

Intervention Paper

Hole in the Bucket

Examining Prevention of Communal & Targeted
Violence Bill-2011

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India Policy Foundation

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Preface

Prevention of Communal and Targeted Violence Bill 2011, is not only a controversial proposal but also a mirror of the new social viewpoint and philosophy that seeks to break the consensus provided by the Indian Constitution and society. What is this consensus? The answer can be found in the preamble to the constitution: “We the people of India”. These four words represent the spirit of cultural nationalism and the uninterrupted flow of the cultural stream. Despite some rare undesirable incidents they represent a positive and optimistic future for the socio-cultural harmony of the country. Whatever languages the people of the country might speak, whatever might be their mother tongues, whatever their attires, whatever gods they might worship or even if they are atheists, Indian society and constitution do not differentiate between them. The social and constitutional consensus prevails without discrimination.

This basic presumption has been the cornerstone of the country’s institutions and laws. It must be made clear that it is social awareness that provides strength to the constitutional consensus and commitment to this consensus gives birth to our concept of constitutional nationalism. A country that does not respect diversity and fair-play can barely be a multicultural and secular society. If this does not happen, both democracy and secularism become victims of the dominant groups.

In Islamic countries believers in other faiths are deprived of even a bare minimum of their religious freedom. For the last 200 years, Europe has been a representative of liberal and neo-liberal beliefs. A section of the Indian intelligentsia consider these beliefs their ideal. But most of Europe affected by the Islamic terrorism has rejected multiculturalism as a

model. France, Belgium, Australia and Switzerland are creating laws that militate against their multi-cultural ethos. One of these is the ban on *burqa*. This marks a clear change in the social philosophy of the West.

India did not allow its multi-cultural diversity and essential character to be weakened even after the tragedy of the partition of the country in 1947. The freedom of religion and freedom of expression remained unaffected in the country and the constitution reflects this. Drawing lessons from history, the Constituent Assembly had declared that dividing people on the basis of their forms of worship as minority and majority was unnatural and unconstitutional. Hafiz Tajamul Husain and Dr. H. C. Mukherjee, a practicing Christian had delivered remarkable speeches on the rights of the minority in the Constituent Assembly. Husain believed that the colonialists had used the concept of minority that proved dangerous. This whole concept had to be exorcised. Mukherjee had warned that if we were to continue as a united country we could not afford to divide people as minority and majority. He asserted that forms of worship could not make people majority or minority.

It is to the credit of people like Mukherjee and Husain who ensured the Indian constitution did not recognize the concept of majority and minority. An exception to this is Sections 29 and 30 which have used the word “minority” though it has not been defined.

However, identity politics is being promoted for political gains. Unfortunately this is not condemned by the political and intellectual classes. This is why economic policies are being formulated on the criteria of majority and minority. Members of the constituent assembly would not have imagined that the standards of Indian polity would decline so much that even the communal and divisive ideas as practiced by the colonialists would begin informing our politics and economics.

The poor, unemployed and needy get government aid on the basis of their religious beliefs. This is a mockery of the whole constitution and its various sections that deal with democracy and equity. It is this politics of the ruling group that encouraged the crusading intellectuals to break the second consensus: the rule of law. The rule of law means equality before the law and no discrimination on the basis of gender, community, region and language. The police and administration of our country

function on this solid foundation. The country is governed by a common legal system. This is a must for establishing an egalitarian society. Prevention of Communal and Targeted Violence Bill 2011 is an attack on this second consensus. The present Bill provides for two kinds of criminal laws, legal system and punishment. It has divided the people into two sections: the majority community as the aggressor and the minorities as the permanent victims of the majority. This 'Group' is the new identity of the religious minorities. The SC/ST have been put in the 'Group' so as to camouflage an aggressive minoritism.

This is why the Bill ignores all the laws and restrictions of the constitution, and divides the minority and majority into two imaginary opposite enemy camps. What is surprising is that the Bill even defines sexual offences on communal grounds. If this becomes a law, it would spell a dangerous communal polarization and destroy the communal harmony that has existed in the country for centuries.

This intervention paper analyses the provisions and implications of the proposed Bill. One hopes the paper would generate a nationwide critical debate on the bill, and force the government to abandon it in the larger interest of the country.

Rakesh Sinha

5/09/2011

Summary

1. The proposed Prevention of Communal and Targeted Violence Bill, 2011 has been created outside Parliament. It has been created by the National Advisory Council headed by Mrs. Sonia Gandhi. Those who have been involved in the process of preparing this Bill include John Dayal, Teesta Seeatalvad, Farha Naqvi, Harsh Mander and others.

All these people consider India a Multinational State. They have made no worthwhile contributions in social, economic and legal fields. They are so called intellectual activists. The Bill they have created reeks of a prejudiced mindset and is an infliction on the country. It is a product of reactionary mind.

2. It is evident that neither the Union Home Ministry nor any senior officials nor constitutional experts and educationists have been consulted before drafting these proposals. Those who have done serious research on communalism, secularism, causes and history of riots in the country have also been left out and their writings have not been taken into consideration either.¹

3. Why was this Bill needed in the first place? What is its purpose? Why has this been created despite there being enough laws for these under the existing laws of the country? Not a single word has been said about preventing communalism and violence and the Bill has no preface to it.

