

# Justice for All

## End Impunity, Ensure Accountability

### National Campaign for the Tabling in Parliament of the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011

**Supported By:** ◆ Justice P.B.Sawant (retired) Supreme Court of India ◆ Justice Hosbet Suresh (retired) Bombay High Court ◆ Justice S.H.A Raza (retired) Lucknow bench, Allahabad High Court & Lokayukta, Uttarakhand ◆ Justice Michael Saldanha (retired) Karnataka High Court ◆ Justice Fakhruddin (retired) High Court, MP & Chattisgarh ◆ Justice B.G.Kolse Patil (resigned) Bombay High Court

Equality before the law and Discrimination towards none are among the founding Principles of the Indian Republic. Yet, between these non-negotiable Ideals articulated in our Constitution and the reality on the ground, there is an ever-widening gap.

The history of targeted violence in the country, in particular the recurring state-sponsored and state-condoned targeted violence of the past three decades – Nellie, Assam (1983), Delhi (1984), Kashmir (1989), Bhagalpur (1989), Mumbai (1992-93), Gujarat (2002) and Kandhamal, Orissa (2008) – show that India's religious minorities (Muslims, Kashmiri Pandits, Sikhs, Christians) have been repeatedly denied these constitutional guarantees. Tamilians in Karnataka and Biharis in Maharashtra are examples of linguistic minorities who often get targeted. Dalits and Adivasis too are frequent victims: the Khairlanjee massacre of Dalits in 2006 or the Ramabai Nagar police firing in 1998, both in Maharashtra, are cases in point.

When it comes to following the Rule of Law and ensuring accountability and due process after bouts of such targeted violence, the local administration and the police have been found tardy and wanting, failing to deliver justice and punish the guilty. Though Power in a Democracy comes vested with Accountability, successive governments have been guilty of serious Crimes of Omission and Commission.

Over fifteen years ago, a serving, senior IPS officer made a stunning statement: "No riot can last for more than 24 hours unless the state wants it to continue". This statement has since then been endorsed by a number of senior policemen and political leaders.

What this means is simple. If the police and administration were to be held directly responsible for the failure to impartially enforce Rule of Law, perpetrators of recurring violence would be halted in their tracks. If the law could facilitate time-bound prosecution of those guilty, the political gains from engineered violence would diminish. If fair reparation commensurate to the loss were to be compulsorily paid within a time-frame, the future would not benefit rioters. If senior officers were held responsible for dereliction of duty they would ensure accountability from themselves and the men and women they command.

Today, women and children are the most serious targets for such bouts of targeted communal violence. Livelihood and the right to live with dignity are snatched away creating hundreds and thousands of internally displaced Indians. Tragically citizens who are numerically weak and socially disadvantaged are attacked on account of their identity and institutions of governance bend to the bullies instead of upholding Constitutional Guarantees and the Rule of Law. Large sections of our people continue to be discriminated against.

Justice is the cornerstone of a healthy and vibrant democracy. Justice is also the key to stem disillusionment and alienation of our people. The prevailing culture of impunity has resulted in widespread alienation and erosion of faith in the system. "The failure of the state in protecting the life and property of a section of its citizens sows the seeds of extremism", retired judges, civil servants and police officers have frequently warned. Hence the urgent need for a law that compels the public servant to act in accordance with the law; a Law that grants effective and immediate reparation and restitution; a Law that enables the Punishment of all those Guilty

We demand that such a law, the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011 be tabled in Parliament forthwith.

Such a law would breathe life into Article 14 of the Indian Constitution which declares that, "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Such a law will give meaning to Article 15(1) which provides that, "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them".

## Main features of the proposed law:

1. The proposed new law seeks to protect religious and linguistic minorities in any state in India, as well as Dalits and Adivasis, from targeted and organized, communal violence. For example, Kashmiri Pandits in Jammu and Kashmir, Biharis in Maharashtra, Tamilians in Karnataka, are minorities in those states as also Muslims, Christians, Dalits and Adivasis in other parts of India.
2. The proposed law defines a new set of crimes like Torture, Sexual Assault (broadening the definition), Hate Propaganda, Organized Communal and Targeted Violence, Dereliction of Duty, Abetment and Offences for Breach of Command Responsibility. It also broadens the definition of Hate Speech and Writing, offences already punishable under Section 153A of the IPC.
3. Dereliction of duty is proposed to be redefined to incorporate, for the first time in Indian law, the principle of "breach of command responsibility". Public servants and other leaders/superiors are proposed to be held accountable and responsible for the conduct of those under their command. Where continuing unlawful activity of a widespread or systematic nature has occurred and the public servant charged with the duty to prevent communal and targeted violence failed to exercise control over persons under his or her command, control or supervision, he or she would be held guilty of the offence of breach of command responsibility. In other words, senior officers and administrators can be held responsible for failure to prevent the outbreak or spread of violence.
4. In cases of dereliction of duty, sanction from the government will no more be a legal impediment. The proposed law lays out "deemed sanction" if the state government in question does not give sanction within a period of three months. In case of certain offences committed by a public servant, sanction has been done away with completely.
5. The proposed law standardizes a procedure for Compensation and Reparation ensuring that dignity is returned to the process and it does not depend upon the whims of the government in power. The government will be statutorily bound to complete payments within one month. The minimum amount payable for death is Rs 15 lakhs, rape Rs 5 lakhs, grievous hurt Rs 2 lakhs, mental harassment, depression Rs 3 lakhs. Compensation for destruction of immovable properties, homes or shops/businesses will be adjusted with inflation. There are also provisions for reparation for forced displacement, forcible occupation of residences and businesses and loss of opportunity
6. A 'National Authority for Communal Harmony, Justice and Reparation' is proposed to be instituted to serve as a catalyst for implementation of the new law. Similar authority should be constituted at the state levels. The National Authority cannot compel a State government to take action in view of the federal nature of law enforcement, but it can approach the courts for directions to be given. The seven-member National Authority would be so constituted that four of them are from the often targeted social groups: one member each from the minorities, women, Dalits and Adivasis.

Muslim survivors of the 1983 Nellie killings in Assam did not get even a glimmer of justice. Sikh survivors of the 1984 carnage still battle on, seeking punishment of the powerful who are guilty. Kashmiri Pandits fled the Valley in 1989 and have not received Justice or Restitution. Christians from Madhya Pradesh, Uttar Pradesh, Orissa and Gujarat have been similarly denied. Dalits and Adivasis who are everyday victims of targeted violence thirst for justice and reparation. Similar is the story for the Muslim survivors of the violence in Bombay in 1992-1993, Hashimpura killings of 1987, Gujarat 2002. Attacks on Biharis and North Indians in Maharashtra have gone unpunished. Reparation has also not been in consonance with international standards.

Democracies, based as they are on electoral and representative politics, are expected to reflect the concerns of all sections of society. In practice, however, they often privilege the majority. A mature democracy recognizes the need to have special legal provisions to protect all its minorities. Short of this delicate balance, a democracy can tip over into majoritarianism or worse, a mobocracy. It is to rectify this systemic failure that the new law has been proposed to ensure the Constitutional guarantee of Equality before the Law and Discrimination towards None.

These are lofty principles that often fall by the wayside when the rule of the mob takes over. Can we in India – looking back over six decades with candour – deny that we need such a law to repay an ever-increasing national debt?

**SAY No to Violence Yes to Justice and Peace**

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