

NAC's Prevention of
Communal & Targetted Violence Bill

**COMMUNAL
FACE
OF
CONGRESS
EXPOSED**

Foreword

The proposed draft of the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill is the brain-child of the extra-constitutional authority of the National Advisory Council headed by the Congress supremo Smt. Sonia Gandhi. It is, to quote the words of Congress spokesperson, the real “tyranny of the unelected, unelectable” (with the exception of NAC chairperson). Not only does the draft bill venture to destroy the secular character of the Constitution; it turns the country into a theocratic State where nobody could open his mouth about the activities of a “group” belonging to a minority community. It also divides the country into majority community and various minority communities. It exposes the real face of Congress — rank communal.

The Bill makes it a crime if a person raises suspicion about the involvement of Muslim mercenaries, including the dreaded Dawood Ibrahim and his Muslim cohorts, as responsible for 1993 communal riots and 26/11 and 13/7 Mumbai communal riots. The person will then be immediately arrested, put behind bars, deprived of his right to seek bail and dubbed guilty of the crime under the Bill unless he/she proves himself/herself innocent. He/she will be sentenced to a rigorous imprisonment for ten years.

A person would also attract a similar maximum punishment if

he were to castigate persons like Smt. Sonia Gandhi, Rahul Gandhi, Smt. Priyanka Gandhi, Robert Vadhra, Smt. Ambika Soni, Jagan Reddy etc. who all belong to a particular “group” defined under the Bill. On the contrary, it makes the likes of Digvijay Singh, Rahul Gandhi, P. Chidambaram heroes when they raise the bogey of the non-existent “Hindu terror” or make irresponsible and baseless allegations of involvement of Hindu organizations in 13/7 serial bomb blasts in Mumbai.

We are publishing this booklet to highlight the inherent dangers to India’s democracy, secularism and freedom of speech and expression if this obnoxious Bill were to see the light of the day. In some cases, we have edited and included only the highlights of the articles published in various newspapers and magazines to keep the size of the booklet handy.

This booklet was first published in July 2011. It was so well received among the readers that we fell short of stock in no time and the demand was still growing. We, therefore, decided to publish an enlarged reprint with added material.

We are sure this booklet will make the reader understand the issues involved in the Bill in the right perspective.

Publisher,
Mookerjee Smruti Nyas,
New Delhi

September 2011



Communalism is the core of Congress culture

The country is undergoing numerous travails under the present Congress-led UPA-II. Sky-rocketing prices and uncontrolled rise in inflation has made the life of the common man miserable. According to one report, about 40 percent of India's population subsists on a daily spending of just ₹ 25. Can a person get two meals a day with this paltry sum? But government remains unmoved by the plight of the aam aadmi it swears by every day.

Unemployment is another cause of agony among our youth.

Terrorism and corruption are the other two burning problems giving sleepless nights to the common man. Corruption is eating into the very vitals of our country. Terrorism has made the innocent people — men, women and children — an easy prey.

The terrorists strike at will anywhere, any time, unabated. At a time when people are crying hoarse demanding stringent laws to combat corruption and terrorism, to divert the attention of the people from the burning issues agitating people's mind the UPA is coming out with the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill. This step is like asking a hungry man begging for a morsel of food to go in for a sunbath at a beach. At the moment there is peace and communal harmony, even in the face of repeated terrorist attacks, the step is likely to enflame communal passions and divide the nation on communal lines.

The Bill is also likely to provide fodder to the rumour mills that minorities are not safe in India and that is why the government had to come out with such a Bill.

INSINCERE

The fact of the matter is that Congress priorities have always been wrong, misplaced. It is sincere to no cause dear to the people. It is committed only to itself, to its own political and electoral interests, zealously pursuing the sole objective of imposing a dynastic hierarchy in its organization and the government. Prevention of Terrorism Act (POTA) had teeth sharp enough to cut deep into the vitals of terrorism. It was because of POTA that NDA was able to crack a number of terror crimes and get the criminals, including the Parliament attack accused Afzal Guru convicted and sentenced. But immediately on coming into power in 2004 the first thing the UPA did was to repeal POTA on the specious plea that it was working against a single community and the existing laws were potent enough to punish the perpetrators of this crime against mankind.

This Congress generosity towards militants emboldened the anti-social and anti-national elements and since then a number of bomb blast incidents one after the other continue to shake the country killing hundreds of innocent men, women and children, maiming another few hundreds and destroying public and private property worth hundreds of crores. The flash point came when the terrorists once again struck in Mumbai on 26/11 in a daring attack from across the sea. In the aftermath of the countrywide furore over the dastardly attack on India's integrity and innocent killings, the Congress had to give in and enact the Unlawful Activities Prevention Act which fell short of the requirements of a law to deal with the situation that is emerging every now and then in the country. BJP had extended open support for stringent possible law that can do away for ever the menace of such incidents recurring again and again.

After 9/11 in USA, 7/7 in UK and other European countries their governments rose to the occasion and enacted strong laws that thwarted all attempts of repeat of similar incidents. These countries are no less democratic than is India. Yet, when it came to

preserving the national interest and protecting the life and property of its citizens, nothing stood in between the realization of this goal.

SOFT STATE

India definitely is the world's largest democracy, but it is emerging as the weakest government to face the trauma of terrorism. The only reason is that in other countries and for the people of India and many political parties, terrorist is just a terrorist, a criminal who has no caste, creed or region. He has to be handed out the severest possible punishment. But that is not so in the mind of the Congress and some other so-called 'secularists'. For them the faith of the person accused of terrorism is more important than the crime he committed. That is why India has come to be recognized as a soft State as far as the fight against terrorism is concerned.

The latest three serial bomb blasts in Mumbai on July 13, 2011 killing 25 persons and injuring more than 130 innocent people are a living testimony to the lack of will, zeal, capability and capacity UPA has to face the threat and protect the life and property of its innocent citizens. Even after a fortnight, the government is still groping in the dark in search of the culprits. During the last over seven years it has been in power, Congress-led UPA has failed to take any case relating to terror crimes to its logical conclusion. Not a single person has been punished for terror crimes during this period.

CORRUPTION

Congress-led UPA-II government of Dr. Manmohan Singh will go down in the history of independent India as the most corrupt government the country had. It is suffering from the "scam a day" syndrome. But Congress failed to be startled into action by the gravity of the situation which has brought the country down in the eyes of the world.

At a time when there is a great demand for bringing in more stringent law to deal with corruption and enactment of a strong Lokpal bill, the Congress and Prime Minister Dr. Manmohan Singh look the other side. Our PM does not believe Lokpal "is a panacea". He and his cabinet colleagues think that bringing PM under Lokpal

"would create an element of instability, which at times, can go out of hand. His HRD Minister Kapil Sibal sees in it a threat to democracy, as if corruption is the very lifeline of the democracy that is being practiced and nurtured by Congress.

If chief ministers could be brought under the Lokayukta without creating "an element of instability, which at times, can go out of hand", how will bringing PM under Lokpal be so disastrous?

Dr. Singh feels there is no need for special law to combat corruption in high offices and bringing PM under Lokpal. He argues that a PM being "a 24-hour public servant...equally covered by the anti-corruption act and....One can dismiss the Prime Minister of India most easily...All that is necessary is for Parliament to pass a vote of no-confidence". If that had been so deterrent a provision and punishment, how was it that under the UPA-II there could take place a record number of scams?

This only points to the fact that PM's opposition to Lokpal is motivated by extraneous considerations other than giving a real fight to corruption.

COMMUNAL VIOLENCE

At a time when communal riots and violence is no topic of the day, UPA is, for political and electoral considerations, bringing to the fore the Communal Violence Bill. Since 1984 the country has lost many times more innocent lives in acts of terrorism than in communal violence. Yet for Congress the priority is communal violence bill and not terrorism.

Barring perhaps the 1984 anti-Sikh riots, the 2002 Gujarat riots and Kandhmal in Odisha, there has hardly been serious cases of communal violence except for small incidents here and there. Congress creates a great hue and cry about other cases of communal riots, but tries to gloat over the 1984 anti-Sikh riots. In dozens of cases in Gujarat the accused persons have been tried and courts given out their verdict and sentenced the guilty. In Gujarat many politicians and high officials are behind bars for their involvement or dereliction of duty. In Kandhmal riots too many

persons including MLAs have been convicted. But the same cannot be said about 1984 anti-Sikh riots. Despite about half a dozen commissions/committees of inquiry which pointed fingers at the then Congress leaders and police officials, hardly any person has been convicted. .

In anti-Sikh riots, more than 4,000 Sikhs — about 3,000 in Delhi alone — were mercilessly butchered while in Gujarat the casualties are about half that number.

Justifying the new Bill, HRD Minister Kapil Sibal says, “Our Government is determined to take it (the Bill) forward because we don’t want any statement not to be accountable to the kind of things that have happened in the past”. Alluding perhaps to Gujarat riots, he said, “There are instances... where nine years have lapsed to decide which should take up the matter”. But he forgets that even after 26 years the UPA has failed to deliver justice to Sikhs and their bereaved families. The new bill too will fail to usher in justice to them.

The Communal Violence Bill ignores the human sensibilities and sentiments. There are numerous instances when persons belonging to both the majority and minority communities have saved persons belonging to the other communities from the rioters. The new bill will fail to protect such brave hearts and they still will continue to be the criminals belonging to a “group” of a community.

KID GLOVES

That Congress is motivated by electoral considerations in dealing with cases related to terror and communal violence is proved by the fact that while it wishes to treat the terrorists with kid gloves, it wishes to treat the communal rioters with steel fist. It doesn’t want a harsh anti-terror bill claiming that India is a democracy that respects human rights, but the proposed Communal Violence is both against democracy and human rights because of its draconian and autocratic provisions which violate the provisions of the Constitution. UPA has shot down anti-terror laws enacted by the BJP governments of Gujarat and of the then Rajasthan government

being very harsh, despite the fact that these bills, were much milder in comparison to the provisions of the NAC’s Bill.

What an irony — and hypocrisy! — that the UPA which repealed the POTA on the plea that it was virtually working against the minority community has now come up with the Communal Violence Bill which is directed against the majority community alone.

Kapil Sibal has described the civil society’s Jan Lokpal Bill as a “Frankenstein Monster without accountability and acts as an oppressive institution outside the state”. But the Communal Violence Bill is much more a “Frankenstein Monster without accountability” which will “act as an oppressive institution”.

A law must stand the test of being fair, impartial, equitable and treat every person at par. But it is not the case with the proposed Bill. It starts with the prejudiced notion that all communal riots are engineered by the majority class only. This is not true if one tries to read various reports that enquired into cases of communal violence. Many a times the first spark was ignited by one minority, though in retaliation it may have turned out to be a big fire.

The Bill also fails to provide justice to the Kashmiri Pandits who are victims of the worst form of communal violence. Unless the provisions of the Bill are extended to the State of Jammu & Kashmir, it will appear to be a law discriminatory to the majority community which, in J&K, is in minority. The Kashmiri Pandits will continue to suffer the travails of communal ill will.

It is time the Congress instead of trying to make political and electoral capital out of this obnoxious Bill tries to sow seeds of understanding and harmony between different communities. The Bill, in the present form, only ventures to divide the nation on communal lines. That is the most unfortunate part of the whole exercise in the Bill.

—Prabhat Jha, MP
Editor, *Kamal Sandesh*



A Bill that damns the majority

— Arun Jaitley

The draft Prevention of Communal Violence Bill appears to be the handiwork of those social entrepreneurs who have learnt from the Gujarat experience of how to fix senior leaders even when they are not liable for an offence

A draft of a proposed legislation titled "Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011" has been put in public domain. The draft Bill ostensibly appears to be a part of an endeavour to prevent and punish communal violence in the country. Though that may be the ostensible object of the proposed law its real object is to the contrary. It is a Bill which if it is ever enacted as a law will intrude into the domain of the State, damage the federal polity of India, and create an imbalance in the inter-community relationship of this country.

What does the Bill in effect state?