4. There are 9 Articles and 139 sections and sub sections in the Bill. But Article 3(E) is the soul of the Bill and all other things revolve around this.

5. Article 3(E) has divided the people of India into two categories - Privileged and

¹ For example Vipin Chandra: Communalism in Modern India, R N P Singh (Riots and Wrongs), Ashutosh Varshney: Ethnic conflict and Civil Life: Hindus and Muslims in India. Both Singh and Varshney have declared the Bill Ultra vires the Constitution.

the Commoners. The religious and linguistic minorities, scheduled Tribes and Scheduled Castes have been kept under the category called the 'Group' while the rest have been dubbed 'Others'. These are common men.

6. The Scheduled Castes and Scheduled Tribes already have a full-fledged Commission with powers of civil courts to take care of their problems. Why have they been kept under the 'Group' the NAC does not have an answer?

7. Similarly, the linguistic minorities are in the group only as a formality. The report of the Ranganath Misra Commission on the linguistic and religious minorities has already been released and almost all members of the NAC agree with the recommendations of the report. But they have deliberately ignored one vital conclusion of the Ranganath Misra report which says that the linguistic minorities are neither a caste nor a class nor a religious community because their situation differs from state to state. They may be a majority in one Taluka and State and in a minority in another state. The report also states that the linguistic minorities have been well taken care of under the present constitutional provisions. Then the question is: why have they been placed in the 'Group'?

8. In short, the word 'Group' for all practical purposes means the religious minorities especially Muslims and Christians. The linguistic minorities and SC/ST have been put under this 'Group' only to hide the agenda of the Government.

9. The Bill is not based on positive bias but on the hate philosophy as propagated by the Nazi. The Bill takes an aggressive, narrow and racial view of the Hindus. It assumes that riots will always be initiated by Hindus. This is a direct attack on the Hindu philosophy and its history. Is there any law in the world that can predict that only one particular community would be responsible for all riots and racial attacks? How can anyone make such an untenable prediction? This view of the NAC appears to bear a resemblance to the Nazi mindset.

10. A mere complaint by the 'Group' or by a member of it of being publicly humiliated, deprived of his right to work or being biased against would be enough to launch criminal proceedings against the accused Hindu. If the accused is associated with any social or other organisation, the office bearers of the organisation would be equally guilty of the police offence as proposed in the Bill. This includes both registered and non registered

organisations. If the accused happens to be member of any youth club or Ramlila Committee even the office bearers would be held equally responsible for his action. But members of the Christian and Muslim organisations would be exempt from such laws. According to R Venkatanarayanan this will be a 'Hindu Apartheid Law'²

11. Similarly the NAC is proposing to bring out two kinds of Indian Penal Code one for the Hindus and the other for the religious minorities. Every individual is equal under the Indian Constitution but this Bill mocks at the fundamentals of the Constitution.

12. According to this Bill 'hatred' or calumny means something written or spoken against the minorities, the majority community would be held responsible. If any written document does not please the minority community it will be considered an attempt to spread hatred and tension against them. And this is a punishable offence. But if the minorities bring out such documents as offend the majority community it will not be considered offensive under the new law.

13. The Bill has a new section under the category 'inimical atmosphere.' If a member of the Group feels that the inimical atmosphere being created by the majority community affects his job, business or living there can be a criminal case against them. Does this not disturb the age old practice where all the communities have been living together for centuries in an interdependent society? Will this not create a fear where no one would like to conduct joint economic ventures with the Hindus under constant threat of litigation? This Bill ignores the inner differences among the minorities. The age-old tension and enmity between Shias and Sunnis, between the SC/ST and the Christians have totally been ignored under the Bill. In Andej (Sanad, Taluka in Ahmedabad) in Gujarat, some Dalit families are living among 700 Muslim families. Here the Muslims have issued a Fatwa that no Muslim rickshaw puller would allow a Dalit to use his vehicle. But this violation of the Fundamental Rights would not fall under the purview of this Bill.

14. The office bearers of social and cultural organisations of the member outside the Group have been called Non State Actors. Wittingly or unwittingly if any member of these organisations indulges in any wrong Bill against the minority the office bearers of these organisations will be held responsible for the consequences. Will anyone take the risk of

² India Policy Foundation Brainstorming Session, May 31,2011

joining any organization as an office bearer under such unjust laws?

15. The term 'victim' normally means any one who has suffered during a riot or violence. But according to the Bill the 'victim' will under all circumstances belong to the minority community in case of riots/ violence. In other words, the aggressor in all cases would be Hindu and even if a Hindu is killed he would not be considered a victim.

16. It appears that those who have drafted the Bill can prophesy the future. This Bill makes absolutely certain predictions about the 'victim' and the 'accused' for all acts of violence at all the three levels- social, legal and political. In modern history such an example is found only in Nazi Germany where the Jews had permanently been held responsible for all acts of violence. This Bill is a repetition of the Nazi thought.

