Intervention paper

NAC's

Hindu Apartheid Law

Prevention of Communal and Targeted Violence Bill-2011

India Policy Foundation

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D-51, Hauz Khas
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Tele : 011-26524018
Fax : 011-46089365
E-mail : indiapolicy@gmail.com
Website : www.indiapolicyfoundation.org

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Foreword

The intervention paper, *"NAC's Hindu Apartheid Law"*, presents an organised voice against the proposed Communal and Targeted Violence Bill, 2011. We consider the proposed bill as a tool to subvert India's civil society. We initiated a systematic intellectual effort to highlight the distortions of the bill. We have presented a critique on the bill to the National Advisory Council headed by Smt. Sonia Gandhi on June 6, 2011. Earlier, the Foundation had organized a brain storming session on the aforesaid Bill on May 31, 2011. R Venkatanarayanan, RNP Singh, Prof Rajvir Sharma, Rambahadur Rai, Rajesh Gogna, Satish Pednekar, Manmohan Sharma, Priyadarshi Dutta, were among those participants who actively contributed to the session.

The phrase "NAC's Hindu Apartheid Law", which was coined by Shri Venkatanarayanan during his speech, has been picked up by IPF as the title of this intervention paper. Extracts of the papers presented by the participants have been included in the intervention paper. Besides, articles published in various newspapers and websites have also been incorporated.

This intervention paper is the second in the series on *Resistance to Communalism* and is **dedicated to the memory of late Prof Madhukar Shyam Chaturvedi,** a prominent political scientist, whose untimely demise on August 1, 2011 gave a blow to the intellectual pursuits of the academic world. Late Chaturvedi was also one of the participants at the session. He presented his paper on the proposed Bill and dubbed it a systematic attempt to destroy the basic premise of the Indian Constitution.

We thank all those who helped to bring out this intervention paper. It could not have been possible without the active support of our office staff Shiv Kumar and Lalit.

5-09-2011

Prof Rakesh Sinha
Hon Director

Brain Storming Session

On
Prevention of Communal and Targeted Violence Bill 2011
Date- May 31, 2011
Time: - 4:30 pm
Venue: - IPF Seminar Hall
D-51, Hauz Khas, New Delhi-110016

Participants:-

1. Shri R. Venkatanarayanan, Former Secretary, Government of India
2. Shri R.N.P. Singh, Managing Editor, Eternal India
3. Prof. Rajvir Sharma, University of Delhi
4. Prof. Rajkumar Bhatia, University of Delhi
5. Shri Rambahadur Rai, Senior Journalist & Activist
6. Prof. Madhukar Shyam Chaturvedi, Rajasthan University, Jaipur
7. Shri Rajesh Gogna, Senior Advocate & Human Rights Activist
8. Prof. A.P. Singh, National Law University, New Delhi
9. Shri Manmohan Sharma, Senior Journalist
10. Shri Satish Pednekar, Senior Journalist
11. Shri Priyadarshi Dutta, Columnist & Writer
12. Shri Ashutosh Bhatnagar, Journalist
13. Shri G.D. Sharma, Former Civil Servant, Government of India
14. Shri Jitendra Kumar Sharma, Political Activist

15. Ms. Namita Tiwari, Activist
16. Shri K.B. Mahajan, Former Civil Servant
17. Shri Jaganniwas Iyer
18. Dr. Sushma Wahengbam, Scholar
19. Shri Navneet
20. Gopal K Agarwal, Activist & Thinker
21. Prof. Rakesh Sinha, Hon. Director, IPF

Part -I

Extracts from the Papers Presented at the Brainstorming Session

NAC's Hindu Apartheid Law

R Venkatanarayanan

The basic premise of the Bill is astounding in itself. Are the citizens of India, particularly the majority, to presume - and accept - that it is only Muslims and Christians who are deserving of State protection and privileges? A prima facie reading of the Bill may give the impression to a lay reader that it is a bill to stop communal atrocities but its actual objective, motive and purpose gives rise to suspicion. The format itself of this bill raises many questions and is enough to raise a question mark on the intentions and ability of those who drafted and cleared this bill. It is astonishing that responsible perons can draft a piece of intended legislation like this, after 60 years of independence from colonial rule. If this bill is passed in its present state and becomes a law, there is no doubt that it will have the most damaging effect of dividing the nation's citizenry into two mutually hostile classes. The debilitating effects will be seriously adverse on our nation, affecting communal harmony and engineering differences between the majority community and the minorities.

Main features of the Bill:

1.1. Sec. 3(e): This is the single most pernicious and mischievous concept in the Bill, namely "the Group". It comprises basically the religious minority (linguistic minority and SC/STs have been added as formality), but at the level of the State. Hindus even when they are in a minority at the level of a region within a State or a district or in a group of villages subject to inter-religious violence will be treated outside "the Group"! This is not very different from Zimmitude practiced during Islamic rule in the country. The Bill can be made more civilized by a single stroke, namely by dropping this concept and definition of "the Group", making the Bill applicable to any community or member of the community, involved in or affected by mass inter-religious violence.

1.2. Sec. 3(f): "coercive environment" is a vague concept, not easy to prove. Refusing to do commerce or associate in any manner with any member of the "Group" which is a fundamental right of any individual, is an offence under this Bill.

1.3. Sec. 3 (j): a "victim" can only be from "the Group"; victimhood is so comprehensively defined that it is easy to arraign any person not belonging to "the Group" as an accused person in a locality or district or State.

1.4. Sec. 4 (a): "means to engage" means nothing in legal parlance.

1.5. Sec. 6: In respect of offence against SC/ST, the accused is subject to double jeopardy, (will be held guilty twice) which is unacceptable in modern jurisprudence.

1.6. Sec. 7: One wonders whether it is necessary to so luridly describe what sexual assault is. The term, "otherwise" in Subsection (v) may make it impossible without legal and criminal liability to do a body search of a criminal of a religious minority community even in privacy. Defining "mass rape" as rape of more than one woman is absurd.

1.7. Sec. 8: The Bill seeks to define the offence of "hate propaganda" in such a comprehensive manner that not only freedom of expression and fair comment will be thrown out of the window but virtually any one saying anything remotely criticizing a minority community or member of the community, outside the Legislature can be hauled by any "complainant" just for belonging to "the Group" ! This is worse than living in Nazi Germany, or under the gaze of the ubiquitous Stasi in East Germany or in Stalin's Russia. What is worse, a Muslim openly inciting violence against those not included in "the Group" will not attract punishment under this Section.

1.8. Sec. 9 (2): This is one example out of many which unfairly and unjustly makes the public servant, such as a district magistrate or a Police officer, criminally liable by presumption and not evidence.

1.9. Tortuous and vague language has been used in a few other related Sections such as sec. 12, 13, 14 to impose responsibility on public servants faced with riot situations. For instance, 'dereliction of duty' as described in the draft is too wide-ranging. This sort of legal drafting will definitely demoralize law and order agencies ; it will also give a powerful handle to religious minorities to terrorize or intimidate members of the majority community.

1.10. Sec. 20: This section is preposterous. 'Internal disturbance' is a major and rare occurrence, described and defined elsewhere. Simply because "the Group" is involved under the rubric, also of questionable validity, of 'organized communal and targeted violence' the concept of 'internal disturbance' cannot be invoked. The use of the term 'shall' shows the mind-set of those who drafted the Bill.

1.11. Section 21: As already mentioned, providing for religious criteria for membership of the National Authority and the State Authority is an very wrong way of showing solicitude to minority religious groups which form the vote bank. It is a pernicious doctrine to hold that in respect of religious minority matters only religious minority-loaded public bodies should function.

1.12. Sec 23: It is not specified whether the Authorities shall be headed by HC/SC judges working or retired. This will make these Authorities suspect. In Sec. 23 (1) (b) it is said that to qualify for membership in these Authorities, one should have had a "record of promotion of communal harmony". How to determine this and prove it is a moot point. Making such provisions in a law is to invite long and frequent litigation.

