

PARLIAMENT OF INDIA
RAJYA SABHA
DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON HOME AFFAIRS
ONE HUNDRED AND TWENTY SECOND REPORT
ON
THE COMMUNAL VIOLENCE (PREVENTION, CONTROL
AND REHABILITATION OF VICTIMS) BILL, 2005

(PRESENTED TO RAJYA SABHA ON 13 DECEMBER , 2006)
(LAID ON THE TABLE OF LOK SABHA ON 13 DECEMBER, 2006)

RAJYA SABHA SECRETARIAT
NEW DELHI

DECEMBER , 2006/ AGRAHAYANA, 1928 (SAKA)

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* To be appended at printing stage.

COMMITTEE ON HOME AFFAIRS
(CONSTITUTED ON 5 AUGUST 2005)

1. # Smt. Sushma Swaraj - Chairperson

RAJYA SABHA

2. Shri V. Narayanasamy
3. Shri Rishang Keishing
4. Shri R.K. Dhawan
Shri N. Jothi
• Shri Janeshwar Mishra
7. Shri Satish Chandra Misra
8. *Shri Sitaram Yechury
9. **Shri Sanjay Raut
10. \$ Shri S. S. Ahluwalia

LOK SABHA

11. Shri L.K. Advani
12. Shri S.K. Biswas
13. Shri C.K. Chandrappan
14. Shri Biren Singh Engti
15. Shri Rahul Gandhi
16. Shri Tapir Gao
17. Shri T.K. Hamza
18. Shri Naveen Jindal
19. Shri Ajit Jogi
20. Prof. K.M. Kader Mohideen
21. Shri Tek Lal Mahato
22. Shri Sachin Pilot
23. Shri Ashok Kumar Pradhan
24. Prof. M. Ramadass
25. Shri G. Karunakara Reddy
26. Shri Bajju Banerjee
27. Dr. H.T. Sanghvi
28. Choudhary Bijendra Singh
29. Shri Brij Bhushan Sharan Singh
30. Shri Braja Kishore Tripathy
31. Shri Beni Prasad Verma

Retired as Member of Rajya Sabha on 2 April 2006. Re-nominated as Member and re-appointed as Chairperson of the Committee w.e.f. 8th April 2006 on her re-election to Rajya Sabha

• Retired as Member of Rajya Sabha on 2 April 2006.

* Nominated w.e.f. 25th September 2005 vice Shri A. Vijayaraghavan.

** Nominated w.e.f. 29th October 2005

\$ Ceased to be a member of the Committee on retirement from the Rajya Sabha on 2 April 2006. Re-nominated to the Committee w.e.f. 8th May 2006 on re-election to the Rajya Sabha

COMMITTEE ON HOME AFFAIRS
(Constituted on 5 August 2006)

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11. Shri L.K. Advani
12. Dr. Rattan Singh Ajnala
13. Shri Ilyas Azmi
14. Km. Mamata Banerjee
15. Smt. Sangeeta Kumari Singh Deo
16. Shri Biren Singh Engti
17. Shri Tapir Gao
18. Shri T.K. Hamza
19. Shri Raghunath Jha
20. Shri Naveen Jindal
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23. Shri Ram Chandra Paswan
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27. *Shri M. Rajamohan Reddy
28. Shri Bajju Ban Riyan
29. Choudhary Bijendra Singh
30. Shri Brij Bhushan Sharan Singh
31. Shri Mohan Singh

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
Shri P.P.K. Ramacharyulu, Deputy Secretary

Shri Rohtas, Under Secretary
Shri Sanjeev Chandra, Committee Officer

* Nominated w.e.f 10th October 2006 *vice* Shri Rahul Gandhi who was nominated to
Standing Committee on Human Resource Development .
(ii)

PREFACE

I, the Chairperson of the Department-related Parliamentary Standing Committee on Home Affairs, having been authorized by the Committee to present the Report on its behalf, do hereby present this One Hundred and Twenty Second Report of the Committee on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005.*

2. The Chairman, Rajya Sabha referred,** the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 (**Annexure-I**), as introduced in the Rajya Sabha on 5th December 2005 and pending therein, to the Committee for examination and report within three months from the date of reference.

3.0 The Committee considered the Bill in nineteen sittings. In the first meeting held on 9th January 2006, the Committee heard the presentation of the Home Secretary on the Bill and held preliminary discussion thereon. The Home Secretary informed the Committee that the Ministry of Home Affairs had planned to hold one Central and five Regional Consultation Seminars at New Delhi, Mumbai, Kolkata, Lucknow, Bangalore and Chandigarh to get feed-back from the cross-section of society on the Bill. The Committee decided to wait for the outcome of the Seminars and directed the Home Secretary to apprise it of the suggestions and issues emerged therein.