17. It is shocking that even an offence like sexual violence has been looked at from a communal and racial point of view in the Bill. An Bill of sexual violence against a member of the Group by a member outside of the Group would be considered a heinous crime and the Bill provides for imprisonment ranging from seven years to a life term. But if members of the Group indulge in acts like eve teasing or rape against a Hindu woman it will not be considered an offence. The new Bill would remain a silent spectator in such situations. For example, if there are two collegemates and a sexual violence is committed against them by chance if one is a Hindu and the other is a Muslim, law would apply different yardsticks in dealing with them. The police will also look at the offence in different ways. If there is a delay in conducting a post mortem or inquiry involving a minority member the police officers would be liable for three years of RI for their dereliction of duty. But if this happens with a Hindu victim it is not a crime. 'Mass rape' also has different connotations for different communities. According to the Bill, 'mass rape' means rape of more than one woman if it involves the minority community.

18. Under the garb of controlling communal and targeted violence powerful structures have been created at the national and state levels. These structures have been vested with powers to ride roughshod over the country's federal system. In a move aimed at weakening federalism, bureaucrats and police of the states of the union would be put under what would be known as the 'National Authority.'

19. The National Authority has been constituted in a way that at least four of its

members would come from the 'Group'. Inclusion of a female member of the minority has been made mandatory. The President and the Vice President have to compulsorily come from the 'Group'.

20. Law and order is a state subject but the Bill is not bothered about such technicalities. The Authority also has the power to intervene in cases against the minorities in the courts.

21. The most interesting part of the Bill is that it will always keep the police and the bureaucracy under psychological pressure. In communal riots, where members of the 'Group' are victims, bureaucracy will be held responsible and given rigorous imprisonment. They would be forced to keep a check on activities of the Hindus and their organisations and would have to be extra strict against them. It has clear provisions that senior officers would also be held responsible for the negligence of their local officers. The Bill appears to be more of the glorification of the Nazi philosophy than an exercise in creating a social awareness.

Divisive policy

The intentions of the makers of the proposals of the Bill become clear just after reading the very first chapter of the Bill. In Section 3 (E) of the Bill there is a category called 'the Group'. This definition divides the people of the country into categories as far as criminal law and justice is concerned.

The first category in this is termed 'the Group'. This includes people from the religious and linguistic minorities and Scheduled Castes and Scheduled Tribes. The 'others' which mostly comprise the Hindus have been termed as others. What does this classification mean? The meaning of this term becomes clear from Section 3 (C), 3 (F) and 3 (I).

Section 3 (C) has totally changed the definition of the word communal riots. From the middle ages and the colonial period to the present times riots have meant a clash between two communities.

Those involved in these riots were identified and punished according to the Indian Penal Code. According to the National Advisory Council, the accused are declared guilty without being given an opportunity to defend themselves. As per the Council, 'communal and targeted violence' means either planned or spontaneous violence against the members

of the 'group' causing physical harm or destruction of their property. In other words, if there is violence by the members of the group against the others it would not be called communal and targeted violence.

Hence this Bill does not regard everyone as a victim but only those who belong to the Group (see section 3(E)). This means that if the Hindus are killed, their houses burnt, they become handicapped, orphaned or helpless, they will not be considered victims. They will always be regarded as the accused and the aggressor. This kind of discrimination by the State is rare to come by in modern societies. In Nazi Germany the Jews were considered responsible for all the ills in the country and the German Police and Administration were forced to treat them as criminals for every crime committed. The Bill seems to have been inspired by the Nazi philosophy.

Artificial definition of 'Group'

Before carrying on the discussion on this Bill further, we must take a look at the nature and practical meaning of the word 'Group'. What is the purpose of lumping together the Scheduled Castes, Scheduled Tribes and the religious and linguistic minorities in the Group?

Linguistic minorities

Clashes between the linguistic minorities and the majority community are very hard to find in the history of India. A linguistic minority is a temporary and changeable concept. It does not have a fixed definition. It differs from taluka, district, state to the national level. That is why the Ranganath Misra-headed 'Commission for Religious and Linguistic Minorities' has clearly stated in its report: "The linguistic minority is neither a caste, nor a community based on religion."³ The commission has expressed its satisfaction with the legal and constitutional safeguards provided to them in India. The report has not mentioned any feeling of insecurity or discrimination among them. Why have they been kept in the 'Group' by the proposed Bill? The NAC does not have any logical argument to support this. Otherwise, they have been the blind supporters of the Ranganath Misra commission report.

³ See Ranganath Misra Committee report, Volume 1 P. 39

Scheduled Castes and Tribes

Unfortunately for the last few years the term SC/ST has been used only to camouflage the minority politics in the country. In 2005, the Sachar Committee had been constituted to study the social, economic and educational status of the Muslims. The Committee gave its report in 2007. The Committee suggested setting up of the equal opportunity commission to resolve their problems. The Ministry dealing with the Minority affairs has clubbed together the SC/ST with the minorities in the Bill prepared by it. The Sachar Commission, which had suggested the setting up of the equal opportunity commission had its terms of reference limited to the Muslims. Secondly, the ministry of minority affairs which prepared this document was also not competent to talk about the SC's/ST's.⁴ Then why did it recommend the clubbing of the minorities with the SC and ST in the Bill? And now the bill on prevention of communal and targeted violence has also done the same.