1.13. Similarly Sec. 23(2)(b) is an absurd provision, impractical to implement.

1.14. Sec. 30, 31, etc are so drafted as to make serious inroads into the Constitutional authority of the States and to make these Authorities control and direct State officials. This is establishing parallel administration and is bound to create a lot of confusion and further subversion of discipline in the permanent public servants. Giving statutory powers to these Authorities to "observe" judicial proceedings directly or through nominees is wholly obnoxious; it smacks of over-lordship on the country's judiciary.

1.15. Sec 32: The entire public Services is sought to be brought under permanent scrutiny of these Authorities. While this is bad for administration and will be construed as unconstitutional interference in State functions, it will also result in complete confusion in discipline and accountability.

1.16. Sec 39 is another absurdity. It seeks to make the Authority, comprising some individuals with vested interest in religious minorities superior to the executive wing of the entire State.

1.17. Section 65 (4) is positively a bad precedent (post mortem to be done in the presence of representative of victim etc). These sections show that the mindset of the makers of this Bill is one of deep suspicion of all established administrative procedures.

1.18. Sec. 69 is an example of absurd provisions that follow in the Bill-the requirement to keep the "victim" informed in writing of the progress in investigation! The details mandated in the report are impractically long. This means another agency to be reported to over and above the State functionaries. Such provisions are sure to make members of the religious minorities run the administrations as they deem fit, interfere in them and dislocate them. This is taking victim rights too far indeed.

1.19. Mandating a judicial enquiry by this Central Bill is not only interfering in the Constitutional functions of the State government but also presumes that simultaneous investigation and enquiry by the Executive and by the Judicial Commission is always the right road to take.

1.20. Section 74: This section mandates a pre-determined inference when a person from the minority religion is the victim. What about a victim belonging to the majority community? Is the discrimination Constitutional? It is of course against judicial prudence.

1.21. Section 78: As already mentioned, appointment of Special Public Prosecutors is to be based on their religion, another pernicious provision in the Bill. How about a Shia Prosecutor or a Sunni Prosecutor and a Catholic Prosecutor and a born again Christian Prosecutor?! The requirement in Sec. 78(3) is absurd.

1.22. Sec. 81: Giving blanket suo moto powers to the designated Judge to take cognizance of offences deemed to have been committed under this proposed Statute will interfere with Executive functions. Such suo moto powers must be minimal.

1.23. Sec 86(6): Provides that irrespective of his or her wealth a Christian or Muslim who professes to be a "victim" shall be given free legal aid, engage any advocate etc.

1.24. Sec. 87: Not only the so-called victim but also every informant and witness shall be provided protection, financial facilities and socio-economic rehabilitation!

1.25. Sec. 87(4) seems to provide for secret trial as a routine-effective defence is forestalled by this sort of Nazi-like provision.

1.26. Sec 88: Calls for video-recordings of all court proceedings to be made available not only to the accused but also to the "victim" and informants, State Authority and also Central Authority.

1.27. Chapter VII: The only set of provisions in this Bill which does not differentiate between a member of the religious minority and a Hindu relate to relief, reparation and compensation. (Sec 90, 98)This is small mercy indeed.

1.28. But Sec. 92 and 93 impose enormous and almost impossible burden of detailed responsibilities on the executive functionaries down to the level of the District Collector. These provisions show the mindset of the drafters-one of unjustified and unfounded presumption that unless statutorily shackled the officials will not do anything for the victims. The history of how public officials have handled riots and their aftermath in the last 100 years does not justify such nitpicking legal provisions. What is worse, such provisions will make mischievous elements in religious minorities seek to drive the administration beyond endurance and even resort to blackmail.

1.29. A reading of the sections in Chapter VIII dealing with penalties will show how liberal the drafters of this Bill have been with "rigorous life imprisonment" not only for perpetrators (assumed always to be Hindus in this Bill) of the inter-religious rioting but on public officials for their commissions and omissions!

1.30. Sec 125 calls for punishment for crime not committed based on "inference" that but for prevention (by whom? Perhaps even by a vigilant minority religious person) the crime may have been committed!

There are certain bills which are discussed, there are others which are thrown in the dustbin and there are some bills, like the Communal and Targeted violence Bill, which need to be burnt. If it becomes law it will be a Hindu Apartheid Law.

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II
Jottings on Communal Violence Bill

Prof. A.P. Singh

The "Prevention of Communal and Targeted Violence (Access to Justice and Repara tions), Bill 2011" seeks to raise new grounds for communal tensions and create a new class of offences which goes against the very basics of juristic traditions.

The most glaring problem with the Bill is the definition of "group" and Communal violence under clause 3 (e) 3 (c) of the Bill. The expression "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,

Apart from the deliberate use of vague terms like "secular fabric of the nation" etc, on which there could be legitimate differences of opinions as to what constitutes "secular fabric of the nation", there is a positively dangerous attempt at raising the presumption of guilt on the part of the majority community. Mark the words "targeting a person by virtue of his of her membership of any group". This simply means that in case of an incident of inter-community tensions and cases of violence, the targeted violence on those who are not a part of the "group" (read minority group) would automatically not qualify as communal violence. Therefore 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. This is new jurisprudence of the bill.

The second most dangerous aspect of the bill is empowerment of the Central Government to interfere in the affairs of the State, if a case of violence or attempted violence occurs, anywhere in the state. Section 20 of the Bill provides, that "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 there under, as the nature and circumstances of the case so requires." Use of the expression "internal disturbance" which is capable of being interpreted in subjective ways, already had a long judicial history and was removed from the constitution by the 44th Constitutional Amendment has been brought in again to obtain flexibility

when Central Government decides to do away with an inconvenient State Government.

The attempt to regress to back-door centralism has to be resisted. The third dangerous proposition of the bill is that clause 14 and 15 read together create a new class of offence, i.e. "breach of command responsibility". This 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.

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Communal Face of the Government

Gopal K Agarwal

In a recent survey by 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. In stead of taking 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 of the government are involved in rampant corruption and the government is trying all means to protect them.

By bringing in a 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 drafted the bill on Prevention of Communal and Targeted Violence. There are many critical analyses on the bill, I will just restrict myself to two main issues: Groups based on religion and caste are danger for democracy. Our constitution envisions that by eroding religious and caste identities we can move towards a mature democracy. But through this bill the government is trying to attach premium to 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 the government announced a series of measures specifically for the benefit of the minorities in the budget and the Prime Minister gave a statement that the minorities had the 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 will

encourage the process of religious conversions in the country. The third case in point is the Census, where inclusion of caste has been brought in for the first time in the history of independent India. We all know that caste based politics is creating havoc in the process of elections in the country. The introduction of Enemy Property Act is also not above suspicion. This bill will facilitate handing over Indian property to many Pakistan nationals and their kin 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 abetting cross border terror. All these cases point towards the communal agenda of the government and its intention to create a divide between religious groups in the country.

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Disastrous Provisions

K.B. Mahajan

- The Bill is purported to prevent violence against minority communities but has been designed in such a way that the majority community (Hindus) has been demonized. Hindus have been made the villains of all communal riots. Here are some of the dangerous parts of the Bill.
- By definition given in Art. 3(e) Indian society has been divided into two: First- a 'GROUP' which includes the minorities, SCs and STs and Second 'others' which means the Hindu majority.
- In the subsequent clauses, the Bill goes on to imply that except the 'Group' as defined above all other groups are responsible for causing communal disturbances in India. In other words, it presumes that disturbances are committed ONLY by members of the majority community and minority community can never commit any communal atrocity.
- In effect the Bill divides the society into two hostile 'groups' which are pitted against each other. It also seeks to identify the 'groups' on the basis of Religion and Castes rather than equality among its citizens. In a very veiled manner the Bill goes against the Constitution which says ' all are equal before the law'.
- If the Bill were to become law, 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 converting India into a Police State where anyone can be framed on the flimsiest ground and put in jail.