The most vital definition of the Bill is of the expression 'group'. A 'group' means a religious or linguistic minority and in a given State may include the Scheduled Castes and Scheduled Tribes. The Bill creates a whole set of new offences in Chapter II. Clause 6 clarifies that the offences under this Bill are in addition to the offences under the SC & ST (Prevention of Atrocities) Act, 1989. Can a person be punished twice for the same offence? Clause 7 prescribes that a person is said to commit sexual assault if he or she commits any of the sexual act against a person belonging to a 'group' by virtue of that person's membership of a group. Clause 8 prescribes

that 'hate propaganda' is an offence when a person by words oral or written or a visible representation causes hate against a 'group' or a person belonging to a 'group'. Clause 9 creates an offence for communal and targeted violence. Any person who singly or jointly or acting under the influence of an association engages in unlawful activity directed against a 'group' is guilty of organised communal and targeted violence. Clause 10 provides for punishment of a person who expends or supplies money in the furtherance or support of an offence against a 'group'. The offence of torture is made out under clause 12 where a public servant inflicts pain or a suffering, mental or physical, on a person belonging to a 'group'. Clause 13 punishes a public servant for dereliction of duty in relation to offences mentioned in this Bill. Clause 14 punishes public servants who control the armed forces or security forces and fails to exercise control over people in his command in order to discharge their duty effectively. Clause 15 expands the principle of vicarious liability. An offence is deemed to be committed by a senior person or office-bearer of an association and he fails to exercise control over subordinates under his control or supervision. He is vicariously liable for an offence which is committed by some other person. Clause 16 renders orders of superiors as no defence for an alleged offence committed under this section.

Any communal trouble during which offences are committed is a law and order problem. Dealing with the law and order is squarely within the domain of the State Governments. In the division of powers between the Centre and the States, the Union Government has no direct authority to deal with the law and order issues; nor is it directly empowered to deal with them nor it can legislate on the subject. The Union Government's jurisdiction restricts itself to issue advisories, directions and eventually forming an opinion under Article 356 that the governance of the State can be carried on in accordance with the Constitution or not. If the proposed Bill becomes a law, then effectively it is the Union Government which would have usurped the jurisdiction of the States and legislated on a subject squarely within the domain of the States.

India has been gradually moving towards a more amicable inter-community relationship. Even when minor communal or caste disturbances occur, there is a national mood of revulsion against them. The Governments, media, the courts among other institutions rise to perform their duty. The perpetrators of communal trouble should certainly be punished. This draft Bill however proceeds on a presumption that communal trouble is created only by members of the majority community and never by members of the minority community. Thus, offences committed by members of the majority community against members of the minority community are punishable. Identical offences committed by minority groups against the majority are not deemed to be offences at all. Thus a sexual assault is punishable under this Bill only if committed against a person belonging to a minority 'group'. A member of a majority community in a State does not fall within the purview of a 'group'. 'Hate propaganda' is an offence against the minority community and not otherwise. Organised and targeted violence, hate propaganda, financial help to such persons who commit an offence, torture or dereliction of duty by public servants are all offences only if committed against a member of the minority community and not otherwise. No member of the majority community can ever be a victim. This draft law thus proceeds on an assumption which re-defines the offences in a highly discriminatory manner. No member of the minority community is to be punished under this Act for having committed the offence against the majority community. It is only a member of the majority community who is prone to commit such offences and therefore the legislative intent of this law is that since only majority community members commit these offences, culpability and punishment should only be confined to them. If implemented in a manner as provided by this Bill, it opens up a huge scope for abuse. It can incentivise members of some communities to commit such offences encouraged by the fact that they would never be charged under the Act. Terrorist groups may no longer indulge in terrorist violence. They will be incentivised to create communal riots due to a statutory assumption that members of a jihadi group

will not be punished under this law. The law makes only members of the majority community culpable. Why should the law discriminate on the basis of religion or caste? An offence is an offence irrespective of origin of the offender. Here is a proposed law being legislated in the 21st century where caste and religion of an offender wipe out his culpability.

Who will ensure implementation of this Act?

The Bill provides for a seven-member national authority for communal harmony, justice and reparations. Of these seven members at least four of them, including the Chairman and Vice-Chairman, shall only belong to a 'group', that is, the minority community. A similar body is intended to be created in the States. Membership of this body thus shall be on religious and caste grounds. The offenders under this law are only the members of the majority community. The enforcement of the Act will be done by a body where statutorily the members of the majority community will be in a minority. The Governments will have to make available police and other investigative agencies to this authority. This authority shall have the power to conduct investigations and enter buildings, conduct raids and searches to make inquiries into complaints and to initiate steps, record proceedings for prosecution and make its recommendations to the Governments. It shall have powers to deal with the armed forces. It has a power to send advisories to the Union and State Governments. Members of this authority shall be appointed in the case of Union Government by a collegium which shall comprise the Prime Minister, the Home Minister and the Leader of Opposition in the House of People and a leader of each recognised political party. A similar provision is created in relation to the States. Thus, it is the Opposition at the Centre and the States which will have a majority say in the composition of the Authority.

What are the procedures to be followed ?

The procedures to be followed for investigations under this Act are extraordinary. No statement shall be recorded under section 161 of the CrPC. Victim statements shall be only under Section

164, that is, before courts. The Government will have a power to intercept and block messages and telecommunications under this law. Under clause 74 of the Bill if an offence of hate propaganda is alleged against a person, a presumption of guilt shall exist unless the offender proves to the contrary. An allegation thus is equivalent to proof. Public servants under this Bill under clause 67 are liable to be proceeded against without any sanction from the State. The Special Public prosecutor to conduct proceedings under this Act shall not act in aid of truth but 'in the interest of the victim'. The name and identity of the victim complainant will not be disclosed. Progress of the case will be reported by the police to the victim complainant. The occurrence of organised communal and targeted violence under this Act shall amount to an internal disturbance in a State within the meaning of Article 355 entitling the Union Government to impose President's rule.

The drafting of this Bill appears to be the handiwork of those social entrepreneurs who have learnt from the Gujarat experience of how to fix senior leaders even when they are not liable for an offence.

Offences which are defined under the Bill have been deliberately left vague. Communal and targeted violence means violence which destroys the 'secular fabric of the nation'. There can be legitimate political differences as to what constitutes secularism. The phrase secularism can be construed differently by different persons. Which definition is the judge supposed to follow? Similarly, the creation of a hostile 'environment' may leave enough scope for a subjective decision as to what constitutes 'a hostile environment'.

The inevitable consequences of such a law would be that in the event of any communal trouble the majority community would be assumed to be guilty. There would be a presumption of guilt unless otherwise proved. Only members of the majority community shall be held culpable under this law. Members of the minority community shall never commit an offence of hate propaganda or communal violence. There is a virtual statutory declaration of innocence under

this law for them. The statutory authority prescribed at the Central and State level would intrinsically suffer from an institutional bias because of its membership structure based on caste and community.

I have no doubt that once this law is implemented with the intention with which it is being drafted, it will create disharmony in the inter-community relations in India. It is a law fraught with dangerous consequences. It is bound to be misused. Perhaps, that appears to be the real purpose behind its drafting. It will encourage minority communalism. The law defies the basic principles of equality and fairness. Social entrepreneurs in the National Advisory Council can be expected to draft such a dangerous and discriminatory law. One wonders how the political head of that body cleared this draft. When some persons carried on a campaign against POTA - an anti-terrorist law - the members of the UPA argued that even terrorists should be tried under normal laws. A far more draconian law is now being proposed.

The States will be watching hopelessly when the Centre goes ahead with this misadventure. Their power is being usurped. The search for communal harmony is through fairness - not through reverse discrimination.

(The writer is the Leader of Opposition in the Rajya Sabha)



A fraudulent draft Communal Violence Bill

— Shivaji Sarkar

IT is a critically flawed move to usurp the powers of the state governments, devastate the federal structure of the country and create schism among different communities. The aim apparently is to create a unitary structure where the Central Government could function like a bully and interfere in the jurisdiction of the states, barred by the Constitution.

The draft bill called Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill is flawed also for the reason, its basic premise is against the secular spirit of the Constitution stated in the preamble.

No wonder. The bill is a creation of an extra-constitutional body - National Advisory Council (NAC) that is expected to function like a super-cabinet, surpassing the elected wisdom of the Prime Minister and the Council of Ministers. Technically NAC is created by the Prime Minister as a body to advise the government. The members are handpicked technically by the Prime Minister but in reality by the NAC chairperson.

Thus the NAC is not a representative body. It also leads to the question whether an elected government or its Prime Minister should have powers to create structures that are not enshrined in the Constitution.

The Prime Minister should have powers to function

independently. But should he himself subjugate to the authority of his own creation? Who authorises him to do it? Why should he create a structure that is virtually neither responsible to him nor answerable to Parliament?

It is no wonder the NAC functions with populist views or indulges in vote bank politics to further the political objectives of some political party.

The NAC drafted the Food Security Bill not with the objective of providing food to the needy. Its primary objective was to create a political climate that would help the ruling party garner votes of the deprived classes. It has created enough rift between the officials of the Prime Minister's Office (PMO), who found the "advice" beyond the capacity of the government to implement it. Any responsible body would have first evaluated the government's physical and financial strength before jumping in to draft a bill.

The food security bill thus remains in the domain of discussion and may possibly not be given the final shape. Keeping it alive and finally blaming the bureaucrats would pay more dividends at the time of next elections than enacting a law that people are bound to forget even a year later. The NAC would serve the purpose of functioning like a permanent campaigning mechanism for the ruling party.

The proposed bill to prevent communal violence is yet another case of over-reach. It intends to arm the Centre with runaway powers to intervene in state affairs, creation of overlapping authorities and selective definition of victims. The bill, runs the risk of being struck down by the courts for falling afoul of federal principles set out in the Constitution's seventh schedule that distributes legislative powers between the Centre and the states.

The bill defines that the victim in a communal violence would invariably be from a "group". The definition of sufferers of communal violence as a "group" comprising only religious, linguistic or religious minorities or scheduled castes and tribes appears highly discriminatory as it can mean that even if a large number of majority

community members bear the brunt of communal violence, they will not be victims of "targeted violence".

If the bill is to meet the objectives of speedy justice and prevention of communal crimes, its framers need to recognise India's political system is not unitary and states and political parties are bound to challenge the definition of a "group" and other provisions. Even if the bill gets through Parliament, it cannot escape constitutional and judicial scrutiny.

The Constitution does not allow interference on the issue of law and order of any state. Its role is limited to tender advice under Article 356. If the draft bill is enacted as law, it would provide sweeping powers to the Centre to intervene in the affairs of any state. This would be the technical provision but in reality states not ruled by the party at the Centre are to be targeted.

Is the bill targeting states like Gujarat? Is it finding in the rise of Narendra Modi, an efficient administrator with clean credentials, a threat to the pseudo-secularists? It is apparently so. Since Modi is emerging as a youth icon and no electoral politics can demolish him, a "secularist" bill with devastating intentions are sought to be drafted. The bill possibly for that reason does not include the majority community in the definition of a "group".

Once the bill becomes law not only Modi but any leader of the majority community could be accused of "promoting ill will" against a minority community and he could be put behind bars. The provisions of the bill would provide enough ammunition to tar the image of a forceful leaders belonging to the majority community from any political party.

In fact, the Congress MP from Delhi, Sandeep Dikshit, son of Chief Minister Shiela Dikshit, could be arrested for his recent remarks that the St Stephen's College promotes communal divide.

The draft bill is structured on the premise that the majority community could never be the victim of communal violence. It believes they would only be the perpetrators.

Those who have drafted the bill have forgotten the recurrence of communal violence by the minority community in 1960s in UP and Bihar. The states like Gujarat suffered recurrent minority violence till late 1980s. The Godhra burning of Ramsewaks in 2002 is too recent to be forgotten.

The bill has also no provision if two minority communities indulge in violence against each other. In fact, as per the provision of the bill even then any person from the majority community could be accused of inciting violence. He could have no defence under the draft bill. The accused would suo moto be considered "guilty" till he can prove his innocence. The bill virtually overturns the simple judicial norm of considering the accused not guilty till he is convicted.

So if there is a Shia-Sunni riot in Lucknow, the bill would not be applicable. It would also not be applicable if a Muslim group initiates violence against Christians, as witnessed recently in Kerala. No wonder it would give freedom to perpetrate crimes against Pandits and evict them from Kashmir for all times to come.

Nothing would also happen to the illegal Bangaladeshi infiltrators, who have captured almost a 20-km tract in West Bengal along the Bangladesh border and forcibly evicted the people of the majority community either through violent means or under threat of violence.

The draft bill also redefines crimes to suit its anti-majority mindset. **According to the draft, the members of minority communities could not be accused for violence against the majority community.**

Indeed it is "secular" exercise that could be done only in free (so far) country like India. The draft smacks of drawing inspiration from a theological state like Pakistan, where nobody except those following the state religion has the basic civic or human rights. Has the Wahabis or elements like that have penetrated the policy-formulation bodies of the Indian state?

