

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, 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.

(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.

(IV) 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 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.