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सांप्रदायिक एवं लक्षित हिंसा रोकथाम विधेयक 2011
एक खतरनाक और घातक बिल

आर.एन.पी. सिंह*

1. विधेयक दंगों के लिए हिंदुओं को जिम्मेवार मानता है। इस विधेयक की आधारभूत मान्यता ही गलत है। यह सच्चाई के बिल्कुल विपरीत है। प्राप्त विवरण के अनुसार भारत में पहला सांप्रदायिक दंगा 1713 में अहमदाबाद में हुआ था। उस समय से आज तक के दंगों के कारण देखें तो मुख्य रूप से उनके कारण इस प्रकार मिलते हैं।
2. मस्जिद के पास गाजे बाजे बजना
3. मजिस्द या किसी मुसलमान पर गुलाल के छीटें पड़ना
4. पूजा स्थान पर किसी समुदाय विशेष का कब्जा
5. पूजा स्थल की जमीन पर किसी प्रकार का विवाद
6. मस्जिद के बगल से हिंदू जुलूस का निकलना
7. हिंदू जुलूस पर पथराव
8. धार्मिक चिह्न को अपमानित करना
9. किसी दूसरे समुदाय द्वारा धार्मिक जुलूस को रोकना
10. मुसलमानों द्वारा गोवध कर हिंदू समुदाय के धार्मिक भावना को चोट पहुँचाना
11. मुसलमानों द्वारा बकरीद के मौके पर गोवध
12. मुसलमानों के द्वारा गाय को घायल करना
13. गो मांस बेचना
14. देवमूर्ति, मंदिर या मस्जिद पर गोमांस या सूअर का मांस फेंक कर अपवित्र करना
15. दो समुदायों में सामुहिक या व्यक्तिगत विवाद, किसी व्यापार को लेकर
16. हिन्दू-मुस्लिम माफियाओं के बीच प्रतिद्वंद्विता
17. हिन्दू या मुस्लिम लड़कियों का बलात्कार, उनका अपहरण या छेड़छाड़

* आईबी के पूर्व वरिश्ठ अधिकारी तथा Riots & Wrongs पुस्तक के लेखक हैं

18. दूसरे समुदाय में शादी
19. धर्मांतरण
20. अफवाह
21. अन्य
22. उपरोक्त सभी कारणों से यह तो स्पष्ट हो जाता है कि सांप्रदायिक दंगे किसी एक वर्ग विशेष की उपज नहीं होती अपितु यह समय एवं तात्कालिक कारणों पर आधारित होती है। इसीलिए केवल बहुसंख्यकों को सांप्रदायिक दंगों के लिए जिम्मेवार नहीं ठहराया जा सकता।

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सांप्रदायिक एवं लक्षित हिंसा विधेयक, 2011
संविधान में फेरबदल की साजिश

प्रो. मधुकर श्याम चतुर्वेदी

साम्प्रदायिकता तथा साम्प्रदायिक हिंसा के प्रसार की रोकथाम तथा साम्प्रदायिक हिंसा के शिकार लोगों को प्रभावी प्रतिकारात्मक कार्यवाही के लिए आश्वस्त करने के घोषित उद्देश्य से प्रस्तावित यह विधेयक प्रथम दृष्टया ही स्वयं साम्प्रदायिक मंतव्यों को अग्रसर करता हुआ प्रतीत होता है।

अधिनियम में प्रकट मंतव्य और प्रतिपादित परिभाषाएं संविधान की मूल योजना का उपहास करती प्रतीत होती हैं, तथा उन घोषित संवैधानिक मूल्यों की सायास अवहेलना करती हैं जिन्हें देश की शीर्ष न्यायपालिका संविधान के मूलभूत ढांचे का अभिन्न हिस्सा मान चुकी है।

अधिनियम की धारा 3 (इ) में 'ग्रुप' शब्द को परिभाषित करते हुए यह घोषित किया गया है कि उसमें भारत संघ के किसी राज्य में धार्मिक और भाषाई अल्पसंख्यक तथा अनुसूचित जातियां और अनुसूचित जनजातियाँ सम्मिलित मानी जाएंगी। इसी प्रकार धारा 3 (जे) में परिभाषित किया गया है कि रिविक्टिम (शिकार) भी वही व्यक्ति माना जायेगा जो कि ग्रुप के रूप में परिभाषित किसी समुदाय का सदस्य होगा।

ग्रुप या समूह की यह परिभाषा तर्क की किसी कसौटी से संगत नहीं है। यह समूह शब्द की भाषिक, तार्किक अथवा विधिक विवक्षाओं की स्पष्टत: अवहेलना है। सामान्यत: भी, और विशिष्टत: साम्प्रदायिक हिंसा और द्वेष के संदर्भ भी यह किस मापदंड से उचित ठहराया जा सकता है कि अल्पसंख्यक समूह ही समूह होंगे और अन्य समुदायों का समूह नहीं माना जाएगा?

जब इस परिभाषा को इस अधिनियम के समस्त प्रावधानों पर लागू किया जाएगा तो उसका सटीक प्रभाव यह होगा कि किसी अल्पसंख्यक समुदाय अथवा अनुसूचित जाति व अनुसूचित जनजाति के सदस्य के विरुद्ध किसी विद्वेषकारी कथन अथवा कारित हिंसा तो अपराध होगी, किंतु इससे भिन्न समुदाय के प्रति व्यक्त की गई दुर्भावना अथवा कारित की गई हिंसा इस अधिनियम के अंतर्गत अपराध की श्रेणी में नहीं आएगी। अधिनियम की यह परिभाषा स्वयं धर्म स्वातंत्र्य के अधिकार की सांविधानिक योजना की अवहेलना है, क्योंकि इसके द्वारा साम्प्रदायिकता को, समता की अपेक्षा स्वयं साम्प्रदायिक पहचान के आधार पर समझने और समझाने का प्रयास किया जा रहा है। ऐसा प्रतीत होता है कि ग्रुप और शिकार की परिभाषा में अनुसूचित जातियों और अनुसूचित जन जातियों का उल्लेख इस अधिनियम के मूल विभेदकारी साम्प्रदायिक मंतव्य पर आवरण डालने तथा उसके आपत्तिजनक स्वरूप को

किंचित कमतर प्रतीत करवाने के उद्देश्य में सम्मिलित किया गया है, अन्यथा अधिनियम की योजना में इन वर्गों का उल्लेख प्रासंगिक नहीं लगता क्योंकि इन वर्गों के विरुद्ध अत्याचार की घटनाओं की रोकथाम के लिए पूर्वत: ही एससी/एसटी एट्रोसीटीज एक्ट अस्तित्व में है। यदि ऐसा प्रतीत होता कि इन वर्गों के विरुद्ध किसी हिंसा या अत्याचार के शमन के लिए उक्त अधिनियम के प्रावधान पर्याप्त नहीं है; तो इसका निराकरण संबंधित अधिनियम में संशोधन करके किया जा सकता था, इसके लिए संविधान की मूल योजना में ही एक वर्ग के रूप में चिह्नित एस.सी./एस.टी. को, साम्प्रदायिकता के आधार पर किए जानेवाले किसी वर्गीकरण का हिस्सा बनाया जाना उपयुक्त नहीं था। यह न केवल अनावश्यक अपितु अनर्थकारी है।