The question arises as to what are the lacunae in the SC and ST (Prevention of Atrocities) Bill 1989? There is already a national commission to redress the problems of the SC and ST which also has powers of the court. Then what will be the benefit in bringing them together within the purview of the national authority? What is that power which does not vest with the SC/ST Commission? And what do they hope to gain by including them in the newly recommended National Authority? It will devalue the authority and power of the already existing Commissions.⁵

How concerned are the members of this committee about the interests of the schedule castes. This becomes evident from this example. Abu Saleh Sharif was a member-secretary of the Sachar Committee. He was also one of the members of the committee that drafted prevention of communal and targeted violence Bill. Under his signature and sanction, the Sachar Committee had set up a sub committee of Muslims. This sub committee had mentioned that inclusion of SC and ST in the reservations in the Lok Sabha and Vidhan Sabha would harm the interest of the Muslims. Therefore, it had suggested that all those areas where Muslims were in majority should be dereserved. in the future the Muslim

⁴ See Defective Equality: Deconstructing the Equal Opportunity Commission, Rakesh Sinha, IPF, 2009

⁵ Sachar Papers, Nehru Memorial Library, Teen Murti, New Delhi.

populated constituencies should not be opened for reservation to SC and ST. Can there be a more dangerous thought about the interest of the SC and ST than this? Was this not an attempt to subvert the culture of the country?

The Constituent Assembly of India had provided for reservations to the Scheduled Castes and Tribes to improve their economic conditions. At that time, too, objections from the Muslim members were overruled by Mr. Nagappa. There are several laws and provisions which are meant to protect the SC and ST from feudal exploitation. These include Protection of Civil Rights Act 1955, the Bonded Labour System (Abolition Act), the Child Labour (Prohibition and Regulation) Act 1968, the scheduled castes and scheduled tribes (Prevention of Atrocities) Act 1989. Then what is the purpose of including them in Prevention of Communal and Targeted Violence Bill. It is not difficult to understand it. The section 2 (6) of the Bill says that the punishment under this Bill would be separate and in addition to the SC and ST Prevention of Atrocities Act 1989. Does this mean that an offence would be dealt with under two legal and criminal laws and procedures and that there would be two kinds of punishment? This is not only a mockery of the judicial system but a planned attempt to belittle the powers of the commissions dealing with the interests of the SC and ST. While doing this, has the NAC consulted the MPs belonging to these categories, their two commissions and their intellectuals?

It appears that the sole purpose of the Bill is to provide special privileges to Muslims and Christians. Inclusion of the SC and ST is prompted by a far reaching strategy. If Hindus try to counter the attempts of conversion by Christians in the remote areas of the country, they will come under the legal provisions but the clashes between the Christians and tribals will not be under the purview of the law. Thus this bill will come in handy as a double edged sword in the hands of Christians missionaries who are on a converting spree.

Defiance of the rule of law

The Constitution of India talks about the establishment of the Rule of Law. Article 14 of the Constitution has stated that all Indian citizens are equal in the eyes of the law and enjoy equal rights. This law makes it clear that there would be no discrimination on illogical grounds. To avoid this, Article 15 lists such illogical grounds. For instance, a Panth would

not be considered a ground for discriminations. It becomes clear that Prevention of Communal and Targeted Violence Bill is a clear violation of the rule of law. It provides an institutional and legal validity for creating discriminations among communities in society. It provides special protection to a particular community by discriminating between communal and violent acts.

A major blow to the culture of interdependence in society

Article 3 (F) of the Bill deals a blow to the unity of the country by attempting to divide the society into two warring groups. It defines what it calls ‘creating inimical atmosphere towards the members of the group’. In this way, any Bill of writing, speaking, or gestures that could adversely affect the profession, residence or dignity of the members of the Group would be considered vitiating the atmosphere. This has the following five divisions:

1. Boycotting the profession or means of living or making the life of the member of the Group difficult
2. To insult the member of the Group by refusing to use their vehicles, educational institutions, health services
3. Depriving the members of the ‘Group’ of their fundamental rights or threatening them
4. Depriving the members of the Group of their place to live and means of their livelihood without their permission
5. And any other Bill that creates an atmosphere of animosity for the members of the Group
6. It is abundantly clear that this provision creates a wall of separation between the Group and those outside of the Group. For centuries people in India have been living together harmoniously. People from different castes, communities and religions have been living in complete harmony in villages, kasbas, lanes and cities. People from different castes speaking different languages have been living in the same house on different floors without any problem. In these conditions when there are differences of opinion and views these are resolved through the laws of the land and the courts have the final say in such cases? But this Bill is going to create a situation that may prove dangerous for the national

unity. If there are differences between a Hindu and a Muslim neighbour the Muslim can easily charge the Hindu with threatening him, making his life difficult and creating an atmosphere of animosity. The new Bill entails that the law will automatically fault him as the culprit. He will have to resort to legal remedies to prove that he is not guilty because the National Authority that has been created in the States and the Centre will make all other laws of the country irrelevant.

