

In the wake of massacre of Gujarat, 2002, civil society started demanding for a bill on prevention, control and rehabilitation of victims of communal violence. In 2004, UPA in its Common Minimum Program

promised for a comprehensive legislation on the same and in 2005, they introduced a bill in Rajya Sabha. The Bill was roundly criticized and rejected by civil society and urged for the serious as it was complete

betrayal from the promise. The Bill was sent to the Parliamentary Standing Committee on Home Affairs for its review and recommendations. But the Committee, which submitted its final report in

December 2006 made no significant changes. In last months of 2009, Cabinet cleared the bill with slight changes and now planning to introduce in its coming session of the Parliament.

The Objections

In the present given form, the Bill is entirely misplaced and disconnected with India's past experiences of communal violence. The bill seeks to further empower the State and Central Governments rather than the survivors of communal or ethnic violence in particular and citizens in general. The Bill is reinforcing and strengthening the past situation where enough statutory powers have been given to the Government and therefore fails in providing an alternative to the existing laws and its instrumentalities and to supplement them to fill the gaps in Indian legislation in the situation of communal or ethnic violence/crisis.

This Bill restricts the application to the communally disturbed areas declared/notified under this Bill; it means this law has no use unless the state government declares/ notifies any area communally disturbed area. This theory is beyond all the limits of reasons and justification that is a crime by definition is always a crime and has no relation with any such declaration by the Government and is unheard of in the history of Penology. However, the declaration/notification has some relevance so far as the exercise of executive power and which is again a question of 'close scrutiny' Further, the 'scale of violence' may be relevant for deciding whether it falls under the special law on communal violence but the 'scale' cannot be linked to the temporality of an executive declaration.

The Bill provides extra ordinary executive powers to the state government and the public servants in form of various provisions of the Bill and thus fails to address the past experience and history of communal conflicts/ violence. On the basis of our past experiences, devolution of enhanced powers to State Government and public servants during communal disturbance and have been always misused and abused against the interest of minority community rather than protecting them. Further, the Bill negates the Central Government's power to deploy Army in genocidal situations, as S. 55 mandates prior request by the State Government for such deployment. Also, giving powers to State government to notify the Bill for its commencement is suicidal and would have serious consequences.

The Bill fails to create any new offence, rather it treats a set of already defined crimes as scheduled offences and leaves no room for the creation of newer offences to deal with crimes of genocidal nature (i.e. mass crimes or targeted crimes) during of communal or ethnic violence/ conflicts, which India is obliged to recognize and legislate on the issue of genocide under the UN Convention on the prevention and punishment of the Crime of Genocide, 1948 (Ratified by India in 1959). Communal violence is by its very nature a targeted or mass crime perpetrated on a community of persons. However, Indian Penal Code, 1860 is inadequate to combat communal violence, failing repeatedly in the past to redress and protect the interests of the survivors of mass crimes and to enforce accountability of the perpetrators, including the state agencies complicit through act of commission and omissions of mass crimes. Yet the Bill fails to recognize this historicity of the impunity for the communal violence and to bridge this existing legal vacuum.

The Bill in the present shape is unwilling to adequately enforce state accountability for the acts of commission and omission by the State agencies. There has been a history of enjoying absolute impunity by the state agencies because of a statutory pre condition of Government's sanction for their prosecution. Such a qualification serves to ensure that state agencies will continue to enjoy immunity even after the passing of this Bill, thus nullifying the Bill's own stated commitment to the principles of state accountability. Further, even the provision for punishment to the public servants either 'both for 'mala fide exercise of lawful authority' or/and 'willfully omitting to exercise lawful authority to prevent communal violence' is adding further impunity for the state agencies and by creating a defense of 'good faith' in favor of them further dilutes it.

The Bill lacks provision related to 'command responsibility' and no special efforts have been made under this Bill to ensure the same when persons in positions of power have it in their command to prevent the eruption or stop the continuance of communal violence, so that the responsibility for the same can be traced back to such person or persons in command with such power.