संविधान के अनुच्छेद 14 में प्रस्थापित विधि के समक्ष समता और विधि के समान संरक्षण के अधिकार की यह अनिवार्य विवक्षा है कि विधि निर्माण और विधि के क्रियान्वयन में अतर्कसंगत आधारों पर कोई भेदभाव नहीं किया जायेगा। अतर्कसंगत आधारों के अभिकल्पन में विधायिका और कार्यपालिका के असीमित स्वविवेक का परिहार करते हुए अनुच्छेद 15 में वे आधार भी व्यापक रूप से गिना दिए गए हैं जिन्हें प्रथम दृष्टया अतर्कसम्मत माना जाएगा। इन आधारों पर पंथ को भी सम्मिलित करते हुए उसके आधार पर भेदभाव का स्पष्टत: निषेध किया गया है। किसी विधि की परिभाषा में अधिनियम के प्रावधान द्वारा की गई संरक्षा की परिधि में और आपराधिक दायित्व के निर्धारण के संबंध में केवल धर्म/पंथ के आधार पर वर्गीकृत किसी समुदाय विशेष के सदस्यों को सम्मिलित किया जाना विधि के शासन की प्रकट अवहेलना है। इस भेदभावपूर्ण परिभाषा का सहज प्रभाव यह है कि इस अधिनियम के आलोक में किसी राज्य में किसी भाषाई अथवा पांथिक अल्पसंख्यक समुदाय के विरुद्ध किया गया दुष्प्रचार अथवा हिंसा ही अपराध की श्रेणी में सम्मिलित किया जाएगा। यह प्रावधान स्वयं में साम्प्रदायिक सौहार्द की अपेक्षा से संगत हो ही नहीं सकता क्योंकि इसमें जो प्रकट भावना है वह यह है कि अल्पसंख्यक समुदाय से भिन्न समुदायों के प्रति व्यक्त की गई दुर्भावना व कारित की गई हिंसा साम्प्रदायिक हिंसा नहीं मानी जायेगी। यह तर्क से परे है कि किस प्रकार साम्प्रदायिक मंतव्यों और साम्प्रदायिक कृत्यों को भी अल्पसंख्यक व बहुसंख्यक के वर्गीकरण के आधार पर समझा जा सकता है।

अधिनियम में ऐसे अनेक प्रावधान है जो शासन के इस मंतव्य को रेखांकित करते हैं कि यह अधिनियम साम्प्रदायिक सौहार्द के संवर्द्धन अथवा साम्प्रदायिक विद्वेष व हिंसा की रोकथाम के उद्देश्य से नहीं, अपितु पांथिक अल्पसंख्यकों को अतिरिक्त संरक्षण देकर उन्हें एक वर्ग के रूप में संतुष्ट करने के प्रयास से प्रेरित है। अधिनियम की धारा 21 में साम्प्रदायिक सौहार्द और न्याय के संदर्भ में एक राष्ट्रीय अधिकार प्राप्त अधिकरण के गठन का प्रावधान है उसमें भी यह स्पष्ट कर दिया गया है कि उसके कुल सात सदस्यों में से कम-से-कम चार अल्पसंख्यक समुदायों से संबंधित ही होंगे।

ध्यान देने योग्य यह है कि स्वयं में धर्म स्वातंत्रय के अधिकार के संदर्भ में अल्पसंख्यक और बहुसंख्यक के वर्गीकरण की किसी भी संभावना का स्पष्टत: निषेध किया गया है। अधिनियम में साम्प्रदायिकता की जो परिभाषा दी गई है उसमें भी किसी अल्पसंख्यक धार्मिक समुदाय के सदस्य होने को ही आधार बनाया गया है। यह ध्यान देने योग्य है कि पंथ विशेष की सदस्यता के आधार पर भारत के नागरिकों अथवा नागरिक समूह का अल्पसंख्यक अथवा बहुसंख्यक के आधार पर, साम्प्रदायिकता के संदर्भ में वर्गीकरण संविधान में स्पष्टत: निषेध किया गया है। साम्प्रदायिकता की रोकथाम और देश के ''सेकुलर तानेबाने'' (जैसा कि अधिनियम में साम्प्रदायिकता की परिभाषा के क्रम में अंकित किया गया है) को क्षति पहुँचाने के संदर्भ को यदि मूल अधिकारों के आलोक में समझने का प्रयास किया जाए तो उसका एकमात्र सन्दर्भ धर्म स्वातंत्र्य के मूल अधिकार में खोजा जा सकता है।

यह ध्यान देने योग्य है कि अनुच्छेद 25 धर्म स्वातंत्र्य, धर्म के व्यवहार और प्रचार करने की स्तंत्रता के सन्दर्भ में 'समान हक' को रेखांकित करता है। अनुच्छेद 25 की शब्दावली में 'समान हक' शब्दों का प्रयोग संविधान के इस मंतव्य को रेखांकित करने के लिए पर्याप्त है कि धार्मिक अधिकारों के संदर्भ में संविधान अल्पसंख्यक और बहुसंख्यक के आधार पर विभेद या अतिरिक्त संरक्षण को अस्वीकार करता है। संविधान में भाषाई और धार्मिक अल्पसंख्यकों का एक पृथक वर्ग के रूप में अभिज्ञान केवल शिक्षा और संस्कृति के अधिकार के संदर्भ में किया है। यह अत्यंत आपत्तिजनक है कि इस अधिनियम के द्वारा संविधान द्वारा प्रत्याभूत मूल अधिकारों की योजना में ही उलटफेर किये जाने का प्रयास किया जा रहा है, तथा अल्पसंख्यक और बहुसंख्यक के वर्गीकरण को शिक्षा और संस्कृति से हटाकर धर्म स्वातंत्र्य के अधिकार के संदर्भ में प्रविष्ट करवाने का प्रयास किया जा रहा है। यदि धर्म स्वातंत्र्य के अधिकार में समानता की अपेक्षा अल्पसंख्यक और बहुसंख्यक होने के आधार पर कोई विशिष्ट वर्गीकरण अभिप्रेत है तो शासन को इसके लिए व्यापक बहस आमंत्रित करनी चाहिए और इतना साहस दिखाना चाहिए कि पंथ निरपेक्षता की उनकी दृष्टि में धर्म स्वातंत्र्य के अधिकार का वर्तमान स्वरूप संतोषजनक नहीं है और उसमें अल्पसंख्यकों के लिए अतिरिक्त संरक्षण की व्यवस्था किया जाना आवश्यक है।

अधिनियम के समस्त प्रावधानों का इस मूल प्रस्थापना के संदर्भ में परीक्षण किये जाने की आवश्यकता है कि क्या धर्म स्वातंत्र्य के अधिकार के संदर्भ में, साम्प्रदायिकता की परिभाषा, साम्प्रदायिक हिंसा के लिए दायित्व अथवा अनुतोष की परिगणना के संबंध में भारत के नागरिकों में अल्पसंख्यक व बहुसंख्यक के आधार पर विभेद किया जाना संविधान की मूल भावना तथा पंथ निरपेक्षता की संविधान में घोषित मूल योजना के अनुरूप माना जा सकता है?