The country needs to draw lesson from the recent developments

in Nepal. Similar policy formulators many supported by the CPI-M and other Left parties from India changed the secular Hindu Constitution of Nepal and replaced the last Hindu monarchy. They even did not ponder the security threat it has created for India and the haven created for Pakistan-sponsored terrorists in the neighbourhood.

The Prime Minister is said to have wide international exposure. He is also stated to be a person of understanding. But it is difficult to understand why he has accepted the bill even to be discussed. The bill should have been dumped at the very first glance.

Even a discussion on the bill vitiates the atmosphere of bonhomie and tolerance that this country is known for. co-existence of different communities and linguistic groups has been an age-old phenomenon.

The drafting a bill with such myopic and blatantly sectarian views would only create a divide that is not there in this country.

The bill needs to be immediately withdrawn and dumped. If the government tries to keep it in circulation it would only affect the social harmony.

But despite that if it is kept alive, it should be viewed as a move to communalise the political scenario in the country with a view to garnering votes of only one powerful minority community. The bill is not in the interest of any other minority groups either.

The draft Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill should be seen as a precursor to create another partition of the country and needs to be opposed by all right thinking people from all communities across the country.

(Courtesy: Organiser Weekly)



Bill to kill secularism

— Arindam Chaudhuri

The NAC-drafted Communal Violence Bill is a recipe for unmitigated disaster. **In the guise of promoting communal harmony it promotes rank communalism. In the guise of protecting minorities, it attacks Hindu rights. This Bill will strike at the very foundation of liberty and legitimise criminal misdeeds of Muslims.** It must not become law

The road to hell is almost always paved with noble intentions. In the Indian democracy, this has been proven true a countless number of times. I am afraid we shall be headed yet again towards hellish times if a new policy that is being currently debated manages to become law, thanks to the super secular denizens of India whose intensity and range of noble intentions usually matches the mayhem that the same noble intentions often trigger.

In each of these above-mentioned cases, the men and women with noble intentions have sought to protect and defend the rights of victims usually the poor and the downtrodden of India who get only lip service from the Government. And now, this group of people has set out to protect and defend the rights of another set of victims I am talking about the victims of communal violence. Nobody will dispute the fact that communal violence has been a blot on the Indian democracy. Similarly, nobody will dispute the fact that those have usually been the minorities who have borne the brunt of communal violence, even though provocation often comes from both sides of the divide.

So to continue with their noble mission to protect and defend victims, members of the NAC have given the green signal to the Communal Violence Bill officially labeled as the Prevention of Communal and Targeted Violence Bill that seeks to protect minorities from murder, mayhem and worse during communal riots.

When I read newspaper reports about this proposed law and the objections raised by politicians like Mr Arun Jaitley, my first reaction was that the BJP was probably trying to play the Hindutva card. But I was speechless with shock when I actually managed to go through some provisions and clauses of the Bill. Most newspapers, magazines and TV channels have been politically correct and have sheepishly and squeamishly reported about the problems with the Draft Bill. But I have never believed in being politically correct. And so, let me say in plain words what the implications of the proposed law are.

If this Draft Bill becomes law, it will become constitutionally accepted that only Hindus cause riots; and that Muslims, Christians and other minorities can never be held responsible for riots because the definition of the term 'group', which is the backbone of this Draft Bill, is made totally in such a manner that the majority, that is the Hindus, will be at the receiving end of the stick. Thus, if this Draft Bill becomes law, the Indian Constitution will accept that only Hindus incite and provoke religious hatred and denigrate other religions; and that Muslims and Christians can never do that. **If this Bill becomes law, all the accused in the Gujarat riots will be culpable and be sentenced, while all those responsible for the death of train passengers at Godhra would be presumed to have harboured only goodwill for Hindus.** If this Bill becomes law, only Hindus will be tried, convicted and sentenced for communal violence and incitement of communal hatred because the Constitution will refuse to accept that Muslims and Christians are capable of violence and hatred. If this Bill becomes law, any anonymous complainant can file a police case against a Hindu for inciting communal hatred and the police will have to register it as a non-bailable offence. The accused who would be arrested would

not even have the right to know who the complainant is. And the accused Hindu will virtually be presumed to be guilty unless he or she can prove his or her innocence.

A Hindu activist who complains against fanatic Christian missionaries (Believe me, there are many of them out there) converting tribals through inducements and bribes will be sent behind bars; the Christian missionary who openly calls Hindus 'heathens' or 'kafirs' and tramples upon idols of Hindu gods and goddesses will be forever found innocent by the Indian Constitution.

That was as far as Hindus are concerned. But it is not just about them. Every other clause in the Bill seems flawed. **The definition of 'Hate Propaganda' is designed to give the Government draconian powers and curb freedom of speech.** The Bill seems to be made on the basis of a dictatorial approach which assumes the accused guilty until proven innocent, and this is totally unconstitutional. Then, of course, I talk about the formation of a 'National Authority', a new power center for harassment.

So, now you see where noble intentions can lead up to. I have no doubt whatsoever that activists, do-gooders and others of their ilk, right up to the members of the NAC, genuinely want to protect minorities from communal riots and violence. I have also no doubt that a majority of them — I am deliberately not saying all of them — harbour a peculiar and inexplicable hatred towards all aspects of Hinduism. But ask yourself honestly: Is this Bill going to promote communal harmony in the country? I would have simply laughed out loudly and derisively if the matter had not been not so serious and potentially devastating for India. And frankly, how does one define minorities? **There are many districts and towns in India where Muslims or Christians outnumber Hindus. Who will then be blamed for communal violence and riots?** If one were to suppose there are riots in two towns in Uttar Pradesh one with a Muslim majority and one with a Hindu majority... What will the police do in both these cases? Arrest only Hindus because the Indian law will state so?

Moving beyond the Bill and the disastrous impact it will have on India if it becomes law, I must also point out one thing that is peculiar to the Congress and the Gandhi family in particular. They have this strange tendency to depend on and promote advisors and Kitchen Cabinets a move that has often cost them dearly in political terms. Mrs Indira Gandhi had a series of advisers who came from a non-political background. Rajiv Gandhi had many bright advisers who had no interest in electoral politics. And look at what they did first with the Shah Bano case, then the Ayodhya case and finally the Bofors issue. I fear Ms Gandhi and Mr Rahul Gandhi are in danger of committing the same mistake.

I will sum up by saying that communal harmony cannot be brought about with such discriminatory Bills. It can be brought about by providing access to education and equal opportunities for a dignified living. It's time the Government thinks about such methods instead of passing such draconian Bills or for that matter increasing internal security budgets, etc, to fight the menace of naxalism. Access to equitable policies and right to a dignified living will take care of most of the problems that the Government seems so clueless about.

(The writer is the Editor, The Sunday Indian)



Remedy Worse Than Disease

— Sam Rajappa

India was born in communal violence, thanks to Partition of the country by the British colonial rulers. Since then its nativity, communal divide was kept alive by vested interests, particularly with an eye on vote-bank politics. A study of voting trends since Independence shows the Muslims tend to vote as a bloc. The recently concluded State Assembly election is a good example. Muslims in Kerala constitute 25 per cent of the population, but they are spread across the 140 constituencies with a concentration in just three or four constituencies in Malappuram district. But the Muslim League (ML) was able to win 20 out of the 24 seats it contested as a major partner in the Congress-led United Democratic Front. The ML has become an indispensable adjunct to the Congress in Kerala because it is able to deliver the community's votes en bloc to the UDF constituent party candidates in constituencies it is not contesting.

That the Congress has been aggressively wooing the Muslim community nationally is evident from leaders like Digvijay Singh referring reverentially to Osama bin Laden as "Osamaji" and bemoaning the terrorist leader was not given a proper burial. It is in this context one should view the draft legislation titled "Prevention of Communal and Targetted Violence (Access to Justice and Reparation) Bill, 2011", put in the public domain last month. The real aim of the proposed legislation is to keep the minority communities on the side of the Congress led by Sonia Gandhi and arm the Union government with extraordinary powers to impose its

will on the states.

The very fact that Parliament was bypassed and the undemocratic National Advisory Council, acting as a supra Parliament, was entrusted the task of drafting the most sensitive legislation, makes the UPA government a suspect. **Harsh Mander and Farah Naqvi, conveners of the advisory group to prepare the draft Bill, are known for bashing Narendra Modi, Chief Minister of Gujarat, and do not enjoy the confidence of the public. The NAC is a conglomeration of NGO members handpicked by Sonia Gandhi for their faith in the Nehru-Gandhi dynasty. Most of these NGOs are foreign-funded and they act according to the wishes of donors.** It is indirect interference in the affairs of the nation by foreign countries. The NAC chairperson has become a supra Prime Minister and an instrument for maladministration.

The draft Bill proceeds on the presumption that communal violence is created only by the majority community and never by members of the minority communities. The most vital definition of the Bill is the term 'group'. A group means a religious or linguistic minority and in a given State may include the Scheduled Castes and the Scheduled Tribes. Hindus are considered a religious minority in the states of Jammu and Kashmir, Punjab, Mizoram, Manipur, Meghalaya and Nagaland, and in the Andaman and Nicobar islands. Chapter II, Clause 6 clarifies that offences under this Bill are in addition to the offences under the SC and the ST (Prevention of Atrocities) Act, 1989. It means a person can be punished twice for the same offence. How the Supreme Court is going to interpret this provision remains to be seen. While the mood of the nation is moving away from communal violence, the draft Bill's presumption that communal trouble is created only by members of the majority community and they alone are punishable is patently discriminatory. The fact that 4,000-odd clashes took place against the minority communities in the last decade does not indemnify the minority community indulging in violence from prosecution, as this Bill would have it. An offence is an offence irrespective of the community of

the person committing it.

Instead of reducing communal violence, the Bill gives a fillip to the defined 'groups' to commit such offences knowing that they would never be held culpable. **Jihadi groups may be encouraged to commit communal riots as they will not be punished under this law.** Implementation of this law will be done by a seven-member national authority for communal harmony, justice and reparation. Of these seven, at least four, including the chairman and vice-chairman, shall belong to a minority 'group'. A similar body is intended to be created in the States. Membership of this body shall be on religious and caste grounds. The offenders are invariably presumed to be members of the majority community.

The special public prosecutor to conduct proceedings under this law shall act in the interest of the victim and not based on the facts of the case. The victim's statement shall be recorded under Section 164 of the CrPC and not under Section 161. If an offence of hate propaganda is alleged against a person, a presumption of guilt shall exist unless the offender proves to the contrary. Under Clause 67, public servants are liable to be proceeded against without any sanction from the State. The occurrence of organised communal and targeted violence shall amount to an internal disturbance in a State within the meaning of Article 355, entitling the Union government to impose President's Rule. Under the Bill, communal and targeted violence means disturbance which destroys the secular fabric of the nation. In the event of any communal trouble, the majority community would be assumed to be guilty as the minority community shall not be held culpable.

.... The Constitution goes out of its way to protect the rights of the State in a federal structure. Law and order is a State subject. But protecting the unity of the country is also a serious issue. The statutory authority prescribed at the Central and the State level under the Bill would suffer from institutional bias because of its membership structure based on caste and community. It will create disharmony in inter communal relations and is fraught with dangerous

consequences. It defies the basic principles of equality before law.

The implications of the Bill are grave. All that is needed for the Centre to destabilise an inconvenient State like Karnataka is to instigate a riot. The population is already entrenched in divisive politics. People are divided under religion and caste. Even if five people assemble and create disturbance it can be called a riot between one community against the other because there will be three from one community and two from another, No government, however well-meaning and committed to communal harmony, can prevent a determined bid to engineer a riot. **Under the proposed legislation, the minor disturbance is enough for the Centre to use Article 355 to intervene and impose President's Rule in the State.** The move is a deliberate attempt to weaken the federal structure of the country and concentrate all powers on the chairperson of the unelected National Advisory Council.

(The writer is a veteran journalist and former Director, Statesman Print Journalism School)



Communal Violence Bill, a threat to country's unity: BJP

Report by Neena Vyas

In the meeting of its national Executive at Lucknow on June 5 the Bharatiya Janata Party attacked the United Progressive Alliance government at the Centre for eroding the federal structure of polity to move towards excessive centralism and from democracy to autocracy.