7. Similarly from Meerut, Moradabad, Varanasi and Kolkata to Kanyakumari and Delhi, almost everywhere Hindus, Muslims and Christians are dependent upon each other for educational, health, business and other services. The basis of this life is the feeling of brotherhood and mutual trust. This is the reason why the Indian markets, industry and commercial life function smoothly without discriminating between the castes, religions or languages. This mixed economic structure of India is a historic reality. But if minority and majority become an issue, it will make daily life a dangerous proposition. Healthy competition and difference of opinion between the partners in business, joint ventures, buyer/seller, employer and employee are normal. But if the minorities and majority are partners in these ventures the new Bill will create unequal conditions for a harmonious relationship as these disputes can always be given a communal tinge. The member of the 'Group' can always charge the majority member with subverting his business or means of living thereby making his life difficult.

8. Similarly if a Hindu land-lord asks his Muslim tenant to vacate his house this could be construed as an attempt to deprive him of his place of living. Instead of the normal procedures of law it will be the National Authority that will decide such disputes now. This section has been left so wide open that Hindus can be charged with any crime. A shopkeeper or a businessman from the minority community can always allege that his partners from the majority community have cheated him because of his community and religion and the law will have to take notice of his complaint.

9. If there is any such incident it will create an atmosphere of mistrust and suspicion throughout the country. This will seriously affect the business and employment conditions in the entire country and will be detrimental to the economic welfare of the nation as this will sound the death knell of the economic fabric of India which are inter-dependent. The Bill seeks to create such a wall between the members of the 'Group' and 'others' that it

replaces mutual discussion and sympathy with polarisation and animosity. If this is not a two nation theory what is it?

Nazification of Sexual Offences?

According to Clause 7, this law will recognize only a sexual offence against the member of the Group as a crime. In other words, if an anti-social element from the majority community commits a sexual offence against a female member of the Group it will be a crime but if an anti social element from the Group indulges in sexual offence against a female member of the majority community the law will not work. In fact, the member of the minority can use the law to save himself from punishment. For the first time law is making the socio-religious background of a criminal as the ground to decide the quantum of punishment. For various levels of the offence the punishment varies from 7, 10, 14 years or life imprisonment (Clause 114 (A) to (E). The Bill gives a new definition to the term mass rape. The rape of more than one member of the 'Group' constitutes mass rape. But this will not apply to the Hindu women. Is there any country in the world which has legal provisions based on religion for meting out two kinds of punishment for rapes? Interestingly, even a rape of an SC/ST member by a member of the minority will not constitute an offence. The incident involving Imrana in 2008 where who was raped by her father-in-law and after a fatwa she was forced to live with him. This shocked the entire nation. This law would remain a silent spectator in such cases because this is an 'internal matter' between the two members of the 'Group' and no majority member is involved in this.

Attack on the freedom of speech

Section 8 of this Bill defines even 'hate disinformation' in fascistic terms. Any advertisement, written statement, gesture or oral statement against a member of the 'Group' if it leads to violence or spreading tension against the members of the group it constitutes 'hate disinformation'. The decision on this would also be taken by the authority created by this law. What does this mean in real terms?

1. Any advertisement, written or oral statement that leads to violence or spreading tension against the members of the group will be considered an offence without considering their feelings or wishes. We can talk about topics like sati, the purdah system or child

marriage but we cannot have a logical and reasoned discussion on an issue like the burqa system.

2. Under such conditions, can there be a free and fair discussion on the social, religious or cultural issues? The charge of spreading hatred or disinformation would be declared as the hidden agenda.

3. The comments on the Hindu deities, religious books and organisations by members of the minority community would not be considered an offence under the new law.

4. The freedom of speech and the tradition of critical assessment would be finished. The historical facts would have to be discussed with reference to the minorities. Will this not mean that even the writings of historians, thinkers and writers would be treated as disinformation?

What has been said above can be illustrated if we consider only three major events of modern India.

a. The second brother of Acharya Kripalani, former Congress President had converted to Islam. He became such a fanatic that he kidnapped his fifth brother's son and converted him to Islam who was only 12 years old and a student of Class three. His family could not trace his whereabouts and later it was found that he had been taken to the Kabul border where he was killed in war. The comments of Kripalani after this incident were significant. He said that in proselytizing religions such a process (conversion after kidnapping) was quite common.⁶ Under the new law, the conversion would be legal but Kripalani's comments would be disinformation against the minority and he would be punished. After all, religion in Islam is the ultimate arbiter of things.

b. The second example relates to Sarvodaya leader Jayaprakash Narayan. In 1946 the Muslim League had alleged that he was guilty of inciting Hindus against the Muslims during relief operations. Had this law been in practice then JP would have been thrown in jail like an ordinary rioter.

c. The third example is that of Marxist leader B T Ranadive. The first communist government in the country had introduced a new education policy in Kerala and the Catholic Schools came out on the streets to oppose it. B T Ranadive who was a theoretician of the

⁶ Transcript file no.403 P P 16-17 Nehru Memorial and Museum Library, Teen Murti, New Delhi

Marxists called the Catholics agents of global reactionary forces and charged them with trying to establish their hegemony on education and misusing the funds they received from abroad. If this law had been in practice at that time Ranadive, like J P and Kripalani would have been sued for spreading disinformation against the minorities. Will cases be launched posthumously against these thinkers? This provision is a fascistic assault on the freedom of expression. The Bill provides that if one's gestures, languages, thoughts and dialogues do not suit the minorities they can be put in jail for a term of three years under Section 115.