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सांप्रदायिक हिंसा बिल की राजनीति

सतीश पेडणेकर

दरअसल एन.ए.सी. ने दंगा शब्द की नई परिभाषा ही गढ़ दी है। पहले दो समुदायों के बीच होनेवाली हिंसा को दंगा कहा जाता था लेकिन एन.ए.सी. की इस बिल के मुताबिक दंगे की नई परिभाषा यह है किसी राज्य में बहुसंख्यकों द्वारा अल्पसंख्यकों के खिलाफ की जाने वाली हिंसा।

न्याय के सामने सबकी समानता के सिद्धांत का इससे बड़ा मजाक क्या हो सकता है कि धर्म के आधार पर अब यह तय होगा कि कौन दंगों जैसे संगीन अपराधों का दोषी होगा और कौन नहीं। इसके लिए कोई कार्रवाई नहीं होगी। ऐसा न्याय तो किसी अंधेर नगरी में ही हो सकता है। यह बिल अगर कानून बन गया तो इस कानून के तहत गोधरा में 60 कारसेवकों को जिंदा जलानेवाले तो दोषी माने ही नहीं जाएंगे। इसी तरह पश्चिम बंगाल के देगंगा में हाल ही में वहां के हिंदुओं पर अत्याचार करनोवाले मुस्लिम भी सांप्रदायिक हिंसा के दोषी नहीं होंगे। क्योंकि दोनों राज्यों में हिंदू बहुसंख्यक जो हैं और बिल का मानना है कि सांप्रदायिक हिंसा केवल बहुसंख्यक ही कर सकते हैं अल्पसंख्यक नहीं।

सोनिया गांधी की अध्यक्षतावाली एन.ए.सी. द्वारा तैयार किया गया इस बिल का मसौदा कांग्रेस के पतन की त्रासदी की कहानी कहता है।

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सांप्रदायिक है सांप्रदायिकता निरोधक बिल

नवनीत

- क्या इस देश में दंगा सिर्फ हिंदुओं या बहुसंख्यक वर्ग द्वारा ही होता है? इसमें कथाकथित अलपसंख्यक वर्ग की कोई भूमिका नहीं होती है? दंगों में सिर्फ अलपसंख्यक वर्ग को ही जान-माल की हानि नहीं होती है। इसमें बहुसंख्यको को भी हानि पहुँचती है। लेकिन सिर्फ किसी खास वर्ग विशेष को बिल के दायरे में लाना और दूसरे वर्ग को इसके लिए जिम्मेवार ठहराना इस बिल के साम्प्रदायिक पृष्ठभूमि को दर्शाता है।
- क्या एन.ए.सी. जो कि अनिर्वाचित ढ़ांचा है उसके द्वारा बिल डाफ्ट करना असंवैधानिक नहीं है? तीसरा व महत्त्वपूर्ण सवाल है कि क्या बिल की प्रकृति स्वयं में ही साम्प्रदायिक नहीं है? जॉन दयाल, अबुसलेह शरीफ, असगर अली इंजीनियर, सैयद शहाबुद्दीन, कमाल फारुकी, सिस्टर मैरी सोंनिया, फरा नकवी, अनु आगा, हर्ष मंदर आदि उन लोगो में से हैं जो किसी समुदाय विशेष के साथ है या किसी समुदाय विशेष के कड़े आलोचक हैं।

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Part- II

Abstracts from Newspapers/Website Articles

Why the Communal Violence Bill is Flawed[1]

Arun Jaitley

- The Bill is a dangerous and discriminatory bill which presumes that the majority community is always to blame for communal violence.
- 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?
- This draft bill however presumes that communal trouble is created only by the majority community and never by the minority community. Thus, while offences committed by the majority community against the minority community are punishable, identical offences committed by the minority against the majority are not deemed to be offences at all!
- The legislative intent of this law is that only majority community members commit offences. Therefore, culpability and punishment should only be confined to them.
- If implemented, this bill opens up a huge scope for abuse. It can also be incentive for the members of certain communities or even terrorists to commit communal offences encouraged by the fact that they would never be charged under the act.
- The procedures to be followed for investigations under this act are extraordinary. Statement cannot be recorded under Section 161 of the CrPC, but only under Section 164 (before courts). The government will have powers to intercept and block messages and telecommunications under this law. Under Clause 74 of the bill, an allegation is presumed equivalent to proof. Public servants under this bill under Clause 67 are liable to be proceeded against without any state sanction.
- 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.

- In its politically motivated campaign against the Terrorist and Disruptive Activities (Prevention) Act - an anti-terrorist law - the UPA argued that even terrorists should be tried under normal laws. But for the citizens of the majority community, a far more draconian law is now being proposed.

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The Communal Violence Bill is itself Communal[2]

R Jagannathan

The Bill is itself communal in nature. According to a key definition of the people who are presumably the focus of targeted violence, "Group" means a religious or linguistic minority, in any state in the Union of India, or Scheduled Castes and Scheduled Tribes (SC/ST)…." If one takes away the fact that religious minorities and the SC/STs between them account for over 40% of the total population, the Bill cleverly posits that the other 60% (which may include upper castes Hindus, other backward castes and some miscellaneous groups) are the only people capable of targeted violence. Are we saying 40% can never target 60%, given that these numbers are distributed all over the country?

- The NAC draft is clearly driven by just one case of communal violence: Gujarat in 2002. Any law that is drawn up on the basis of one incident is draconian and foolish. The Bill is clearly targeted against the Sangh Parivar, whereas the objective should be to prevent communal violence of any kind. But were the 1992 riots in Mumbai and the 1993 blasts the result of Hindu conspiracy? Were all the blasts that took place in India in the last decade the result of "majority violence against the minorities" or the reverse?
- One should not forget that the country's worst communal riots did not happen during BJP regime. Gigantic ethnic cleansing in India happened in Kashmir, where the majority (Muslims) drove out the minority (Kashmiri Hindus), with help from across the border.
- The "secular" activists of the NAC have realized that since they can't get rid of inconvenient governments at will due to the lack of a Rajya Sabha majority, the Communal Violence Bill should come in handy. This draft bill tries to avoid all centre-state issues by pretending that communal violence is beyond the law.
- The Bill puts civil servants in the firing line. Clause 13 betrays the intent of this bill by listing a whole host of crimes that civil servants may be hauled up for under the head "Dereliction of duty." They do not even have the defence of saying they were following orders, because they have to judge if the orders were lawful or not. How many can make such decisions in the thick of a crisis?

Dump NAC's Communal Bill[3]

Sudheendra Kulkarni

- The NAC's proposed Bill is one of the most dangerous, discriminatory and ill-conceived draft bills ever to come up for consideration of the Union Cabinet since Independence. The Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011, prepared by NAC and cleared by its chairperson, reeks of the mindset of minority communalism, which the Congress has frequently appeased for vote-bank considerations.
- The bill's real danger lies in the fact that it holds individuals and organisations of only the majority community, and never the minority community, responsible for any communal violence. Thus, the perpetrators of the torching of the train at Godhra would not be covered under this proposed law, nor would foreign-funded church organisations involved in systematic conversion of the SCs, STs and the other poor Hindus based on clandestine hate propaganda against Hinduism.
- NAC's law would not cover Shia-Sunni conflicts, nor incidents like the chopping of the hand of a Christian professor in Kerala last year by a Muslim radical group, since both the victim and the victimiser in such cases belong to minority communities. Similarly, it would not consider the derogative description of Hindus as kafirs and heathens as "hate speech".

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Fatal Flaw in Communal Violence Bill[4]

Vivek Gumaste

- This restrictive definition of victimhood with a deliberate and manipulative syntax, smacks of a furtive agenda to tilt the scales in favour of a specific community at the cost of the majority, and violates the basic tenets of equality before the law.
- Additionally, by co-opting a minority status into the definition of victimhood, this bill makes the fallacious assumption that members of the majority are immune to sectarian violence and do not warrant specific legal intervention. Can any civilized society even tolerate such a far fetched and unrealistic claim that jars with realty?
- Numerical majority does not automatically translate into functional advantage and security. Demographic logistics often reduce a so-called majority community into a minority and vice-versa making such labels meaningless.
- For example, in pre-partition India, Hindus comprised 70 percent of the population, making them numerically a majority. Yet this perceived advantage did not protect them from becoming the victims of what is till now the worst communal bloodbath in the history of the subcontinent - the massacre at Noakhali in 1946: over 5,000 Hindus were butchered, hundreds of women were raped and thousands more were forcibly converted to Islam.
- In recent times, the plight of the Kashmiri Hindus is yet another example. Nearly a quarter million Kashmiri Hindus have been driven out of their homes permanently. This negates the hypothesis that a majority identity guarantees security.
- The aphorism "justice is blind" is meant to emphasise the non-partisan nature of law. The present draft, a complete anti-thesis of any ideal of justice must be scrapped.