This Bill completely ignores the fact of inherent distinction between the sexual assault at the peacetime and sexual assault with genocidal intent in a communal situation and fails to acknowledge and create a separate category of such offence. Crimes against women in a communal situation are horrific and of multiple types which are not even touched by the criteria of scheduled offences as created for the purpose of this Bill and completely fails to even acknowledge those crimes which do not defined under Indian Penology.

The Bill provides an institutional arrangements for relief and rehabilitation, which is positive and encouraging to a small extent, but it fails to create a national framework of justiciable entitlements for the survivors of the communal violence and leaves it to the State Governments to prepare their own relief and rehabilitation standards and scheme and also the amount of compensation and therefore, it is not articulated as an inviolable legally enforceable rights of the survivors and seems more an act of charity than entitlement. Further, there is no mention of the rights of internally displaced persons leaving them entirely unprotected hence the Bill fails to acknowledge the UN Guiding Principles on Internal Displacement. Also, it fails to recognize the internationally accepted principle of payment of 'reparation' by the State to its citizens for failure to protect life and liberty during mass communal violence.



WSN Bureau

Of the many communities that suffered communal riots in India, and we concede that Muslims have been bearing the brunt of communalism and communal violence, the Sikhs have a unique experience. What they suffered in 1984 was hardly a riot; it was a full fledged ethnic cleansing operation, a genocide, a pogrom, a massacre. Thankfully, few deny the real nature of it, except of course the dominant discourse in mainstream media in India.

But for a community that has been such a receiving edge of the communal paradigm of politics, that has been suffering for many decades now because of the deeply entrenched brahmanical powers holding the power levers in India, it is strange that the Sikhs have completely failed to engage with a piece of legislation as important as the Communal Violence (Prevention, Control & Rehabilitation of Victims) Bill.

To be very precise, if this Bill got passed in its present form, it will be one of the most draconian laws of the time as it empowers the state than the victims and is full of loopholes, which cannot be omitted by mere amending it but would require a redrafting exercise.

On the face of it, it is a piece of law being hammered out by the central government to stem the communal tides in the country and ensure that the victims of the communal violence are taken care of and are well provided. The Sikhs should welcome it since they have seen how the victims of 1984 communal and genocidal killings are still waiting for not just justice for the killings but also plots, shops, rehabilitation measures from the government.

What then is the problem?

The Bill is the problem. The Sikhs' disconnect from the larger human rights concerns connected to this piece of legislation is the problem. We must remember that the voice of the civil society and the saner sections in any community is heard very little in India when the interests of the Congress and the BJP coincide. That is why you see such convergence of ideas on Operation Green Hunt, that is why the widows of 1984 genocide killings have been on the road all these years, and that is why the Ayodhya mosque debate suits both sides instead of any positive, decisive action against those who violated the atmosphere in the country. Maut Ke Saudagar co-exist oh-so-peacefully in India with those claiming to be the alternative to them.

Wide sections of the civil society in India have condemned the Communal Violence (Prevention, Control & Rehabilitation of Victims) Bill and have called it "unacceptable. It is not just weak but dangerous, it will fail to secure justice for communal crimes, and will actually strengthen the shield of protection enjoyed by those who plan and sponsor these crimes.

Several activists have said the bill continues to perpetuate the silence around gender-based sexual crimes. The activists recently held a two-day national consultation on the Bill and said even the 59 amendments proposed by the government amounted

"This Communal Violence Bill 2009, if passed, will not only be weak, it will be dangerous. It will not only fail to secure justice for communal crimes, but will actually strengthen the shield of protection enjoyed by those who plan and sponsor these crimes. Further, it continues to perpetuate the silence around gender-based sexual crimes".
Signed by Justice K K Usha, former Chief Justice of Kerala High Court, Justice Rajinder Sachchar (retd.), Justice Sardar Ali (retd.), AP High Court, Harsh Mander, Prof. Rooprekha Verma, former V C of Lucknow University, Adu. Colin Gonzales of Supreme Court of India, Dr. Rampunyani, V. N. Rai, former DGP, UP and many others.

to "mere tinkering" and the Centre was shying away from structural changes to the Bill.