It was a long litany of complaints in a six-page resolution - the Centre had usurped powers of the State given exclusively to them by the Constitution and due resources were being denied. On the concluding day of the national executive committee meeting, Gujarat Chief Minister Narendra Modi proposed the resolution while Madhya Pradesh Chief Minister Shivraj Singh Chauhan and Bihar Deputy Chief Minister Sushil Modi seconded it.

The strongest criticism was reserved for the draft Communal Violence Bill prepared by the National Advisory Council. Spokesperson Shahnawaz Husain described it as "most dangerous to the country's unity." The resolution argued that since it was now difficult for the Centre to dismiss State governments using Article 356 of the Constitution, the Centre planned to do so in future using the Communal Violence Bill.

The party threatened to use constitutional and legal means to question the moves made by the Centre. It has questioned the setting up of the National Investigation Agency to investigate terrorism related cases, saying it attacks federalism and takes away the States' powers. Not so long ago the Madhya Pradesh government had resisted transferring the Sunil Joshi murder linked to several terrorism cases in Malegaon, Ajmer and the Samjhauta Express to the NIA.

The appointment of Dr. Binayak Sen on a Planning Commission panel on rural health was also seen by the BJP as an attack on federalism since a Chhattisgarh court had held him guilty of sedition. (The issue is now pending before the High Court).

(Courtesy : The Hindu)



Justices Verma and Srikrishna red-flag NAC draft anti-communal violence Bill

— **Seema Chishti**

The Congress may dismiss the BJP's attack on the National Advisory Council's draft Prevention of Communal and Targeted Violence Bill as "communal propaganda". But there's mounting criticism from quarters it may find hard to shrug off independent jurists with an impeccable record of having intervened in cases of communal discord or violence.

Their argument: existing laws need to be better implemented, access to justice needs to be expanded, another law isn't the answer. Especially one which, just like the one for a Lokpal, sets up panels of eminent people of "good moral character" and expects to equip them with a magic wand.

Commenting on the Bill former Chief Justice of India Justice J S Verma says: "No law can eradicate communalism in the country...We need to identify lacunae in present laws, if any, and make amendments. We have enough laws, in fact the maximum in the world. The problem is in faithful implementation. It is not the Constitution that has failed us but we who have failed the Constitution."

Instead, this Bill, critics say, sets up a whole new bureaucracy at the Centre, a seven-member National Authority for Communal

Harmony, Justice and Reparation, parallel state authorities and in a remarkable parallel with the Lokpal proposal expects it to "prevent" any communal violence, control an outbreak of violence, monitor the probe, the prosecution and the trial and distribution of relief and reparations. (Chapter IV, Clause 30).

The proposed law also defines the victim as member of a religious or linguistic minority or SC/STs opening the door to a bewildering interpretation of who all are eligible.

Four of the seven members have to be from either a linguistic or religious minority or an SC/ST community. The qualifications include "high moral character and impartiality," and, in the flavour of the season, it bans membership of any political party for at least a year before the appointment.

No wonder Justice B N Srikrishna, a former Supreme Court judge and author of the report on the communal riots in Mumbai of 1992-3, finds the principle behind the Bill flawed.

"The investigative and prosecuting machinery under the CrPC could itself be used by suitable amendments," he says. "There's no need for an elaborate separate Act for that. Large-scale communal riots like in Mumbai or Gujarat do not happen on the spur of the moment. These are the result of elaborate preparations. There should be an effective method of tagging known communal elements and for swooping down on them with preventive arrests in case of intelligence inputs so as to nip the riots in the bud. What is needed is lightning action and not meandering gait. What is needed is pre facto and not post facto activism. The Bill suggests no such quick reactive machinery. Communal riots spread like wildfire and must be treated like fire emergencies. The Bill shows no such thinking. It seems to be long on cure and short on prevention."

On the National Authority, he says: "It's a toothless tiger. Its

role seems more to collect information and advise the government at the Centre and state levels. This is an example of mindless proliferation of laws. That is the rampant disease in our country. We have and make many laws but hardly implement them seriously."

Echoing this is chairman of the National Commission for Minorities (NCM) Wajahat Habibullah. He says the creation of such an Authority would mean a "vast centralized machinery, which is also a criticism of the Jan Lokpal Bill".

He adds: "Instead of empowering the community to safeguard minority interests, the Bill would instead strengthen the government machinery which, in the past, has shown itself to have been the principal offender in failing to so safeguard."

Welcoming a law to control "collective violence," the NCM has cautioned on safeguarding the rights of states vis-a-vis the Centre and on varying interpretations of how the term "group" is to be defined.

*(Note: Only important points reproduced)
(Courtesy : The Indian Express)*



Limitless appeasement

NAC's Bill is an assault on liberty

The National Advisory Council-drafted Communal Violence Bill that is being sought to be imposed on a Government which is only too happy to be treated as a doormat by the Nehru-Gandhi family, spells disaster for India and its people. If the Bill, by some quirk of fate, were to become law, every aspect of liberty and rule of law in our republic would be in danger of being run aground and given an indecent burial. Those pushing this monstrosity in the guise of preventing the outbreak of communal violence and maintaining communal 'harmony' are plainly not telling the truth about the Bill. This Government is incapable of telling the truth; it is equally unable to summon the courage to tell the NAC to leave law-making to the executive and the legislature, and, in the event of people taking a dislike to a particular policy or a law, the judiciary. Hence it has chosen silence over comment on the Communal Violence Bill. But that in no manner either absolves the Government of its responsibility nor does it mitigate the looming threat to our democracy. While it is nobody's case that communal violence should be ignored or that every possible and legally defensible effort should not be made to punish those responsible for strife, the proposed law is unacceptable, not the least because it is patently un-constitutional and reflects the perverse thinking of a few who parade themselves as the Army of the Self-righteous. The Bill, if it were to become law courtesy a gutless Government and supine party leaders for whom defiance of the wishes of the 'high command', also known as the Nehru-Gandhi

dynasty, is unthinkable an offence that can fetch merciless retribution would kill freedom and democratic rights in all their manifestations, turn rule of law on its head, subvert the Constitution, and rob State Governments of their legitimate authority sanctioned by the Constitution. Such are the draconian provisions of the Bill drafted by the NAC.

If this Bill were to muster parliamentary approval, it would make all Hindus into sole offenders and practitioners of communalism, absolve all minority communities of any role in or provocation leading to communal violence, and convert India into a police state where people will live in perpetual fear of being framed under its obnoxious clauses. The truth behind any incident of communal violence for example, the horrendous crime of Muslims setting a coach packed with Hindu passengers on fire as it happened at Godhra in Gujarat shall forever remain buried because anybody mentioning it orally or in writing would be put behind bars if the offenders were to allege feeling offended at their crime being exposed. Free speech shall die a tragic death because any comment on transgressions by any minority community or criticism of excesses and abuses in the name of faith - the horrific oppression of women under Muslim Personal Law is one example and the abuse poured on Hindu gods and goddesses by Christian evangelists is another will be met with the registration of non-bailable offences. The identity of the complainant shall be kept a secret; the person against whom the complaint has been lodged will be presumed to be guilty unless he is able to prove to the contrary. If in the end the charges are found to be frivolous or untenable, the complainant, by virtue of being a Muslim or Christian, shall go unpunished. India must rise in revolt against this proposed law.



Goodness gets silly

— **Karan Thapar**

Just because you have the right intentions doesn't mean you'll end up with the right result. Sometimes you can overdo things and create a mess. That, I'm afraid, seems to be the case with the National Advisory Council's (NAC) draft bill to tackle communal violence. That we need a bill to tackle this menace is hard to deny after the Sikh killings of 1984, Bhagalpur, Gujarat and Kandhamal. The response that the laws we already have are sufficient is debatable. They're clearly not used effectively. A new act, with sharper focus and more defined responsibilities, would undoubtedly help.

The problem lies with the details of the NAC's bill. It starts with the presumption that communal violence is perpetrated by the majority community and the victims are members of religious or linguistic minorities. While that may be true of the horrific murders of 1984 and 2002, it's certainly not the full truth. The violence independent India witnessed in Meerut or Moradabad, Bengal, Assam and Kerala was also communal. No doubt the NAC's desire to protect minorities is laudable. But a law must be even-handed and non-discriminatory.

Unfortunately, the problems go further. Some of the offences the bill outlines are ludicrous. Clause 7(b)(iii) defines "exposing one's sexual organs in front of any person" as a sexual assault. This means flashing, streaking and, presumably, even peeing in public become an assault! Clause 7(b)(vi) takes this to an absurd extent. It says "any other act or conduct that subjects a person to sexual indignity"

is a sexual assault. This is so wide and vague it could cover anything. Worse, these are non-bailable offences and the punishment is rigorous imprisonment for not less than seven years!

A particularly revealing example of how right intentions can sometimes lead to foolish outcomes is the bill's treatment of hate propaganda offences. That such offences need to be recognised is indisputable. But when you discover that the bill's broad and imprecise terms could mean Sandeep Dikshit's comment that St Stephen's is a "communal institution" may be treated as a crime you'll get my point.

Clause 3(f) (v) states that a hostile environment is created by "any act, whether or not it amounts to an offence under this act, that has the purpose or effect of creating an intimidating, hostile or offensive environment". Under this bill Dikshit could serve three years! Sadly, there's more. The national authority to supervise the implementation of the bill is bizarrely structured. First, its appointing body is dominated by the Opposition and not the government. Second, of its seven members four, including the chairperson and the vice-chairperson, have to be from the minorities. Third, four also have to be women. If this seems communal or sexist there are further examples to corroborate your concern. The bill requires state governments to appoint a panel of special public prosecutors. One-third have to be from linguistic or religious minorities and "at least another one-third" have to be women.

A clause I find particularly repugnant is No. 82. It says "where a charge has been framed in relation to an offence under this act", a judge may attach the property of the accused "during the pendency of the trial" i.e. while he's still innocent! If this bill was law that would be a further horror in store for flashers, streakers and Sandeep Dikshit. All of which reminds me of the old epithet: there's none so prone to do evil as those who aim to do good.

(Courtesy: The Hindustan Times)



Major mistake

The National Advisory Council has drafted the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill — a bill that is both vague and bludgeon-like in its terms. The proposed law adds little to make our investigation and prosecution machinery more accountable. We already have a whole array of laws in the CrPC to deal with violence, which do not deter communal incidents or force an incompetent, weak-willed, even complicit state apparatus to act. This bill, far from filling the gaps in our current laws, adds another confusing layer: a seven-member National Authority for Communal Harmony, Justice and Reparation composed of people who represent a range of religious and linguistic minorities, and have displayed "high moral character". This draft again draws attention to the fundamental cognitive kink in the Central government's approach: its belief that a quota-created panel of good elders can be trusted to resolve things.

Victimhood and agency are already assigned in this bill and the "group" that this law tries to protect can be defined as religious or linguistic minorities, or SC/ STs, a large and variegated category of sufferers. But the bill, conditioned by the traumatic memory of the 2002 Gujarat riots, fails as a comprehensive legal response to situations of communal violence. Its anti-federal tilt is clear, giving the Centre and the National Authority new powers to intervene in a state's law and order problem. And as the National Commission for Minorities Chairman Wajahat Habibullah, has observed, this bill seems to repose inordinate trust in the police and administrative machinery

rather than finding a way to empower the victimised community. Most of all, as eminent and involved jurists like B.N. Srikrishna and J.S. Verma have pointed out, this bill is practically useless in dealing with aspects that make organised communal violence a special case. It says nothing about preventive arrests after intelligence tip-offs, attempts to contain the spread, etc. No standard measure for reparations and relief has been laid down. It makes no attempt to ensure that FIRs and investigations are taken seriously. So why have this bill at all? If the CrPC was found lacking in certain situations of premeditated group violence, then those aspects should be directly addressed.

If anything, the anti-communal violence bill reflects a Twenty20 approach to lawmaking one that focuses on quick-and-dirty workarounds rather than refining the law that exists. Sticking a legislative label on our most intractable problems and setting up a caucus of good people to oversee it is no alternative to really taking on the problem, with method and commitment.



Cure suggested worse than the disease

— Asghar Ali Engineer

The Government has got clearance from the Cabinet for introducing the Communal Violence Bill in the coming session of parliament. The Bill was drafted originally in 2005.

The Congress party had promised in its manifesto that it would bring the bill to prevent Gujarat like carnage against minorities. It did draft the Bill in 2005 which we, along with several other NGOs, human rights activists and legal experts, studied and found it wanting in many respects. We organized number of consultations and suggested number of amendments to make it really serve the purpose for which the Bill was drafted.