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NAC's Bill would Land Dikshit in Jail[5]

Swapan Dasgupta

- Since the proposed legislation stipulates that "Every Police Officer shall take action, to the best of his or her ability, to prevent the commission of all offences under this Act" [clause 18 (2)], the relevant thana will have to register a case under the new legislation.
- The Bill is explicit that "unless otherwise specified, all offences under this Act shall be cognisable and non-bailable" [Clause 58].
- Clause 73 of this bill means that there is a presumption of guilt of the accused. The principle of innocent until proven guilty has been turned on its head.
- Anonymous informants will also have the automatic right to appeal to a seven-member National Authority if the case is dismissed at the local level, according to the bill's Clause 70 (1).
- The National Authority appointed by the Centre is not made up of sober and dispassionate judges. It would enjoy draconian powers, including the right to enter properties, carry out searches [Clause 33 (4)] and even control media content [Clause 8 and 67(1)]. This reminds people of the infamous Rowlett Act of the British colonial era.
- A statutory and quasi-judicial authority will be appointed on the basis of a communal quota. This body will also monitor and review transfers and postings of the civil administration in districts that have a record of communal tension or where communal disturbances could flare up [Clause 32(2)].
- Clearly, the draft NAC bill opens the doors for activist and overtly communal jurisprudence. India will witness a parallel Government committed to the principle that some Indians are more equal than others. It will open the floodgates for settling private scores and political vendetta.

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The Communal Violence Bill is a Remedy Worse than the Disease[6]

Sam Rajappa

- The draft legislation called "Prevention of Communal and Targeted Violence (Access to Justice and Reparation) Bill 2011" must be viewed in the light of the Congress wooing of minorities for their vote. Congress general secretary Digvijay Singh's description of the now-dead Islamic terrorist Osama bin Laden, who was killed by Americans, as "Osamaji" must be viewed in this light to understand the extent the party goes to woo the Muslim vote.
- The real aim of the proposed legislation is to keep the minorities firmly tied to the Congress and arm the Union government with extraordinary powers, which do not have the sanction of India's Constitution. This will also enable the centre to impose its will on the states.
- Most of the NAC members are also part of NGOs that operate on foreign funds, and represent vested interests of foreign powers. The chairperson of the NAC is slowly assuming the role of a supra-Prime Minister with no accountability. The body is becoming an instrument for maladministration.
- The draft bill presumes that communal violence is the handiwork only of the majority community and never the minority community. The most crucial and contentious definition of the bill is the term "group". Since offences under this bill would be in addition to offences under the SC and ST (Prevention of Atrocities) Act, 1989, the bill in effect, would mean that a person can be punished for the same crime twice. This is a sheer atrocity on any canon of civilized jurisprudence!
- Instead of reducing communal violence, the bill gives a fillip to the privileged "groups" (under the definition of this bill) to commit offences, secure in the knowledge that they would never be held culpable.
- The special public prosecutor to conduct proceedings under the proposed law

shall act not based on the actual facts of the case, but "in aid of the victim", who of course, will always be from the minority community. Thus, anti-majority bias is sought to be inherently built into the legal process itself. The basic principle of equality before law has been dispensed with.

- The statutory authority prescribed at the state and centre itself suffers from institutional bias because its membership structure is biased-based on religion and caste. This will only sharpen the communal divide and create disharmony in inter-communal relations. Since it defies the basic principle of equality before law, it is fraught with dangerous consequences.

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Centre as the Big Brother[7]

A Surya Prakash

- The proposed Prevention of Communal and Targeted Violence Bill, incorporates some extremely dangerous provisions which seek to re-impose the 'dadagiri' of the Centre on the States and even promote insubordination in the administration of the States.
- The insidious aspect of the proposed law is the attempt to use communal violence as a pretext to usurp the States' right to maintain law and order and to signal to bureaucrats and policemen that Big Brother in New Delhi is watching them.
- Police officers can be prosecuted if men under their control commit an offence or are accused of committing an offence against a religious minority community. The law proceeds on the assumption that the officer ought to have known that persons under his command would commit an offence.
- It encourages every policeman to question or challenge his superior right up the line of command and, if he so believes, to disobey his superior. Every policeman will need to worry about how the Union Government (and not the State Government) will view his actions. It is difficult to find a more irresponsible provision in any law.
- Equally disgusting is the communal colour that this Bill gives to every major offence. Though the Indian Penal Code deals with all such crimes, the proposed law draws a distinction between rape of a 'minority' woman and a 'majority' woman and assault of a 'minority' person and a 'majority'' person. The victim acquires an exalted status if he or she belongs to a 'minority'' community. Nowhere in the democratic world does one get to see such communalisation of crimes.

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Politically Motivated Bill-I[8]

Joginder Singh

- A Communal Violence Bill has been proposed by an advisory council of the head of the current ruling party in India. The Bill has been prepared by arm chair theoreticians, who are either totally ignorant of the ground realities or have deliberately glossed over the problem with a view to score brownie points, when elections in some States are around the corner.
- The Government prescription to pass laws on every subject, even when laws already exist, appears to be aimed at vote bank. It is a game, which all citizens, irrespective of their caste or creed or religion can see through.
- The biggest communal riots took place in 1947, when India was divided into Pakistan and India. Pakistan is the direct result of communalism. Almost all other communities from that country have been thrown out from that portion of India. With nobody to target any more, now Muslims in Pakistan are killing each other, on the ground as to who is more fundamentalist. It has happened in J&K, where 3.70 lakhs Hindus and Sikhs were forced to migrate from the valley.
- In the name of communal harmony, the Government of India and so called National Advisory Council has glossed over the issue. On the contrary, it initially suggested that the majority community is always at fault. One cannot really blame any Committee, because normally, they are packed with the cronies of the party in power and are more than willing to give any kind of recommendation.
- The draft bill will create more problems than it would solve, because majority in one State can be a minority elsewhere
- One way, apart from oral words, the communal riots also spread through printed words. The Criminal and Elections Laws (Amendment) Act, 1969 contains provisions for controlling and checking of prejudicial publications. It was observed by the National Police Commission that "Inspite of the availability of Legal power under this Act for controlling objectionable publications in the Press, very little action under the law is taken by the State Governments. While no Government in a democratic system should attempt to compromise the freedom of the Press, the Government cannot abrogate its functions, if mischievous reporting in the Press is likely to lead to a breach of the public peace."
- The Criminal Law (Amendment) Act, 1972 (Act No 31) of 1972 introduced a new section 153-B in the Indian Penal Code, which makes imputations, assertions, etc. prejudicial to national integration, an offence, punishable with imprisonment which may extend up to three years or with fine or with both. Thus legal provisions already exist for the control of the prejudicial publications and other activities prejudicial to national integration and public order.
- A number of commissions of Inquiries into communal riots, which have mostly occurred in UP and Maharashtra, with a few here and there in other States, have gone into the genesis of some of the riots in recent years and they have stressed again and again the need for effective and prompt control and contradiction of rumours which add fuel to the riots.
- The problem of communal riots cannot be isolated from the general law enforcement in a State. A strict and impartial law enforcement on a day to day basis can reduce the chances of a prolonged communal riot", according to the National Police Commission.
- Jagan Mohan Reddy Commission suggested that "Moral and Cultural education should be inculcated in the youth, so as to imbibe in them a sense of toleration and to broaden their outlook. The concept of a secular state is compatible with the moral aspect of religion…. The Political leaders should inculcate the idea of oneness in all sections of the people of India. The problem of communal disturbances must be solved by political and social leaders, as it is they who can initiate action, create conditions, prescribe norms and give proper orientation to inculcate that feeling and help achieve harmony and make a better society."
- Madon Commission felt that "The most effective way of bringing down a disturbance which has taken a serious turn or is about to take serious turn is to use firearms. Police firing should never take place in the air and should not be long delayed. The Police should not be afraid of judicial inquiries. The Police open fire on the most determined part of the mob keeping their arms slow so as to avoid taking life as far as possible… In every case of police firing the Government need not accept the demand of judicial or public inquiry."