In turn, a slew of changes were drawn up at the national consultation. Finding fault with the very definition of communal violence in the Bill, the activists and lawyers have instead suggested that it be defined as "any targeted attack committed on the persons and property of individuals 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 government's proposal to declare certain areas as "communally disturbed" was rejected. Demanding that Chapter II of the Bill be dropped completely, they argued that the State already has sufficient powers vested in it by law. "Further empowering the State and Central governments would therefore not remedy the situation. Co-

relation between crimes and disturbed area is false, dangerous and untenable, and must not find place in a law on communal violence."

Of the view that punishment should be commensurate to the crime, they noted that other forms of punishment - such as disqualification from public office, debarment from professional associations or running for public office - should be included in the case of culpability of public officials. Clearly, the

Congress will be on back foot on this as Sajjan Kumar and Jagdish Tytler will then again come into focus and people will judge that those who should have been cast aside were sent to Parliament by Congress.

The activists said instead of holding the public servant accountable, the Bill makes it more difficult to secure accountability. And, a "good faith" clause has no place in a law that seeks to prevent and control communal violence.



Want to stop Communal Violence? First, Stop This Law



(L-R) Shabnam Hashmi, Vrinda Grover, Farha Naqvi, Asghar Ali Er., Harsh Mander at the consultation exercise

Calling for the inclusion of sexual crimes - like rape, forced pregnancy and enforced sterilisation - in the Bill, the activists said since such acts were committed with the intent of intimidating, humiliating and degrading the dignity of the victim, such offences should be clearly defined. Further, the Bill must recognise the comprehensive rights of victims and survivors. As Asghar Ali Engineer put it, "Relief is not charity. It is the right of the victim but the State makes it look like a charity."

The Sikh Community too must reject as useless and draconian the proposed Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2009 and should add its voice to that of the eminent lawyers, judges and civil and human rights activists.

Harsh Mander, former IAS and renowned social activist said, "For the prevention of communal violence, no more powers to security agencies are needed". "I can tell you from experiences of service life, if the agencies are willing, the situa-

tion can be brought under control within hours because we have sufficient laws", he added. However, Mander argued for a bill on relief and rehabilitation.

Shabnam Hashmi, member of National Integration Council, Govt. of India said, "The bill is not acceptable in its present form as it is not going to help the victims of communal violence in any way". "One of the most disturbing parts of this bill is declaring an area as Communally Disturbed", she added. Advocate Vrinda Grover of Supreme Court of India said, "Lack of accountability part is missing". "Until accountability part is ensured, it's not going to help", added Grover.

Veteran social activist, Asghar Ali Engineer, who has investigated numerous cases of Communal Violence from Jabalpur to Gujarat said, "No preventive measures has been incorporated in this bill". "This bill is only going to aggravate the problem", he added. Social Activist Farha Naqvi reiterated, "The proposed bill is not acceptable at all in its current form".

Key Recommendations

Keeping the track record of communal violence in India, any such Bill will help only when new offences like "Forced Displacement, Gender Based or Sexual Offences, Genocide, Social and Economic Boycott, Illegal Dispossession, Transfer, Possession or Disposal of Immovable Property" must find place in the law. Provision for enhanced "punishment on subsequent conviction", "in camera proceedings", provision for "compensation to Waqf or religious trust on damage and destruction of religious property", special mobile police stations for lodging complaints during and after communal violence, appointment of accredited paralegal and volunteers for assistance to survivors during filing of Complaint and trail need to be put in place. Further, special duty with regard to access to justice such as lawyer of choice, traveling expenses to complainant and witnesses, post trauma counseling etc. shall be imposed on the State Governments. Mechanism related to social insurance like 1% compulsory surcharge on all tax payers towards relief and rehabilitation of the survivors should also be incorporated. Last but not the most, the rule of burden of proof in trial of offences related to communal violence must be relaxed and shifted from prosecution to the violator (accused) by adding a new chapter on presumptions such as presumption as to mala fide commission and omission by public servant on duty and so on so forth.