Mr. Shivraj Patil, the then Home Minister also held number of consultations in few cities and promised to consider various suggestions given by various NGOs and individuals but he did not incorporate these suggestions when final draft was presented. The present draft after going through standing committee and Cabinet too, is hardly better than the original draft. One wonders what Government wants. I would say this cure suggested is worse than the disease.

The present Bill already cleared by the Cabinet, seeks to give more power to the police. In fact police has always been the part of the problem, rather than part of the solution. Had police been fair and impartial, no communal riot can last for more than 24 hours. Those governments which have intended to control communal violence do nothing but ask the police to control violence within 24 hours else office in charge would be suspended. And communal violence stops before 24 hours.

And if you empower police more in such circumstances, as the present Bill seeks to do, one can very well imagine what havoc it is going to cause. It is victims who need to be empowered, not the police. In a consultation

held in Delhi on 12-13 February by ANHAD, Institute of Peace Studies and Conflict Resolution, Mumbai (part of CSSS) and several other organizations. They all unanimously rejected the present draft.....

If an area is declared disturbed area police will have powers to shoot anyone at its will. In Kashmir and in North Eastern states people have demanded repeal of disturbed areas act. The victims, instead of getting relief, would feel totally helpless. Any law which gives police more powers without making it accountable cannot be acceptable to those who care for human rights of victims.

Like any other official Bill, there is not a single clause to make administration, police or politicians accountable for their failure to control communal violence. If so, you don't need any fresh law at all. Human rights activists have always maintained that present laws, if enforced sincerely, can very well take care of any situation.

If only state governments enforces section 153-A of Indian Criminal Code in right earnest and arrests all those who make hate speeches and vitiate communal amity, there will be no communal disturbances. No politician would like to go to jail for three years.

Also, there is not much in the present Bill for investigations and successful trial of cases and launching of FIRs. It is well known that police is extremely reluctant to register FIRs and even when it does, it refuses to enter the names of the accused. And less said about the subsequent investigations, the better. The investigation is so shoddy that courts often dismiss the cases against the accused.....

It is, therefore, highly necessary to make drastic changes in the present Bill before it is discussed in the Parliament and if the Government is unwilling to introduce necessary changes, the M.P.s should study the Bill carefully and force the Government to bring about necessary amendments in the Bill. All the eminent participants of consultation in Delhi felt that the 59 amendments proposed by the government are nothing but mere tinkering.

The participants felt that neither do the proposed amendments make any structural changes to the Bill nor has the government factored in any of suggestions made by the civil society. The national consultation in Delhi on 12-13 February found fault even with the definition of the communal violence in the Bill. The consultation suggested the definition as "any targeted attack committed on the persons and property of individual or a group of persons on the basis of their religious identity,

which can be inferred directly or from the nature or circumstances of the attack."

The consultation also felt that the government's proposal to declare certain areas as "communally disturbed" was rejected. In fact it demanded that the Chapter II of the Bill be dropped completely arguing that the State already has sufficient powers vested in it by law and further empowering the State and Central governments would, therefore not remedy the situation. The Consultation felt that co-relation between crimes and disturbed area is false, dangerous and untenable, and must not find place in a law on communal violence.

The consultation also felt that instead of doubling the punishment which courts would be reluctant to apply anyway, it noted that other forms of punishment— disqualification from public office, debarring from professional associations or running from public office should be included in the case of culpability of public officials.

It takes us to yet in another field i.e. that of electoral reforms. In highly diverse country like India with so much religious, linguistic and cultural diversity, the first past the post method which we have blindly copied from England which was then a mono-religious and mono-linguistic society, is highly problematic. We need to either introduce 51% votes for winning or proportional voting or combination of both to remedy the situation. Such electoral method would lead to inclusive rather than exclusive as it is today. Candidates win elections by excluding certain class of people rather than including everyone.

Well until then this Bill needs to be drastically amended to give relief from communal violence.

(The writer is associated with Centre for Study of Society and Secularism Mumbai)

(Note: Only important points reproduced)

Courtesy : www.sacw.net



Christian leaders oppose Communal Violence Bill

A recent national consultation of Christian leaders has opposed the Communal Violence Bill for being inadequate, reports Yogi Sikand

Ostensibly directed at preventing outbreaks of communal violence, the National Advisory Council Draft Bill, titled 'Prevention of Communal and Targetted Violence (Access to Justice and Reparations) Bill, 2011', has been roundly critiqued by minority groups, who are almost invariably the worst-hit in incidents of communal violence.

Speakers at a national consultation of Christian leaders recently held in New Delhi presided over by the archbishop of Delhi, noted that the draft Bill contains disturbing features which, they argued, were contrary to the purposes of a law aimed at combating communal violence, thus defeating its purported objectives. **'It is a cause of serious concern for all of us that a Bill which contains regressive and draconian principles has been adopted by the NAC.'**

One of the major grouses of minority and human rights activists who participated in the meeting was with how the Bill defines what it terms 'communal and targeted violence' -- as an act that 'destroys the secular fabric of the nation.' This definition is central to the Bill, and all offences and rights of victims to justice and reparation would ensue only if the action warrants description as a communal and targeted violence as per this extremely restrictive definition.

The statement endorsed by the Christian leaders pointed out that it was arguable if any event of violence in post-independence India, whether against religious minorities or Scheduled Castes or Scheduled Tribes, could be said have actually destroyed the 'secular fabric' of India. Presumably, then, such violence may not come under the definition of 'communal and targeted violence' as laid down in the Bill.

Yet another cause for unease with regard to the Bill, according to the statement, are the powers that it provides to the government to encroach on civil liberties. It empowers the state and central government the power to intercept telephonic communication, and censor and control the same.

(Courtesy: Rediff.com)



Rethink the bill

— Ashutosh Varshney

The communal violence bill prepared by the National Advisory Council (NAC) seeks fundamentally to change how the government deals with violence against minorities. The bill focuses on religious and linguistic minorities as well the Scheduled Castes and Scheduled Tribes, but religious minorities are at its heart. The bill has some undeniable strengths, but it suffers from two analytically fatal flaws. First, it places excessive faith in the state machinery. Though attached to the government, the NAC's primary function is to express civil society concerns. Civil society normally checks the powers of the state. It is profoundly ironical that the bill asks for a substantial expansion of state bureaucracy. Second, the bill assumes that India's future will be an extension of its riot-infested past, a deeply implausible point for reasons articulated below. Parliament should reject the bill.

But it is not only the cultural right that takes this view. Radical liberals also reject the notion of group rights and protections. For radical liberals, citizenship is an individual right, and individuals should be allowed freely to choose their identities. Group entitlements imprison individuals and societies, inexorably pushing them towards dangerous collective identities.

Does this position imply that minorities can do no wrong? Is the majority community always to blame? By the 1940s, thinking long

and hard about this question, Jawaharlal Nehru had started distinguishing between minority communalism and majority communalism.

This position does not imply that minority communalism ought to be ignored. Nehru had harsh words to say about Muslim organisations and leaders during a Hindu-Muslim riot in Aligarh in 1954, and wanted those organisations punished. My own research in Hyderabad uncovered many instances when Muslim organisations were egregiously complicit in riots. Hyderabad's mass killers came in both hues, Hindu and Muslim; Hindus had no monopoly over rioting. Other researchers came to similar conclusions. Agar Hindu pachees Musalman mareng, said Hyderabad's Muslim wrestlers to Sudhir Kakar, a psychologist who also researched violence, to hum chhabbees Hindu mareng yeh jo riot hai, woh one-day cricket ki tarah hota hai (if the Hindus kill 25 Muslims, we will kill 26 Hindus - a riot is like a one-day cricket game).

The NAC's assumption is that if civil servants were personally liable for riots, there is a greater chance they would act according to the rule-book, not wait for political signals from above.

But this assumption can only be half-right. The NAC has not confronted a factual question. Why has Aligarh been so riot-prone, whereas Bulandshahr, a town next door, has rarely had a communal riot? Why have Meerut and Morabadad been so communally nasty, whereas the neighbouring Muzaffarnagar and Bareilly hardly ever witnessed a communal riot after independence? Did Aligarh, Meerut and Moradabad have riots because the civil servants stationed there ignored, or supported, the killing of Muslims, or is there something about the local relations of Hindus and Muslims in these towns that made them riot-prone?

Indeed, the NAC needs to be given another reminder about the limits of state power. Aren't state capacity and governance in the US, Britain and France much higher than in India? Yet the US could not prevent the so-called Rodney King riots in 1992, Britain witnessed racial rioting in the 1980s, and Arab migrants in France

rioted in 2005. Los Angeles, Brixton and Paris burned, while the police wielded their batons and even shot to discipline the crowds. If making the state more powerful and/or rule-governed were the solution to rioting, the world would be an easier place to govern.

A new bureaucracy for communal harmony, justice and reparation?

The bill also envisions creation of a new set of state institutions: a National Authority for Communal Harmony, Justice and Reparation, headquartered in Delhi. The National Authority will have seven members, supported by a "Secretary General, who shall be an officer of the rank of the Secretary to the Government of India". Presumably, the members will have the rank of ministers of state and the chairperson will be of full ministerial rank. The National Authority will be given police and investigative staff when necessary; it can investigate the conduct of army officers during riots; it will have the powers of a civil court for inquiry and investigation; and all district magistrates and police commissioners will be required to report to it on matters concerning communal violence. There will be corresponding institutions at the state level, too. A massive bureaucracy will thus be created.

This great institutional proposal invites a basic question: Does the NAC expect the future of India to be as riot-ridden as India's past has been? Massive law-and-order bureaucracies are normally created to deal with a frequently recurring problem, not for something highly infrequent or rare. **We need to ask if riots will be occasional episodes, or regular occurrences, in the coming years. If riots are going to be occasional, we can't justify the creation of a huge permanent bureaucracy.**

To treat the future as a mechanical extension of the past is almost always an awful mistake. The future is basically uncertain. That is why we use probabilistic, odds-based reasoning about the future.

What can we say about the odds of rioting in India in the next 10, 20 or 30 years? A vast amount of cross-country research on

riots and civil wars has been published in recent years. And a large conclusion has emerged. **According to worldwide evidence, riots are regular occurrences at low levels of national income, but only occasional episodes at middle and high incomes.**

On why this is so, the research is not conclusive. But two hypotheses have been considered reasonable. **First, as incomes rapidly rise, popular aspirations change and a desire for material advancement, perhaps always present, becomes more realistic.** It is possible to envision a better economic future, if many others around are rising. As a result, a new politics of aspirations emerges, shrinking space for politicians to mobilise groups for communal riots. With rising prosperity, issues in politics begin to change. Communal discontent does not fully disappear, but it begins to take the form of higher-technology terrorism as opposed to low-tech mass riots. Once that happens, a riot- bureaucracy is incapable of handling the problem. **Second, at higher national incomes, state capacities also increase and governance improves.** The NAC believes that the latter is not happening in India and that may be true. But it shows no understanding of the rising politics of aspirations, which India is beginning to see, as it moves economically forward. Indeed, this could well be an important reason India has witnessed no big riots since 2002.

A preponderant majority of India's riots took place, when India was a low-income country. India has now become a middle-income country and is growing faster than ever before. To the extent we can make predictions on the basis of research, riots will increasingly be a matter of India's past, not its future. While it is not impossible for this prediction to be wrong, it will be a great surprise if communal riots returns to India in a big way, as the nation rises up the income ladder. The basic point is that we can't create a huge bureaucracy with unprecedented powers on the basis of a low-odds scenario.

The NAC appears to be a prisoner of India's past, especially of Gujarat 2002. What happened in Gujarat was a crushing embarrassment for all liberal Indians and every effort should be

made to punish the guilty, but to build a new bureaucracy to prevent another Gujarat 2002, which is in any case unlikely in the future, will be a terrible mistake.

Indeed, the creation of such a bureaucracy and law might create perverse incentives. Conflict research shows that many people settle petty personal scores in ethnic violence, pretending that a larger ethnic cause is being served. If public servants are made liable for riots, those opposed to them, for whatever reason, might have an incentive to touch off riots to punish a civil servant they did not like. Thus, even though the normal tendency is for the incidence of riots to go down at higher levels of income, the creation of a riots bureaucracy might counteract that trend. We could reinvent a problem, which would otherwise naturally decline.

A final point is in order. A distinction needs to be drawn between riots and prejudice. The fact that riots decline at higher levels of income does not mean that prejudice and discrimination necessarily go down. After the 1960s, the US has seen very few riots, but African Americans still end up in jail disproportionately. Rich today, Malaysia has had no big riots since 1969, when it was poor, but discrimination against the Chinese and Indians continues. Prejudice also sometimes takes the form of hate crimes, including those perpetrated by the police, both in the US and Malaysia, but riots are few and far between.