This will introduce an undeclared censorship on historical books, creative writing and social and cultural discussions. According to historian Mushirul Hasan, Lal, Bal and Pal (the three nationalists) had deliberately kept Muslims away from the freedom struggle through their writings and their course of action. So now will those abstracts from the writings of Lal, Bal, Pal and Maharishi Arvind, which do not suit the minorities and which will be considered disinformation according to the new law, be removed. Will the works of Lal, Bal and Pal have to be edited under the new dispensation?

'Group law' versus 'normal law'

Section 9 and 129 are above all the laws and provisions of the Indian Constitution. There can be no control over these. These are a serious legal attack on Hindu social, cultural and religious activities. An organized and continuous campaign against the 'Group' and its members by the majority community which could lead to violence or their suppression has been considered communal and targeted violence. Some of its features need to be looked at carefully.

1. Under these provisions the alleged spontaneous and organized activities of the majority community have been targeted. The organizations responsible for these activities have also been targeted.

2. The intentions or the hidden agenda of the makers of this Bill become clear from the use of two words - organized and continuous activities. This means that organizational and thoughtful activities of Hindu organizations which are regular and organized will be considered dangerous activities. Obviously this provision treats their activities as potential dangers for the Group and the minority. It will be easy to blame any Hindu organizations

and their thoughts and put them in the dock.

3. This Bill has made a special exception for illegal activities that lead to suppression of the minorities which have been left out of the provisions of the new law. Are the existing laws not effective enough to control the illegal activities that harm the minorities? Or is the National Authority planning to invent a new definition of illegal activities?

According to Section 9 (2), if organized and continuous activities are going on in an illegal manner the police and administration will be blamed for their failure to prevent communal and targeted violence. In other words, this means that the national and state authorities will consider such organizations as dangerous. This law amounts to inventing a 'minority veto'. The Bill assumes that both the general bureaucracy and the police are prejudiced against the minority. NAC believes that prevention of communal and targeted violence law will help them become impartial. In 1933 even the Nazi Germany had framed a law 'the restoration of the professional civil service.' They were of the view that police and bureaucracy were pro-jews and the law would turn them impartial. Such ideas can only knock the very bottom out of our democratic and secular principles.

The police will be forced to declare regular seminars, weekly and daily activities of Hindu organisations as against the interests of the minorities. Section 9 has been clubbed with Section 129. According to Section 9 those indicted as criminals including the Hindu organisations, police and administrative officers will be punished under Section 129. This punishment will be unlimited. Which means that this will be above the common law, justice and penal procedures? This is the fascistic order of the NAC. It is both an affront to and supersession of the spirit of the Indian Constitution.

A conspiracy to defund the Hindu organizations

Under Section 10, any organization or person who is involved in activities that could harm the minorities could be imprisoned up to three years (Section 117). This will apply only to those who are giving financial assistance to organizations of the majority. If anyone from this organization is found guilty those who have donated to the organization will also be sent to jail for three years. Donations being given for the Ramlila would now be under the scanner. On the other hand, the financial donations coming to Muslims, Christians and

Criminals would not be affected at all as this is not a crime under the new Bill.

Bureaucracy and Police

One of the most dangerous aspects of the Bill is that it will force the Police and the Bureaucracy to work with a particular mindset in discharging their duties. During and after communal riots, they will be forced to Bill with a particular viewpoint, bias and fear.

There are several provisions in the Bill that will not only hamper a fair and free investigation into communal and terrorist activities but also encourage anti-social elements and protect the sympathizers and supporters of the home grown terrorists. According to Section 12, if during investigation of the members of the 'Group', for taking their confessional statements, punishing them or during administrative and police actions if there is any physical or mental pain it will be considered torture. Will any Police or administrative officer be able to complete a fair and just investigation under these conditions? The minority status of the criminal will always keep the police and administrative officers under pressure. Those who are members of the Authority will encourage human rights activists to block a fair and just investigation. Looking at members of the minority with suspicion even after communal and terrorist acts will be considered mental torture under the new law. If these laws had been in place it would not have been possible to arrest suspicious characters during the investigation of the Godhra or the Batla House encounter cases. If there are allegations against the police and administrative officers criminal cases would be launched against them in special courts by the national and state authority constituted by the Bill. Since the authority is a legally constituted body which will launch criminal cases against the police and the administrative officers they will have to fight their cases in their personal capacity. In other words this will be a state versus police case. He can be punished for seven years to life term for his alleged crime (Section 119) but if the torture case is lodged by the Hindus it will be dealt under normal law of the land. The terms of reference of a Police officer have been so defined that they will be hamstrung.