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How I Doused the Flames of Communal Violence?-II

Joginder Singh

Elections were to be held in the country in 1967. More than 450 polling booths were set up in Bidar District. The instructions, for the Election Commission were, that there should be at least one constable per polling booth. With a total force of about 500 including the sick and trainees, it was a Herculean task to man the polling booths. With the total deployment done, I was left with a reserve force of seven men, which included my own guard and driver. For the first time, Jan Sangh, the predecessor party of the BJP had decided to contest elections from Bidar to the State Assembly. The Congress candidate was a sitting MLA and also a Deputy Minister, in the State Government, Maqsood Ali Khan and his Jan Sangh rival was Chanderkant Shindol.

On the election day, a dispute arose between the supporters of the two rival candidates. The representative of the Jan Sangh claimed that bogus voters were coming, to cast vote for the Congress candidate. The supporters of Congress candidate alleged that Jan Sangh supporters had removed the Burkas, to verify the genuineness of the Muslim lady voters, so that no man by putting on a Burka does proxy voting. First it started with stone throwing. Arson followed when a few shops and houses were set on fire. I saw the mobs of the two communities, surging towards each other menacingly. I myself along with my driver, and guard, started lobbing tear gas shells, into the unruly crowd. There was no sign of the violence and arson abating. I went to the nearest telephone booth and sent the following message to the IG "rioting, looting and arson in Bidar. Request rush reinforcements". I was also aware that by the time any force came from Bangalore, which was 480 kilometres away, the whole town would have been burnt. I also telephoned the Station Commander of the Indian Air Force, to rush to our help, with all the force he had, otherwise he would not see anything of Bidar town as I was battling the mob with just a seven men reserve force.

Fortunately, the Air Force arrived in a big way with their armaments, and vehicles and they started patrolling the city. At our request, they also sent up their trainer aircraft's to sensitive areas. This enabled us to assess with pinpoint accuracy, the trouble spots and the trouble makers. We were able to bring the situation, under control without any loss of life or even firing. Notwithstanding the trouble, the city had a polling of 65 per cent. In the meantime

a message came that the IG wanted me to speak to him immediately. The option for me was to leave the trouble spot for making a phone call or ignore it. I did not ignore it but told the wireless operator to send a message back that a hostile crowd had surrounded me and as soon as I could get out, I would speak to him. There were no ways of easy communication. There was no such thing as straight trunk dialling (STD). You had to book a call and wait near the telephone for at least one or two hours. I did it after four hours, after bringing the situation under control. He was quite happy with what I had done in that critical situation. The Deputy Commissioner, late, N.K. Prabhakar Rao, IAS of 1956 batch, was a valuable colleague. He was a type who would fight with you, any battle shoulder to shoulder. His presence in another part of the town, brought a similar situation under control. Sometimes, Policemen complain that when trouble arises, the Executive Magistrates make themselves scarce. But here the Deputy Commissioner was in the forefront of the battle with me. Under the law it is only the District Magistrate who can summon the armed forces or paramilitary to the aid of the civil authorities. Here I had summoned the Air Force and they had responded in the national interests. The Deputy Commissioner-cum-District Magistrate signed the requisition, as if he had summoned them, to keep the record straight. He did not create any fuss.

The incident had generated a lot of bitterness and distrust between the two communities. I convened a meeting of the two candidates and the prominent citizens in my office, along with the District Magistrate. Instead of a peaceful discussion the members of the two communities started blaming each other for communal riots. I kept on listening for sometime. I intervened to say that any more disturbances and recriminations would compel me to arrest all those spoiling the atmosphere, including the candidates, contesting elections, without any fear or favour. I urged them to ensure peace, in their respective areas, failing which I will have to take some very unpleasant and tough measures. Nobody had heard such a plain talk. Since the District Magistrate was in my office sitting with me, everybody presumed that it was a joint decision. This had a salutary effect. I suggested that the shops must open next day and the business should go on, as usual. For any serious rioting or incident, it is essential that the senior officers including DIGs and if possible the IGs should visit the place. Bidar was more than 300 kms. from the range of Headquarters. The only way to travel to Bidar was by road. When the DIG got the message of trouble, he rang me up on the first day. Since I was busy with quelling the riot, I could not speak to him. Next day when my meeting with the citizens was going on, a call came from the DIG. He started berating me that I had not dealt with the situation tactfully. The real cause was the uncomfortable road journey on pock marked and pot holed roads, for two days, to reach Bidar. When I found that without realising the gravity of the situation, he was going on and on with his lecture, I just said: "I cannot hear you". He said that he could hear me clearly. I kept on telling him that I could not hear him and would call him up later on. I did not want to appear to be rude to the DIG in the public meeting. I put down the phone and told my personal staff that if any call comes from the DIG when I am in a public meeting, they could tell him that I had gone for the city rounds and would call him later on. The DIG was bitter, on my not receiving the call, when he came

to Bidar two days later on. I explained to him that I was busy in a public meeting when he was calling me up. I had no other option, but to cut the call, as he was in no mood to listen to my version. After going around and seeing how I had tackled the critical situation, he paid me rich compliments with a copy of the letter to the I.G.

Mass rape at Bhimalkheda

During one of the meetings with the press, it was brought to my notice that a mass rape had been committed at a village called Bhimalkheda in Mannaelkheli police station. The Police had refused to register a case. Perhaps it was on the ground that the rape victims were from the family of a big bully and a known rapist. Perhaps there was an element of fear coupled with glee, that a sort of poetic justice, had been meted out, to the family of one, who himself had ,been guilty, of similar offences on the village womenfolk of the other community. The offence had been committed more than two weeks ago, on a dozen women belonging to the minority community. The victims included the old and the young, married and unmarried. When I made enquiries, I found that no case had been registered. At least the district records did not show the occurrence of any such offence. I sent an officer from the district headquarters, for an inquiry. I followed it up. with my personal visit to the village. Preliminary enquiries showed that such an offence had indeed taken place. Almost all the young people of the village belonging to the majority community had taken part in the rape. It was done in a spirit of reprisal. A few days before this well-planned crime, the entire youth of the majority community, had taken an oath, on a flame to teach a lesson, to the rowdy.

The preliminary enquiries also revealed that no complaint had been made to the police station. I was personally not inclined to believe the same. But since the aggrieved women themselves, said that they had not complained, I had no option but accept their version. A case of rape and criminal trespass was registered. All of those, who had perpetrated, the crime, were nabbed. The women were sent for vaginal medical examination, which is essential to prove the charge of rape. As most of the victim women were married, the medical opinion was not helpful. The Doctor reported that no opinion could be given as they were used, to frequent sexual intercourse. In the case of two young married girls, the medical evidence showed ruptured hymen.

The only evidence, against the accused numbering 25, was the statement of the victims. Despite weak evidence, the case did succeed in the Sessions Court. The case was based on circumstantial evidence. The accused were convicted and sentenced to five years of rigorous imprisonment. However, they were acquitted by the High Court in an appeal. But as they had spent a lot of time in jail, first in police custody, then in judicial custody and later on as prisoners, this had a good effect on the law and order climate in the district. The local press blew up the case, as my personal success, for having taken up the challenge and proved that the District Police Chief was totally impartial in his dealing with all the communities.

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Bill to kill Secularism[9]

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 proposed Bill, if it becomes a Law, pre-supposes that all communal riots are started by the majority Community and the minorities cannot ever do that.
- What happened in Godhra would never come to light under this law as the majority community cannot complain against the happenings while the Minorities would not commit the crime.
- 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 definition of 'Hate Propaganda' is designed to give the Government draconian powers and curb freedom of speech.While the complainant's identity will not be disclosed, the accused is treated as guilty unless he proves lies innocence (It is just the opposite of our present basic Law ' you are innocent until proved guilty).