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(Note: Only important paragraphs reproduced)

(Courtesy : The Indian Express)



The Ugly Truth behind the Bill

Violence serves as a universal common denominator for any conduct that is abhorrent, and in aberration to the tenets of human rights values which serve as the foundation stone for peace and semblance in the society. Violence is however a means to attain an objective when viewed from a larger perspective. The objectives may vary from political, ethnic, religious, economic, social, etc. which are a subject matter of another debate. The moot question is centered on the ramifications arising out of such violence. Communal Violence to that extent is deemed to be one of those instruments which are tantamount to being repressive, nefarious, and egregious and is bereaved of any reverence for the pain and suffering endured by thousands of individuals, households, villages and communities. It is therefore pertinent to address the very conduct itself which goes in flagrant violation of the very spirit of our Constitution which the state seeks to preserve and uphold.

The repercussions of a violence of such magnitude are colossal. Furthermore, for a person who has been a victim of such despicable circumstances has no recourse before the law, as the criminal justice system in India had enough measures to tackle with individuals being the perpetrators, but had limited legal remedies when the same action was committed by a very large group of individuals. The result however remained the same: the cost of an individual's life is above any caste, creed, religious or linguistic majority/ minority. Therefore any action of the state should revolve on the creation of an all-encompassing law which seeks to ensure that the fundamental right to life and liberty of every citizen is upheld irrespective of his

or her religious or social predilection.

The enactment of the recent Bill to address the growing concern of en masse violence therefore assumes considerable significance. However the recent Prevention of Communal and Targetted Violence (Access to Justice and Reparations) Bill, 2011 which has been approved by the National Advisory Council (N.A.C.) regrettably broadens this hiatus rather than addressing the problem. The very definition clauses run on the basic premise that violence can only be deemed to be communal if such a violence is committed by a religious or linguistic majority on minority and not vice versa. There are many other provisions mentioned in the bill which have further consolidated this presumption and which, if implemented, would result into the dispensing of justice, which is essentially preferential in character. These provisions have been elucidated below:

Definition of Communal Violence, "Victim" and "Group":

Communal or targeted violence has been defined under Section 3 (c) as any act or series of acts, whether spontaneous or planned, resulting in injury or harm to the person and or property, knowingly directed against any person by virtue of his or her membership of any group, which destroys the secular fabric of the nation. This means and includes that the intention of the legislature is to prevent any act which is against the tenets of secular value in India. However, the very next definition runs in contravention of the principles of secularity which the state endorses. Section 3 (e) defines a "group" which means a religious or linguistic minority, in any State in the Union of India, or Scheduled Castes and Scheduled Tribes within the meaning of clauses (24) and (25) of Article 366 of the Constitution of India.

By including only a religious or linguistic minority, the legislature has proscribed a citizen from claiming his equitable share of right if he belongs to a religious or linguistic majority. Of particular significance is Sub Clause 3 (j) which defines a victim who is defined as a member of the minority group only. A pertinent instance could be that in India where Hindu population is dominant whereas Muslim

population is a minority, if a communal riot breaks out, then only the members of the minority group can claim their right. **So if there were 200 Hindu families which had to suffer the consequences as against 100 Muslim families, then under this law they have no recourse whatsoever.**

Furthermore, this provision runs on a very flawed assumption which states that "violence" can only be perpetrated by a group of people who belong to a linguistic or religious majority and not vice versa. The objective of any criminal justice system in the world is to uphold the rights of the society and to create a deterrence which is not to be vilified on account of one's socio, political or religious association. The nature of punishment should be equal for every individual irrespective of what religious order he professes or to which region he belongs to. This provision has mutilated the very canon of criminal law. **Why should the nature of punishment vary on account of one's religious or linguistic predilection? Violence is violence irrespective of whether it is been committed by a Hindu, Muslim, Parsee, Christian, Jew, etc. The imposition of punishment should therefore be the same and should not vary according to these frivolous demarcations.**

What constitutes "Hostile Environment":

Section 3(f) further talks of what qualifies as hostile environment against a group. It means and includes any intimidating or coercive action by a majority against a minority group by virtue of his or her association with that group and lays down five circumstances wherein the said act can be deemed to be shrouded in the garb of being hostile. However, sub clause (5) creates a very arbitrary standard of relying as to what conduct would result into the creation of this hostile environment. The clause lays down that it would include any other act, whether or not it amounts to an offence under this Act that has the purpose or effect of creating an intimidating, hostile or offensive environment. This clearly brings in a state of ambiguity as to which acts would precisely fall under the ambit of this Act. Therefore it may also include a speech, a work of art like

a picture, music or video clippings which may have the capability of creating an intimidating, hostile or offensive environment. **Therefore in the light of the given provision, if Sheila Dixit's comment against the Stephens College was to be adjudicated on, her statement could have been classified as being an offence under this Act.**

The problem does not end here. Another important point worth considering is who shall have the discretion to decide as to which Act qualifies as being intimidating or hostile. These questions need further deliberations.

Scope and Ambit of "Hate Propaganda":

The definition of the term "Hate Propaganda" is classified as a separate offence which has been made punishable under section 8 of the Act. However, the scope and ambit of the definition is so broad that it can cover almost any conduct which has the capacity to incite people. It includes any act, or words, whether spoken, written or any mode of visible representation which shall be construed to be capable of inciting violence. This provision is bereaved of pragmatism as every individual has been bestowed with the freedom of speech and expression and has a right to raise his voice in case of its violation. The legislators have not specified as to what acts would actually constitute the term "Hate Propaganda". This would result into arbitrariness as a certain conduct shall be deemed to be an offence in one state whereas the same conduct might not qualify as an offence in another state.

Organized Communal Violence to be Construed as Emergency:

The most draconian of all provisions is the power which has been bestowed on the Central Government to construe any act of Organized Communal Violence to constitute "Internal Disturbance" within the meaning of Article 355 of the Constitution of India. The prerogative of determining whether an act qualifies as being tantamount to Internal Disturbance solely vests with the Central Government under Section 20 of this Act. Historically speaking,

India has witnessed the period of Emergency in 1975 wherein gross human rights violations were perpetrated by the functionaries of the State itself. The very nature of Emergency provisions bestows indomitable powers on the State and this can be used for political advantages as was done in Punjab and later in India. One can only speculate on the powers which the Government shall enjoy once this provision comes into force as it can suo motto decide on whether a given situation in a particular state requires the imposition of Emergency or not. If this is further seen in consonance with the definition of the words victim and group, then this provision shall open flood gates to political maneuvers at the Centre. **This would further impose a serious threat to the very nature of federal character of the country as this provision gives all the power in the hands of the Central Government and the State Government is nothing but a mute spectator to the Emergency powers of the Central Government which extends to restricting even the Fundamental Rights of every individual in the interest of the State.**

Constitution of "National Authority for Communal Harmony, Justice and Reparation":

The Central Government has been endowed with the power of constituting a National Authority for Communal Harmony, Justice and Reparation within the meaning of Chapter IV, Section 21 of the Act which shall be constituted of a Chairperson, a Vice Chairperson and five other members. The quorum has been set at minimum four members including the Chairperson and the Vice Chairperson. The condition of the appointment of Members is another factor which is worth consideration.

Provided further that, at all times, there shall be -

1. One Member belonging to Scheduled Castes or Scheduled Tribes;
2. Four women, whether Chairperson, Vice-Chairperson or Member;

However, the powers that have been conferred to the National

Authority are extensive. These may include intervening in any matter relating to communal violence in the court of law under Section 31 (k), transfer, posting and replacement of any public officers whether administrators or police officials from their jurisdictions of power and control that affects areas where not only the outbreaks of communal violence but also a mere anticipation of the same shall be included under this Act. Furthermore, by virtue of Section 26 and Section 49 (in case of State Authorities) no act or decision of the National or State Authorities can be questioned merely on account of vacancy of the members and / or defect in the constitution of the Authority. The Central Government has given an autocratic status to the respective authorities. The National Authority has been conferred with the status of being a Civil Court while carrying out its duties and has the power to summon any person for the purposes of recording evidence. However, no provision has been made in order to provide for a judicial scrutiny against any order passed by the National Authority. This is further depictive of the amount of power which has been granted to the authority and goes against the system of checks and balances.

Nature of Offences, Pressumption and Evidence:

The nature of offences committed shall be non - bailable and cognizable as per the wordings of Section 58 of the Bill. This means that a person accused of an offence shall not have the right to seek bail from the court of competent jurisdiction and can be apprehended by the police officer without a warrant.

The collection of evidence relating to an offence under this Act shall include video graphing and or photographing of the scene of crime and the same shall form a part of the report of the case under section 173 of the Code of Criminal Procedure, 1973 as per the tenets of Section 66. However inclusion of video graphing and photographing may jeopardize the determination of guilt of the accused as they can potentially be manipulated.

The biggest lacuna which exists in the Act is the presumption of guilt on the accused unless it can be rebutted by the accused.

Section 74 however makes two fold presumptions which are against the very ethos of Criminal Justice System i.e. A person is deemed to be innocent unless proven guilty of an offence.

The first presumption is that the accused shall be guilty of an offence that he has been charged with, unless that can be proven otherwise. The second presumption is further discriminative as it states that Whenever an offence of organized communal and targeted violence is committed and it is shown that a hostile environment against a group exists or the offence of hate propaganda under section 8 was committed against a group, it shall be presumed, unless the contrary is proved, that the said offence was knowingly directed against persons belonging to the group by virtue of their membership of the group.

The consequences may have a very negative influence on the entire state of affairs. For instance, a speech that was made in a politically sensitive area may be qualified as hate propaganda to be knowingly directed against the people of the minority group and shall attract a punishment of three years as per section 115 of the Act. The very presumption is devoid of rationality as the definition of the term Hate Propaganda is so wide that any act could be construed as being culpable in nature.

Miscellaneous:

The extent and scope of power vested with the National Authority does not merely extend to the state law enforcement agencies such as police officers but also brings the entire Armed Forces within the ambit of the term "public official." This Bill therefore blurs the line between civilian matters and armed forces matters and brings it within the ambit of the National Authority. With no judicial intervention, these powers can be extended to any extent. Furthermore, Schedule I appended to the Bill brings within itself all the forces including the Army, Navy, Air force, Paramilitary forces such as the Border Security Force, Indo Tibetan Border Police Force, Special Allied Forces, Central Reserve Police Force, Central Industrial Security Force, Coast Guards, Home Guards, Railway

Protection Force, Territorial Army and even the National Security Guards.

Conclusion:

The Bill in its present form has been reduced to a mere mockery which is against the core principles of criminal law; it is also pulverized to the extent by incorporating the preferential definition of what constitutes group and victim. The autonomous nature of the National Authority is also a cause of serious concern. If a law has to prevail, then it should be universal in its approach and its enforcement should be coupled with the system of checks and balances. The present bill regrettably promises none of these and is rather looked upon as a political faux pas.

So what is the intention of the legislature ? To promote and uphold the constitutional virtues or to denigrate them on grounds of religion and linguistic demarcation? The question is left for us, THE PEOPLE to answer.

(Courtesy: <http://www.legallyindia.com>)



Communal Violence Bill: A Conspiracy by NAC

— Manohar Seetharam

Many of the readers might be already familiar with the constitution, functioning and the orientation of the National Advisory Council (NAC). NAC is an extra-constitutional body that was constituted by an executive order in the year 2004. In this regard it is similar to the Planning Commission of India, which has acquired almost an indispensable role for itself when it comes to economic policy. The crucial difference being that the Planning Commission is chaired by the PM, whereas the NAC was peculiarly designed to suit the politics of UPA, i.e. to portray Smt. Sonia Gandhi, Chairperson of NAC, as the saviour of the poor and oppressed. Despite being an outcome of national politics NAC has off late come to represent and position itself as a government within government, allowing the ruling party to position itself both with and against the government.

The focus of this post is one particular bill drafted by NAC called the "Prevention of Communal and Targeted Violence (Access to Justice and Reparations), 2011" (1). There is currently another version of this bill currently pending in the Parliament. (2). Just one reading of the bill is sufficient for one to be concerned about the fallout of having such an act and seriously question the mindset and approach of the members of NAC.

Brief overview :

Under the new law any act of indulging in communal and targeted violence is defined as a non-bailable offense, procedures and resources for enquiry are laid out and punishment prescribed.