According to Section 13, if the police and administrative officers Bill with bias and misuse their position leading to communal and targeted violence it will be considered dereliction of duty.

Even if a step taken with good intent by a police officer leads to communal violence, he would get into trouble.

Let us see what would be the position of the police and administrative officers in some possible cases.

1. If public peace is disturbed by any of their actions, they will be held responsible. If during investigation the Quran Sharif falls down and this disturbs the peace the police and administration would be held guilty. There have been many occasions when this has happened in the past. They will be liable to receive two to five years of rigorous imprisonment (Section 120). Similarly demolishing illegal religious structures will create a very difficult situation for the administration and the police. They will have to allow minorities to become anarchists. The law will be with them if they go to demolish illegal structures belonging to the majority community but if they try to take such action against the unauthorised religious structures of the Muslims they will always have law hanging like a sword over their head. They will have to treat minorities as their *mai baap*. Only then can they save their skin.

2. If they refuse to provide security to any victim of the 'Group' they will be considered guilty, section 13(I) (A).

3. If they refuse to investigate a case according to the demands of the members of the group, they will have to undergo a rigorous imprisonment which could last from two to five years.

One also has to note as to what are the expectations from the police and bureaucracy.

a. They will have to identify the nature of the communal and targeted violence in a state or any part of the state. They will have to take action against the threats, possibilities and allegations of communal and targeted violence, which could lead to tension against members of the Group Section 18 (I). That means if there are complaints that the daily activities of any Hindu organization can spread violence this will be considered dereliction of duty. In other words any rally, demonstration or any other activity of the Hindu organization will not be allowed in the name of keeping the peace. If this rule had been in practice when L K Advani started his Rath Yatra he would not have been allowed to do so. If some anti social elements create violence or tension after any such rally they would be crucified. It would not be difficult to guess what the police and administration have to do just to keep

themselves safe. They have to keep Hindus perpetually in fear, arrest them from time to time, and ban all rallies and intellectual activities.

b. The police are expected to use force promptly without fear or favour (section 18 (3)). Obviously they are expected to take this swift and impartial action only with reference to the minorities. What swift means here is obvious: total surrender to the minorities.

c. Under the Bill not taking action to protect the victims, informers and witnesses is a criminal offence on the part of the police and administration. This will also apply only to members of the group (Section 13 (1)). This is an attempt to keep the senior officers of the police constantly under pressure.

This is an attempt to browbeat the police and the administration to adhere to the philosophy of the minorities. They have used minority appeasement as a threatening instrument. What can be a better illustration of the attempt to create a thought, viewpoint and direction that are anti majority?

The colonial rulers also tried to misuse their control over the police and bureaucracy but this was never given a constitutional sanctity. Only Hitler and Mussolini had 'coordinated' their bureaucracy. They were considered efficient only when they caught the Jews, beat them up and tortured them for crimes. They were considered honest, fearless and efficient for following this strategy. Is the same philosophy not being replicated by the new Bill?

A blow to federalism

Section 20 is an attempt to create confusion about the power of the centre and states, their relation and an attempt to destroy the boundaries. According to this Bill, communal and targeted violence would be considered 'internal disturbances' under Article 355 and the center would be expected to take steps. After the 44th amendment of the constitution Section 44 has been removed from the Constitution, as they were considered harmful for the federal and democratic structure. This amendment was brought in 1978 to prevent its misuse as had been done during the emergency. Steps have been taken to strengthen the Indian constitution. Of these, the Sarkaria Commission report is a landmark. This clearly takes a clear stance against the tendency of the Centre to interfere in the matters of the state. But the NAC has thrown all such reports in the dustbin. It advocates intervention by

the Centre to create instability in the States by misusing the provisions of Article 355. Although the use of the term internal disturbance was later deleted from the final draft of the Bill but this raises some serious doubts about the democratic federal system of the country. Was the use of this provision in the original draft an attempt to destabilise the democratic structure of the country? The NAC is a constitutional body headed by Sonia Gandhi who enjoys the cabinet minister rank. She is the president of the Indian National Congress and Chairperson of the United Progressive Alliance. Such a step is reminiscent of the emergency.

Imaginary charge of institutional bias

The thought that has sired the Bill presumes that the bureaucracy and police have an institutionalized bias towards the members of the 'Group'. This is not a new allegation. Before independence the Muslim League used to level such baseless allegations. This has been used to create a Muslim polarization. One thing is clear from the Bill that it displays a complete lack of faith in the police and bureaucracy of the country. The supporters of the Bill are alleging an institutional bias among the police and bureaucracy. An attempt to demoralize the law and order machinery, to weaken the Indian State has been going on for quite some time. To make such charges publicly without any evidence or proof leads to erosion of the ethical and legal sanctity of the state. Before partition, the Muslim League continuously made such allegations to create an atmosphere to justify the two nation theory and to distance the people from the leadership of Nehru and Gandhi. In 1930, the Muslim League constituted the Pirpur Committee to prepare a report on the atrocities on Muslims in the Congress-ruled states. The report had accused the congress rule of being a Hindu fascist raj and alleged institutional discrimination against Muslims in the field of education, employment and security. The Congress had rejected all these charges and the Muslim League did not have any proof to justify their allegations.

