law.

(V) WALLS OF DEMOCRACY

Every College of the University of Delhi should arrange for and make available two "Walls of Democracy" within its premises to be used by candidates and their supporters for putting up handmade banners / slogans during the elections. One wall be dedicated for candidates for elections to DUSU and the other for the students union of the particular College.

(VI) ANCILLARY MEASURES

(1) The SHO of any Police Station within whose jurisdiction any college of Delhi University falls shall periodically conduct surveys and identify all persons / organizations involved in the business of printing of any kind of stationary including pamphlets, boards, cut outs, banners and manufacture, stocking and sale of any kind of spray paints.

(2) The survey list of all such persons / organizations shall be made available by the SHO of the police station to the University Committee.

(3) The University Committee shall sensitize these identified persons / organizations about the perennial problem of defacement of property during elections to various student bodies. The provisions of the Delhi Prevention of Defacement of Property Act, 2007 and the Delhi Metro Railway (Operation and Maintenance) Act, 2002 shall be brought to their notice.

(4) The University Committee shall obtain an undertaking from such identified persons / organizations to the effect that they shall not print any material having any kind of association with elections to student union bodies of colleges of Delhi University.

(5) Recommendations be made by the University of Delhi to the appropriate government to include clauses in licenses issued to printers and manufacturers, stockists and retailers of spray paints to prevent them from printing any college / University election related material including pamphlets, cut outs, banners etc. or supplying spray paint to any person for use during college / university elections."

15. All authorities shall ensure that immediate steps in compliance with these Guidelines are taken.

16. So far as implementation of the Guidelines is concerned, we may usefully refer to the judgment of the *Bombay High Court Report 2010 (4) BomCR 519 Sunil Pandharinath Jadhav vs. The State of Maharashtra* wherein the court held as follows:

"11. In this Petition, the grievance is about the rampant display of illegal posters / banners throughout the city and more particularly in and around the area of Kranti Chowk and in the vicinity of head office of the Corporation itself. The reports submitted on behalf of the Corporation from time to time virtually concede that illegal hoardings / posters / banners are being displayed in large numbers throughout the city. From the provisions referred to above, there can be no doubt that displaying any hoarding / banner / poster without taking prior permission of the Competent Authority under the provisions of the Act of 1949 or for that matter under the provisions of the Act of 1951 or any other Rules or Order in force, will have to be treated as unauthorized and liable to be removed forthwith. The display of such unauthorized hoardings / banners / posters not only result in defacement of public property and any place open to public view, but is an eyesore to the viewers thereby causing public nuisance. In a given case, it may also result in obstructing the free flow of traffic on the public roads. The same would not only be unlawful but unjust and unreasonable, irrespective of whether it has the effect of advertisement or otherwise. Suffice it to observe that the Authorities have a bounden duty to prevent and regulate display of illegal hoardings/banners/posters in the interests of amenity and public safety. The principles laid down by the Bombay High Court shall stand consequently applied to the defacement of properties in Delhi as well.

XXX

XXX

XXX

14. During the hearing, it was argued on behalf of the Corporation that experience shows that most of the banners / posters / hoardings on public roads, which are illegally displayed do not reveal the name of the person, who has displayed the same. The fact that such hoarding has been displayed without prior permission, is good enough to treat the same as unauthorized and liable for appropriate action against the concerned person. In case, the name of the person, who has extended good wishes or intends to felicitate his political mentor has disclosed his name, himself, would be primarily liable for display of such illegal hoarding/banner/poster. In addition, the person, whose picture has been prominently displayed, either to felicitate him on his success, welcoming his arrival in the city or for his success or birth-day, that person may also be liable to be proceeded by the Competent Authority.

That is so because, such posters are published and circulated by the workers at the behest of such political leaders to eulogise them. There ought to be presumption of abetment in allowing ones photograph to be advertised on the eve of birth-day or for some success or arrival in the city. The fact that the photograph was not published by him or at his behest is a matter, which plea may be available to that person as a defence. By this process, not only the person, who has actually issued the publication or advertisement, himself would be responsible, but even the person for whose benefit and whose publicity, the publication has been done would also be liable. In that case, every political leader would ensure that all their supporters and workers are unambiguously advised and instructed to forbear and refrain from indulging in display of such illegal hoarding / poster / banner, which causes immense public nuisance and also raises environmental issues. Unless this view is

taken, the damage caused on account of reckless display of large number of posters / banners / hoardings throughout the city will continue unabated."

17. We have noticed earlier the disparate punishments provided under different legislations.

18. A direction is issued to the Union of India through the **Secretary, Ministry of Information and Broadcasting and Secretary, Ministry of Urban Development** to look into the matter and take a view about the disparate punishments provided under the legislations.

19. Directions are also issued to the Government of NCT of Delhi through the **Principal Secretary, Department of Ministry of Law and Justice, the Principal Secretary of Department of Urban Development and Principal Secretary, Department of Publicity** in regard to the disparate punishments and to take a considered view in the matter.

20. We also direct **DMRC and Government of NCT of Delhi** to continue with their programme of publicizing the applicable legal provisions regarding defacement of property provided with regard thereto.

21. All public, civic authorities shall take stringent measures to publicise the legal provisions and to address any defacement which takes place within Delhi.

22. Effective steps shall be taken for **prosecution** of the culpable persons.

23. The **Delhi Police** shall promptly deal with all matters relating to defacement of property as and when complained of, expeditiously and with the seriousness which they deserve.

24. The **Delhi University** shall send copies of this order to all colleges with a direction that the Guidelines be implemented and this order be complied with. The Guidelines and this order shall be brought to the notice of all student unions and college administrations. The Delhi University shall ensure that the penal provisions pertaining to defacement are prominently displayed in all university and the college campuses.

25. The **Delhi University** shall further ensure that the permanent Committees at the University and College levels as postulated under Guideline II are constituted before the 7th July, 2018 and notified at prominent places and uploaded on the concerned websites.

26. A direction is issued to the **Secretary, Department of Education** to also draw up a program for educating school children regarding the offence of defacement of property.

~~27.~~ All authorities shall ensure that the approved Guidelines are duly publicized, prominently notified and uploaded on the concerned websites to enable the public at large and students in particular to be put to notice about the same.

28. Status reports shall be filed by all authorities before the next

date of hearing with advance copies to the petitioner.

29. We appreciate the effort of Mr.Prashant Manchanda and all the counsels for the respondents in bringing the matter to the notice of this court and also for enabling formulation of the Guidelines.

30. List on 16th July, 2018.

Order be given *dasti* under signatures of Court Master.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

MAY 29, 2018
rk