As every new law these days does, this law too prescribes the setting up of a new official structures and offices with vested power. A body known as National Authority For Communal Harmony, Justice And Reparation. In a token gesture to our federalism (which it later proceeds to undermine) it calls for similar bodies at the state level too. Having ensured ghoda, gaadi, kursi and a lifetime of pension for themselves and their ilk they proceed to brazenly forward their agenda, in no uncertain terms and with clinical precision. If this has caused any outrage in you, then I am certain what follows is sure to bankrupt you of it completely.

Definition of a group :

"group" means a religious or linguistic minority, in any State in the Union of India, or Scheduled Castes and Scheduled Tribes within the meaning of clauses (24) and (25) of Article 366 of the Constitution of India.

Communal and targeted violence is defined as :

"communal and targeted violence" means and includes any act or series of acts, whether spontaneous or planned, resulting in injury or harm to the person and or property, knowingly directed against any person by virtue of his or her membership of any group, which destroys the secular fabric of the nation.

All the provisions provided in the bill are centered around and built on "targeting a person by virtue of his or her membership of any group". It is very clear even to a layman like me what its implications would be. Firstly, any targeted violence on those who are not a part of the "group" would automatically not qualify as communal violence. Hence violence reported in the recent times from places like Deganga or Meerut would fall outside the bill's scope. Secondly, in a situation where there is violence from two or

more sides targeted at each other, the provisions, powers and punishment of this bill would be deployed only against one such side.

It is not that the drafters of this biased and unjust bill do not realise this, look at what the bill has to say about the process of payment of compensation.

"All persons, whether or not they belong to a group as defined under this Act, who have suffered physical, mental, psychological or monetary harm....."

Very kind of them indeed. The saving grace is that no such devious definition of group could be spotted easily in the draft currently tabled in the Parliament. The blatant fashion in which NAC has drafted this bill and invited comments suggests that they don't have a very high opinion about the capabilities of ordinary Indians to comprehend and challenge their authority.

Having murdered the very idea of natural justice and equality they now turn to strangle federalism. It seems to be there either on-demand or as a chip for central government to pursue this act further. Fortunately for India, the post-liberalisation era has seen the emergence of many strong and financially sound states. They have used the space provided by privatisation and delivered growth and a better life for their people. The bill makes the following provision:

"The occurrence of organised communal and targeted violence shall constitute "internal disturbance" within the meaning of Article 355 of the Constitution of India and the Central Government may take such steps in accordance with the duties mentioned thereunder, as the nature and circumstances of the case so requires."

This is again an open attempt to colour the constitution. The intention being to empower the central government to indulge in arbitrary and politically motivated use of Art 356. The provision is in clear violation of the clarification and procedure laid down by the Supreme Court in the S.R.Bommai Vs Union of India case. The judgement records the following

The expression "internal disturbance" is certainly of larger connotation than "armed rebellion" and includes situations arising out of "armed rebellion" as well. In other words, while a Proclamation of emergency can be made for internal disturbance only if it is created by armed rebellion, neither such Proclamation can be made for internal disturbance caused by any other situation nor a Proclamation can be issued under Article 356 unless the internal disturbance gives rise to a situation in which the Government of that State cannot be carried on in accordance with the provisions of the Constitution

Leaving other issues like legitimisation of phone tapping and like aside the above two issues are sufficient to be really worried about this bill and its intended consequences. Sadly, but from a very few influential columnists this draft hasn't received the treatment it deserves. Media apart, it is sad to see that the other stakeholders like the State government's remain silent on such proposals. May be this bill won't get passed, but it is important to use these opportunities to draw lines and set new thresholds which would stay etched in both institutional and individual memories. The biggest takeaway from this is that the NAC today feels much more confident and sure of itself. The many battles they fought with the PMO and the Cabinet has emboldened them to attempt such a thing.

With the public outrage solely focussed on the corruption cases, nobody has bothered to ask them the right question, which is : How dare you ?.

(Courtesy: <http://centreright.in>)



Communal Violence Bill

An Analysis

The basic premise behind this new bill is deeply flawed and anti-federal. It is clear from the draft bill that there is an effort to subvert the original intent of the Constitution under the active political patronage of the Congress Party.

The new title of the bill exposes how cleverly the scope of the bill has been expanded to include what the neo-liberals call "Targeted Violence". The inclusion of reparations in the title is also indicative of the mindset at work behind this bill.

The draft is 67 pages long and begins with definitions which need to be closely looked at. Especially definitions like 1) Association & 2) Communal and Targeted Violence.

These definitions are so broad and vague that they are easily liable to all kinds of interpretations. As an example within the definition of "Communal and Targeted Violence" is the phrase "destroys the secular fabric of the nation".

It is anybody's guess what exactly "destroying the secular fabric" means. What test will be applied and by whom ?

This is classic Left Liberalism where subjective value judgement takes precedence over objective and factual determination. The broad definitions of the term "Victim" and "Intimidation" further highlight this with references to acts which need not be crimes and suffering which can be psychological. The most insidious and subversive aspect of the Bill is the definition of "Knowledge" which

seeks to bring via the backdoor elements of the Rome Statute (International Criminal Court), notwithstanding the fact that India is not a signatory to the Rome Statute.

This is not the first time this has been attempted. An effort in the past to pin down Narendra Modi by invoking a non-existent Command Doctrine failed when it was pointed out that there was no Indian Law on the same. The Communal Violence Bill by trying to invoke the Doctrine of Command Responsibility essentially makes India party to provisions of the Rome Statute despite not being a signatory to it.

It is also ironic that the Left Liberals of NAC have adopted definitions from the much maligned Maharashtra Organized Crime Act (MCOCA) despite having opposed similar legislations pending from other non- Congress states.

The definitions of "Dereliction of Duty" are broad as well leaving ample scope for holding Public Servants criminally liable for acts of omission. The Bill's anti-federal character becomes clear on page 10 when it seeks to confer on the Central Government the power to intervene. Much of the rest of the draft bill goes into the bureaucratic aspects of the so called "National Authority".

The draconian and anti-federal character of the "National Authority" becomes clear on Page 16 under the "Powers of the National Authority". Specific antifederal powers include:

- ◆ Binding directives to agencies of the State
- ◆ Judicial Powers of a Civil Court in running inquiries and investigations
- ◆ Power to search any building
- ◆ Power to refer cases for trial to the Judiciary under the Criminal code
- ◆ Treating proceedings conducted by it as Judicial Proceedings
- ◆ Wide investigative powers through any existing agency
- ◆ Role on inquiring into the conduct of Armed Forces

- ◆ Democratically elected governments will be required by law to explain within 7 days why the National Authority directives were not complied with
- ◆ The setting up of a parallel structure within the states called the “State Authority”

The most disturbing aspect of the Bill is the permanent interventionist role it envisages for so-called liberals & NGOs under the guise of what it calls “Defenders for Justice and Reparations” where in the state authority can appoint any random individual and empower him or her with an interventionist role. More absurd provisions follow on Page 33, like the demand for proportional representation of religious and linguistic minorities in Special Public Prosecutor Panels.

A patently anti-federal provision is the power to move Cases to Judges and Courts outside a state on the mere apprehension of impartiality. A provision on page 35 seeks to empower Court to preemptively act on the apprehension that a Public Servant is likely to commit a crime.

Provision on ‘Victims Entitlement’ : The provision on free legal aid to victims is an ill-conceived piece of legislation. Essentially Tax Payers of India shall foot the legal bill for victims, and given the broad definition of the word victim it is anybody’s guess how tax payer money shall be milked in the name of Justice.

The bill also provides for broad claims of reparations at the tax payers expense with even vague criteria like “psychological harm” being in scope. The bill very conveniently sticks the bill for paying reparations to the state governments while conferring all kinds of powers on the Central Government to interfere. Another insight into the communally prejudiced mindset with which this bill was written becomes evident within the section on “Guarantee of non-repetition” on Page 50, which says, “The search for the bodies of those killed or disappeared and assistance in the identification and reburial of the bodies in accordance with the cultural practices of the families and communities.”

The above language exposes the communal mindset goes to show the NAC liberals who drafted this Bill have made the assumption that perpetrators will always be Hindus and the victims will always be Muslims or Christians. In conclusion it must be noted that this Bill stands out for the contempt and disregard with which it holds the Parliament of India by offering NO ROLE to Parliament in the removal of members appointed to the proposed “National Authority”.

The word Parliament occurs exactly 4 times in the entire draft bill. There is no mention in the entire draft bill on how exactly the proposed “National Authority” will be accountable to Parliament for its interventionist conduct beyond the token act of placing its annual report during the monsoon session.

In fact there is no mention at all anywhere in the Bill on who exactly the “National Authority” is accountable to for its conduct but for a vague reference to a request from the President to Supreme Court to inquire into its conduct. If there is anything at all in this bill on accountability it is the provision on “Good Faith” that essentially gives immunity to the “National Authority” from being held accountable in the Courts for its conduct.

Bottomline : This bill has been written with just one Act of Communal Violence in mind – Gujarat 2002. It makes a mockery of the Sikh Victims of the Rajiv Gandhi led Congress sponsored 1984 riots in Delhi by assuming that all Victims by default are Christian or Muslim. This bill is Anti-Federal and goes against the spirit and grain of the Constitution. It must be junked in toto.

(Complied by : Communication Cell, BJP)



TN CM Jayalalithaa finds communal violence bill 'fascist'

The bill targeting to tackle communal violence due to be introduced in the forthcoming session of Parliament, has evoked its latest and perhaps bitterest criticism from Tamil Nadu chief minister Miss Jayalalithaa Jayaram, according to the *Economic Times*.

Flatly condemning the proposed bill, Miss Jayalalithaa said on July 29, 2011 that the Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011 would not even “remotely achieve its desired objective”, and on the other hand would “promote distrust among various groups”. She said she feared the bill would also provide “opportunities for authorities to vent their frustrations on vulnerable persons, or wreak vengeance against any group that is outspoken or critical”.

“If this bill becomes law, one could well have a situation where members of political parties in power at the centre could conspire to create a volatile situation in a state that is governed by an opposition party. If the agitators are put down, the state government would be pilloried for stifling dissent”, Jayalalithaa said.

Arguing that if violence erupts, the centre can dub it as communal or targeted violence and use the sweeping and wholly subjective powers of the law and dismiss the concerned state government, Miss Jayalalithaa said it presented a veritable Catch-22 situation. “This is nothing but an undemocratic and fascist bill which is against and totally repugnant to the basic principles of the Constitution”, she said.

Making her extreme dislike for the bill clear, Miss Jayalalithaa described the Centre’s move to introduce the bill as “a wholly undesirable piece of legislation that is being introduced with vested motives by a central regime that is not only running out of steam, but also of ideas for survival”.

The communal violence bill prepared by the National Advisory Council primarily deals with how the government would deal with violence against minorities. Its broad scope is the protection of religious and linguistic minorities as well as scheduled castes and scheduled tribes. Critics have, however, pointed out that the primary emphasis of the bill is on religious minorities. They have also attacked the bill’s excessive faith in state machinery to ensure protection of minority communities as well as a presumed assumption that the country’s riot-prone past would be extended into the future, too.

Miss Jayalalithaa said the bill was being introduced under the garb of preventing communal and targeted violence, while it was “yet another blatant attempt to totally bypass state governments and concentrate all powers in the central government”. She also smelt in the bill a new ruse to side-step the judicial constraints imposed on the indiscriminate use of Article 356 of the Constitution against opposition-ruled states by an antagonistic central government.



A Communal Bill Injurious to unity, integrity and fraternity of the people

— **Justice (Retd) Dr M Rama Jois**

IT is astonishing that a Bill like Prevention of Communal and Targeted Violence (Access To Justice and Reparations) Bill, 2011 which is flagrantly violative of the right to equality and patently discriminatory being violative of Article 15(1) could have been even thought of by the National Advisory Council under the chairmanship of Sonia Gandhi who has taken oath to uphold the Constitution and the Government headed by Dr Manmohan Singh who is also under similar oath and introducing it in the Parliament. To put it in a nut shell the Bill is intended to give immunity to religious minorities against serious criminal offences committed by violent groups among them against the life and property of majority and penalise the majority for the crimes committed by such militant groups among minorities and in addition to reward the culprits by providing compensation at the cost of exchequer.

Therefore if it were to be passed into Law; though it is difficult even to imagine that it will be passed by the Parliament; it would be void ab initio. Therefore this is one such Bill which should not be permitted even to be introduced in the Parliament.