After independence, the Muslim intelligentsia have been making such imaginary allegations. Radiance, Milli Gazette, Urdu newspapers, 'Communalism Combat' edited

⁷ There is not a single instance in the thousands of documents of the Sachar Committee report. One case from West Bengal was placed before the committee but that also proved false.

by Teesta and Javed Anand and Muslim intellectuals have been continuously making such baseless allegations as part of a premeditated conspiracy. Two vital reports about the status of minorities that have come out in the last five years - Ranganath Misra report and Sachar Committee have not been able to cite a single instance to support the charge of institutional bias.⁷ Scholars like AAA Faizi and Humayun Kabir have termed such allegations imaginary and a figment of imagination. In history, Goebbels advocated this strategy to turn a wrong into right. The NAC is full of such crusading intellectuals. State sponsored communalism does not need proof and logic. During discussions, the supporters of the Bill have been leveling allegations of institutional bias against the police and bureaucracy. The Bill has communalized all the sections of the Indian Penal Code. This will have a demoralizing effect on those agencies and officers who have to look after the administration.

Question mark on the existence of the organisations outside the Group

Under the Bill the office-bearers of any organisation who do not belong to the group have been termed Non State Actors. They will be held responsible for any act that harms the Group (Section 15 (C)). Three particular aspects have been mentioned in this respect.

1. If an office-bearer of an organization hides some criminal facts about his organization or deliberately ignores them (Section 15 (C)) he will have to prove whether he did this or not? If a member of the organization names someone, it will be sufficient to implicate the entire organization.

2. The members of the organization will also have to prove that a crime against a member of the 'Group' has not been done at his behest.

3. If the members of the organization are unable to take effective steps to check these activities or inform the authority about the investigation they will be held guilty.

The special feature of the Bill is that it takes both the registered and unregistered Hindu organizations under its cognizance. Which means that football clubs in far flung rural areas and youth clubs in urban metropolis come within its ambit? Becoming a member of any such club will be a risk now. The office-bearers of minority organisations will not be liable for any such criminal activities and no one will be held responsible. For Non State Actors there is a provision for a ten year jail term and penalty under Section 18:122. As

soon as this Bill turns into law thousands of small and big organisations will either be finished off or no one will be ready to become office-bearers of such organisations.

National authority

This Bill has sought to set up national authority at the Centre and the states to provide security, to measure the attitude of the bureaucracy and police towards the minorities, to launch cases in courts and to intervene in their day-to-day hearings. Law and order are state subjects under the Indian Constitution but the Bill has been given the power to break these boundaries.

To ensure communal harmony, justice, reparation and compensation, National Authority has been set up under Section 21. This seven member authority will include one member from the Scheduled Castes or Tribe and at least four from the 'Group' which means that at least four members from the minority will be in this body. The Chairman and the vice chairman of this group will be compulsorily from the 'Group'. All decisions will normally be taken on majority basis. Anyone who has either through his/her writing or through any other means shown his bias against the group will not be entitled to become the chairman, vice chairman or member of the authority. In other words, if anyone has made even constructive suggestions about the state of madarsas, Muslim reservations or Muslim traditions will be disqualified from becoming a member of this body. Tajamul Husain and Dr H C Mukherjee both members of the Constituent Assembly had rejected the concept of minorities. Mukherjee was himself a Christian. But people of his intellectual caliber would be disqualified to become members of this body. The Authority has been given the status of a quasi judicial body and it can function like a civil court. The center will provide police and other employees for this body. They will work under an officer of the rank of DGP Section 29: I.

The jurisdiction of this body is not only too broad but also undefine:

1. To supervise and investigate the cases filed
2. It has been given not only the power to file criminal cases but also to intervene in day-to-day court cases
3. It has been given the power to control and supervise the administrators and police

officers. The authority will monitor the activities of the officers to find out whether they are taking effective steps to prevent the outbreak of communal and targeted violence.

4. The authority also has powers to monitor, review and regulate the postings and transfers of the officers under its control.

5. It will maintain a record of the crimes of its officers

6. It will have the power to get the feedback and information from the state about all the departments and activities of the non state actors

7. It will have the power to give directions to the officers of the state about investigations

8. The DM and Police Commissioner will be answerable to the authority about the possibility and fear of any communal and targeted violence in writing

9. It has the power to expel anyone from an area for a period of six months

10. It has been kept out of the purview of the RTI for giving any information about the victim and the witnesses

In this way, all government and non-governmental organisations have been put under it. It can summon any office bearer of an organization for questioning. The DM will send their reports to it. Law and order is a state subject but the Authority will have the power to intervene in the states. The Bill becomes an instrument for instability as the Centre can use it at its will. For example, if this were the law the Centre could have used the Farbisganj incident in Bihar (July 2001) to bypass the state government. Can India's federal structure be allowed to be sacrificed at the altar of the National Authority?

The proposal to set up a minority appeasing judicial body is like a dangerous Black Hole for secularism. The Bill that seeks to establish multi-nationality in India. The Bill is premised on the philosophy of exclusion.

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