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?"

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Rethink the Communal Violence Bill[10]

Ashutosh Varshney

Minority protection

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. Both were bad, but majority communalism was infinitely worse. Nehru detested Jinnah's communalism, but called Hindu communalism the greatest danger to India.
- 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 marenge, said Hyderabad's Muslim wrestlers to Sudhir Kakar, a psychologist who also researched violence, to hum chhabbees Hindu marenge - 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).
- In sum, therefore, fundamentally because of the easy, though erroneous, equation of majorities with nationhood, a democracy must protect its minorities from violence. The NAC is right to emphasise the vulnerability of minorities and to stress that the Indian state can behave in a highly majoritarian fashion. But do we need a new law?

- The second important aspect of the bill is its insistence that if "communal and targeted violence" against minorities takes place, it will automatically be assumed that the civil servant in charge of law and order has not exercised "lawful authority vested in him or her under law" and he or she "shall be guilty of dereliction of duty". The bill makes civil servants legally liable for riots. They will be fired, demoted or reprimanded, if a riot takes place on their watch.
- 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, and 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, during 1950-95, as I calculated in my book on communal violence, a mere eight cities of India - Mumbai, Ahmedabad, Baroda, Hyderabad, Aligarh, Meerut, Delhi and Kolkata - had nearly 46 per cent of all deaths in Hindu-Muslim riots. Did these eight cities have repeated "dereliction of duty" by civil servants? Did the peaceful cities have especially duty-driven officials and police forces?
- When I asked why he succeeded in keeping peace in smaller towns of Maharashtra but, in 1984, failed to prevent an awful communal riot in Mumbai and later in Ahmedabad, Julio Ribeiro, an outstanding police officer of post-1947 India whose commitment to duty has never been questioned, said that there was something about how social and economic life was organised in Mumbai and Ahmedabad, which made his task enormously difficult. The same question - why riots in some places, not in others - elicited an identical answer from most police officers and civil administrators I interviewed in my 10-year long study of communal violence. Would the NAC fire a Ribero, and others like him, for their inability to prevent riots?
- Riots are jointly produced. They are, in part, an outcome of how the police officials and civil administrators have performed their constitutionally assigned functions. Rioting is also, in part, a result of how social and economic life is organised in a town, whether Hindus and Muslims are segregated or integrated, and what incentives or capacities such local structures have created for politicians, always in

search of political gains, to inflame and polarise, or calm and unite, local communities. The same IAS officer who functioned well in Warangal often felt helpless in Hyderabad. The NAC would like to give more powers to the civil servant. But if riots are jointly produced by the state and society, dealing with one side of the equation is surely not enough.

- The bill also envisions creation of a new set of state institutions: a National Authority for Communal Harmony, Justice and Reparation, headquartered in Delhi. 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.
- 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.

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Part- III

Letter to the NAC Chairman

This is an excerpt of the letter written to the Chairman of NAC by the Hony. Director, India Policy foundation. It is felt that the letter has created its own impact as certain amendments that had been suggested in the letter is found to have been incorporated in the newly amended bill.

To,

The Chairman NAC/ Drafting Committee (Prevention of Communal and Targeted Violence Bill, 2011)

India Policy Foundation, a Delhi-based think- tank, has analysed the content of the proposed Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011.

We find that the present bill redesigns and reinterprets the crucial provisions of the Indian Constitution relating to Centre-State relations purely at the behest of political interests of the party in power at the centre. A host of institutions are deliberately sought to be created with the sinister aim of promoting petty party politics at the cost of undermining elected democratic institutions in India. This is not a good sign for the future of democracy in the county.

Even a cursory glance at the bill indicates ominous signs for democratic politics in this country. It explicitly pursues the course of politics of exclusion by selectively and politically defining the term 'group' under clause 3(e). Shockingly, this definition not only excludes the majority community, but also undermines the constitutional provision of multicultural ethos of Indian society. There is absolutely no dispute to any law which is employed to defeat communalism. However it sets the alarm bell ringing when it becomes the pretext of excluding people of different religions, castes, gender, language and region. Such a constrained meaning of "Group" that only includes religious minorities and Scheduled Castes and Scheduled Tribes, unfortunately, implies that except these groups all other people are responsible for causing communal disturbance in India. If such a parochial categorization goes unchallenged, it has all potential to create serious cleavages in the Indian society. Moreover, inclusion of SC/ST is merely an eye-wash to cover up the hidden agenda.

The other questionable aspect of the bill relates to assigning more and more powers to the central agencies and the proposed National Authority for Communal Harmony, Justice and Reparation under clause 21 of the bill. The bill consciously strives to mount an assault on the federal fabric of the polity.

Another feature of the bill which invites urgent attention is the reinterpretation of Article 355 of the Constitution. Sadly, this reinterpretation makes the ghost of emergency alive by reinserting the much condemned phrase 'internal disturbance' that had become the basis of declaration of emergency in June 1975.

The communal nature and composition of the National Authority is also not without suspicion. Besides, it also provides enough space to the central government to manipulate the decision of the Authority.

We conclude the above analysis by raising some fundamental questions on the necessity of enacting laws and creating institutions. As human history suggests, both are the product of long churning of human wisdom to grapple with social problems, crises and tensions. They also inherently contain the societal consensus for such enactment and creation. If we apply this principle to the proposed bill, it seems to be quite inadequate for enactment, at least in the present form.

In fact, the necessity of the bill is not based on acute and serious social concerns but primarily owes its existence to political concerns of a particular regime and ideological persuasion.The imperative need of the hour, therefore is, to reveal the real intent of the bill before it causes any damage to the democratic politics of the country.

This is another attempt to premise the idea of governance on the religious-social division of the country. It is an effort to deeply embed the idea of majority and minority in the psyche of the country in such a way that the politics of the country could hardly ever be turned towards real issues of democratic governance. In short, the bill, on closer scrutiny, itself becomes the ground for promoting communal divide.

Social and cultural cleavages are readily available resources for charting out the course of state power. Again there is a resemblance of the present articulation of state power with the colonial power discourse. The rational of British power in India was provided in the form of white man's burden, it was apparently their civilizing mission that justified their continuity in India. The hollowness of such claims was exposed only with the intensity of freedom struggle and with the emergence of nationalist discourse. Ironically, the same pretext is, more or less, being invoked in the same fashion when the present political dispensation takes the fullest advantage of social and cultural divisions of the country in the name of promoting and strengthening secularism in India. This proposed bill is the classic example of such a state centric power discourse. Moreover, both colonial practices and the subsequent evolution of state power in India are parts of the same philosophical tradition of modernity. This philosophical synchronization entails a kind of political practice that resembles the function and strategy of pre and post colonial states. It is really very unfortunate that we find almost the same colonial resonance in the proposed bill.

The alternative tradition to what India inherited under the influence of a long spell of colonialism was expounded by Mahatma Gandhi. Instead of according primacy to state initiatives, he privileged social initiatives. The root to India's ethno-political problems, according to Gandhi lies in fusion of different plural traditions of this great country. It was the strength of civilizational aspects of the evolution of nation in India that has ensured unity in diversity. However, this role of fusion was almost singlehandedly carried by the society and its different groups. Problems arose only when this process of fusion was first reversed by the British and then by the post-colonial state in India. The proposed bill is the strong link to this reversal process and as such it intends to continue the same trend, though of course with a different tone and tenor.

We are sending the critique of the bill in view of its larger perspective. We hope that it will exhort the NAC to rethink and reanalyze the content of the proposed bill.

Rakesh Sinha
09.6.2011

Rakesh Sinha
Hon Director
India Policy foundation

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