The Bill is more disastrous than the Partition of India on communal lines as it is intended to divide us the people of India on communal lines; for by Partition India lost a portion of its territory but by this ill-conceived Bill the citizens who are all children of Bharatmata, stand divided on communal lines providing instigation to the militant and violent sections of minorities to indulge in violence

against majority with impunity.

A reading of the definition of the word group and of communal targeted violence in the Bill which disclose the entire mischief of the Bill read -

"Group means a religious or linguistic minority in any state in the union of India or Scheduled Castes and Scheduled Tribes within the meaning of clauses (24) and (25) of Article 366 of the Constitution of India."

Definition of the Communal Targeted Violence:

The communal target violence means and includes any act or series of acts whether spontaneous or planned, resulting in injury or harm to the person or property, knowingly directed against any person by virtue of his or her membership of any group, which destroys the secular fabric of the nation.

The above definition read with the various provisions of the Bill indicate that only minority group can be the victim of communal and targeted violence and only the majority indulge in or instigate communal violence. It is preposterous to presume, that the majority instigates violence against minority and not vice versa in view of the two definitions. It is therefore needless to analyse the various provisions of the Act to show how unreasonable and arbitrary they are, and how they are designed to destroy the unity and integrity of the nation and fraternity among the people which are the noble principles enshrined in the Preamble to the Constitution of India. Further the provisions of the Bill are designed to destroy the federal structure and render the states subordinate to the Centre.

I conclude this article by stating that the Bill is unconstitutional relying on the Constitution bench judgment of the Supreme Court of India in which an exactly similar classification was struck down as violative of Article 15 of the Constitution (State of Rajasthan vs. Thakur Pratap Singh; AIR 1960 Supreme Court 1208)

Shortly after the commencement of the Constitution Congress Government of Rajasthan issued a notification under Sec. 15(5) of the Police Act after having levied the cost of additional police force

stationed in certain villages, on the local citizens granting exemption to Muslims and harijans from such levy. The constitution bench of the Supreme Court of India struck down the said notification. Relevant portion of the judgment reads:-

The State of Rajasthan in defence of the exemption stated thus

"The Harijan and Muslim inhabitants of these villages have been exempted from liability to bear any portion of the cost of the additional force not because of their religion race or caste but because they were found to be peace loving and law-abiding citizens, in the 24 villages where additional force has been posted" ..

The Supreme Court rejected the defence thus:-

"It would be seen that it is not the case of the state even at the stage of the petition before the High Court that there were no persons belonging to the other communities who were peace-loving and law-abiding, though it might very well be, that according to the state, a great majority of these other communities were inclined the other way, If so, it follows that the notification has discriminated against the law-abiding members of the other communities and in favour of the Muslim and Harijan communities, - (assuming that everyone of them was 'peace loving and law-abiding') on the basis only of "caste" or "religion". If there were other grounds they ought to have been stated in the notification. It is plain that the notification is directly contrary to the terms of Article 15 (1), and that Para 4 of the notification has incurred condemnation as violating a specific constitutional prohibition. In our opinion, the learned judges of the High court were clearly right in striking down this paragraph of the notification.

The present Bill proves that old habits hardly die

In the light of the law down by the Supreme court of India the present Bill is liable to be rejected at the stage of introduction itself.

(Courtesy : Organiser)



NAC-drafted Bill to kill State Governments

— Swapan Dasgupta

The next time a partisan Government at the Centre decides to facilitate the dismissal of an elected State Government with majority support in the Assembly, it will not have to appoint a less ham-handed version of Karnataka Governor HR Bhardwaj. The former Law Minister who was sent to Bengaluru on a mission of subversion failed because both the political culture and Supreme Court judgments have made it difficult (but not impossible) for the Centre to impose President's Rule on flights of whimsy. Gone are the days when Governors such as Ram Lal, BD Tapase and Romesh Bhandari could subvert the Constitution's federal principles with impunity.

No, the next time an inconvenient BS Yeddyurappa or a Narendra Modi has to be destabilised and eventually dismissed, the role of the Governor will become secondary. The principal part may well be played by an emerging body of professionals who will have the power to hold any State to ransom. Like the wedding organiser and party organiser who have made life incredibly easy for people with sufficient money to burn, a breed of riot organisers will be very much in demand in the coming years. That is if the draft of the Communal Violence Bill prepared by the Sonia Gandhi-led National Advisory Council is passed by Parliament.

India has always been indulgent to bad ideas. The Nehru-Gandhi family in particular has taken exceptional care to nurture quackery

and cretinism as long as they were packaged in the garb of 'progressive' politics. Just as the Planning Commission was the nursery for bad economics for four decades, the NAC is fast becoming the instrument for Sonia Gandhi's misapplication of mind. Its contribution to the derailing of India's global competitive potential will be assessed (and, hopefully, even quantified) by economic historians in the future. However, mercifully, the NAC had so far desisted from imposing its grubby paw prints on the basic features of the Constitution - although the centralist 'one size fits all' philosophy was a recurring feature of all its proposals. The draft Communal Violence Bill marks a departure.

The implications of the Bill are grave. To destabilise a difficult State Government, a cynical dispensation at the Centre will merely have to engage the services of a riot organiser. The riot organiser will simply have to either orchestrate tensions in a chosen locality - not a very difficult project - and trigger a little riot against either a minority community or local Dalits and tribals. No administration, however well-meaning and committed to social harmony can prevent a determined bid to foster disharmony. Under the proposed law, that local disturbance will become the pretext for the Centre to use Article 355 to intervene in the State.

Next, the seven-member National Authority for Communal Harmony, Justice and Reparation made up, presumably, of 'non-partisan' grandees such as Harsh Mander and Teesta Setalvad, will get into the act. Blessed with statutory sanction, this committee of the good and virtuous will stricture the local administration and the State Government for its alleged lapses and suspected complicity in the riots and make a case for the breakdown of the Constitutional machinery. The committee's report, in turn, will become the occasion to file FIRs against 'difficult' State leaders and an obliging Bhardwaj-like Governor will recommend the imposition of Article 356 on the State.

Yes, a few innocent citizens would have died or had their property destroyed in the exercise. But at least they would have died so that the supercops of secularism could rule.

The Communal Violence Bill proposed by the NAC is not merely flawed, it is positively dangerous. In a country where laws sometimes exist to be subverted, the proposed legislation will be a direct incitement to made-to-order rioting and political destabilisation. The presence of a legally-sanctioned committee of the wonderfully virtuous overseeing the State administration is calculated to undermine any elected Government and make administrators accountable to two masters. Governance would be made dysfunctional and the primary focus of every official would be to keep the Centre happy. Even an issue as localised (but no less regrettable) as the violence in Greater Noida over the quantum of compensation for land acquisition would become the pretext for the Centre to first intervene directly and subsequently dismiss the Mayawati Government.

There is a strong case for ensuring that the State Government (which has ultimately responsibility for law and order and the preservation of peace) carries out its obligations diligently and without fear or favour. The best way to ensure this is all-round vigilance. Many district-level committees made up of local notables can be constituted to be an informal watchdog body and even assist the local administration. But political power ultimately vests with an elected Government and not with do-gooders nominated by the Government because they have the right aesthetic and NGO credentials. Sonia Gandhi has chosen to exercise power without making herself accountable. Now she seems determined to foist this model of colonial paternalism on the rest of the country.

India is a federal country and the more federal it becomes the better. The attempt to regress to back-door centralism has to be resisted. The issue is not riots versus secularism; the choice is between federalism and centralism, between a Delhi Sultanate and local democracy. Parliament should choose wisely.

(Courtesy: The Pioneer)



Communal face of the government

— Gopal Krishan Agarwal

In a recent survey by the *Times of India*, 61% of the respondents identified corruption as the main concern of the people of the country. This corruption is causing major agony in the day to day life of the common man. Instead of taking some concrete steps in the direction of controlling this menace the government is shamelessly trying to suppress all non-violent and democratic mass movements by using all kinds of brutal force. This clearly points to the fact that the persons occupying high offices in the government are indulging in rampant corruption and the government is trying all means to protect them.

By bringing in series of communal issues the government intends to shift the focus of the debate from corruption and divide the society on communal and caste basis. With this intent they have introduced the bill on Prevention of Communal and Targeted Violence. There are many critical analysis on the bill, I will just restrict myself to two main issues: Groups based on religion and caste are a threat to democracy. Our constitution envisions that by eroding religious and caste identities we can move towards mature democracy. But through this bill government is trying to put premium on minority and other small groups and will be reversing the process enshrined in the constitution. Secondly, it intends to create a separate institutional setup with specific mandate to protect the minority rights. This will put a question mark on all existing institutions and discredit them. Controlling riots will not ensure the end of discrimination, because it is the mindset of the people which is harmful, and this Bill will create a permanent rift between the majority and the minorities in the country.

This government is perpetuating a communal agenda. This will be clearly visible if we go over the events of the last several months. The first case in point is the release of Sachar Committee report which has a communal bias on the status of the minorities. Based on this report government announced series of measures specifically for the benefit of the minorities in the budget and the Prime Minister gave a statement that the minorities have a first right on the resources of the country. The second case is of the Rangnath Mishra Commission report, which deals with the question of scheduled caste status to converted Muslims and Christians. In spite of the dissent note of its member secretary Mrs Asha Das, the government went ahead with the controversial report. Our constitution specifically disallows reservations based on religion. This fact is being ignored by the government. This report is bound to provide incentive to the process of religious conversions in the country. The third case in point is the Census, where inclusion of caste has been brought for the first time in the history of independent India. We all know that caste based politics is creating a havoc to the process of elections in the country. The introduction of Enemy Property Act is also not above suspicion. This bill in all earnest will facilitate handing over the property to many Pakistani nationals and their kins belonging to the minority community. The government has also taken up a move for handing over the control of many historical mosques presently with the archeological department to the Muslim community. This move is also in line with the policy of appeasement of the government. Lastly, the coining of the term Saffron Terror also does not go well with the country's fight against terror. It weakens our case against Pakistan, which is openly perpetuating and abating cross border terror. All these cases point to the communal agenda of the government and its intention is to create a divide between religious groups in the country.

*(The writer is the National Convener of
BJP Economic Cell)*



COMMUNAL VIOLENCE BILL

Relook objectionable clauses, says advisory group member

Close on the heels of National Integration Council meeting where some political parties, including UPA ally Trinamool Congress, rejected the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011 as anti-federal and anti-majority, voices of concern over the Bill's present structure have surfaced within the National Advisory Council which drafted it in the first place.

In the first public anti-Bill stance, member of the Advisory Group of NAC Harvinder Singh Phoolka wrote to NAC to convene an urgent meeting for reconsideration of objectionable clauses of the draft legislation and, thereafter, meet all those political parties that have opposed the Bill.

"Some clauses have generated major controversy and many political parties have opposed the Bill. This has endangered its passage. We need to reconsider the clauses pertaining to definition of 'Group' which, under the Act, is restricted to minorities, SCs and STs. Another clause which requires reconsideration is on functions and powers of the National Authority. This provision as it stands is being viewed as anti federal," Phoolka said in a letter to Harsh Mandher and Farah Naqvi, NAC members and conveners of NAC Advisory Group.

Phoolka has questioned the anti-majority face of the Bill (something the BJP has also said) saying, "This law should project zero tolerance for any type of communal or caste violence by any

section of the society and provisions to this effect must be added," Phoolka's letter states, adding that though NAC had handed over the Bill to the Government, it must meet urgently to debate the controversial clauses and send its comments to the Government.

The Bill's most contentious part is the expression "Group" defined as a religious or linguistic minority and in a given state as Scheduled Castes and Scheduled Tribes. Clause 7 mentions that a person would be said to have committed sexual assault if he or she commits it against another person belonging to a "group".

Clause 8 says hate propaganda is an offence if a person by words spreads hate against a "group" or its member. Clause 9 lists the offence of communal and targeted violence and says a person who alone or jointly ... engages in unlawful activity against a "group" is guilty of such violence.

The Bill, therefore, as the BJP claims, assumes that only the majority is capable of targeted and communal violence and its members can never be victims. "The provision needs revision," Phoolka told TNS today. Asked if he made these points earlier, he said, yes.

He has also sought changes to the proposed structure of the seven-member National Authority for Communal Harmony, Justice and Reparations which will implement the Act. The authority will have at least four members, including chairman and vice-chairman, from the "group" (the minority).

(Courtesy : The Times of India)