3.1 However, after three Seminars held at New Delhi, Bangalore and Mumbai, the Home Secretary on 16th February, 2006 informed the Committee that the Ministry had decided not to hold Seminars at remaining places i.e., Lucknow, Kolkata and Chandigarh in view of the Budget Session of Parliament and requested the Committee to proceed further with the consideration of the Bill. The Committee in its sitting held on 3rd March, 2006 considered the matter in the light of Home Secretary's letter and unanimously, with the consent of each Member present in that sitting, decided that in view of more pressing and urgent business i.e., examination of Demands for Grants of the concerned Ministries in hand, it may seek extension of time for presentation of Report on the Bill from Hon'ble Chairman, Rajya Sabha till the last day of the first week of the 208th Session (Monsoon Session). On the authorisation of the Committee, I approached Hon'ble Chairman for grant of extension of time which was acceded to.

3.2 The Committee in its meetings held on 5th and the 6th June 2006 considered the Bill further and felt that it was necessary to seek comments of State Governments and recognized Political Parties on the Bill, particularly Clause 55 thereof, which has a direct bearing on the federal structure of our polity and jurisdiction of States in the matter of "Public Order" and "Police". It also decided to hear legal/constitutional experts on the provisions of the Bill. As all these processes would take time and it might not be able to present the Report till the last day of the first week of the 208th Session, the Committee in its sitting held on 21st July 2006 unanimously decided with the consent of each Member present, to seek further extension of time from the Hon'ble Chairman, Rajya Sabha till the last week of the 209th Session (Winter Session). As authorised by the Committee, I approached Hon'ble Chairman to grant further extension to it which was kindly granted by him.

3.3 Six sittings of the Committee were exclusively devoted to in-house discussions on the Bill, i.e. on 5th, 6th, 28th & 29th June, 2nd August and 5th September 2006.

3.4 In its sittings held on 15th & 16th June, 21st July, 4th September and 6th October 2006, the Committee heard five witnesses and two organizations (**List of witnesses at Annexure-II**) on the various provisions of the Bill.

3.5 The Committee heard the views of the Home Secretary on the suggestions/points made/raised in different fora, on 28th & 29th September 2006.

3.6 The Committee considered the Bill clause-by-clause on 18th & 30th October and 16th & 17th November, 2006.

The Committee relied on the following sources for finalising its report:

Background Note received from the Ministry of Home Affairs on the Bill;

Presentation and oral evidence of Home Secretary, Law Secretary and Legislative Secretary;

Oral evidence of other witnesses;

Written Memoranda received from various sources;

Comments received from State Governments and recognized Political Parties;

Relevant Acts and the Constitution of India.

(iv)

3.8 The Committee in its sitting held on 7th December 2006 took up for consideration the Draft Report. The amendments jointly proposed by the three members of the Committee namely S/Sh. Prasanta Chatterjee, Baju Ban Riyan and T.K.Hamza to certain paras of the Draft Report were also taken up for consideration. After some discussion the Committee did not agree to those amendments. At this stage the said Members observed that their comments/amendments may be treated as “Minute of Dissent” and appended to the report. The Committee agreed to the request of the Members. Thereafter, the Committee adopted the Draft Report.

4. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report. The observations and recommendations at a glance have also been given at the end of the Report.

NEW DELHI
7 December, 2006.

SUSHMA SWARAJ
Chairperson
Committee on Home Affairs

REPORT

INTRODUCTORY

India, a multi-religious, multi-lingual and multi-ethnic society, is aptly called a Nation of unity in diversity but communal violence has been a grave threat to its secular fabric, unity, integrity and internal security. To deal with communal violence and encourage each state to adopt the law to generate faith and confidence in minority communities, the Government of the day introduced a Bill titled “The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005”, in the Rajya Sabha, on 5th December, 2005.

2.0 The Bill empowers the State Governments and the Central Government to take measures to provide for prevention and control of communal violence, which threatens the secular fabric, unity and integrity and internal security of the Nation and rehabilitation of victims of such violence and for matters connected therewith or incidental thereto. The Bill has 62 clauses under Thirteen Chapters and a Schedule. The Schedule contains 111 Sections taken from the following Acts, offenses punishable under which would be considered Scheduled Offences for the purpose of the present legislation: -

Indian Penal Code 1860;

Arms Act, 1959;

Explosives Act, 1884;

Prevention of Damage to Public Property Act, 1984;

Places of Worship (Special Provisions) Act, 1991; and

Religious Institutions (Prevention of Misuse) Act, 1988.

2.1 The focus of the Bill is to ensure steps for prevention of communal violence and in the unfortunate event of its occurrence, its speedy control and immediate effective steps for relief, rehabilitation and compensation to the victims of communal violence and speedy investigation and trial of offences.

Salient features

2.2 The Bill, *inter alia*, seeks to-

provide for declaration of certain areas as communally disturbed areas by the State Governments;

lay down measures for prevention of acts leading to communal violence;

enhance punishments for offences relating to communal violence and for certain other offences;

make provisions for speedy investigation and trial of offences through Special Courts;

make institutional arrangements for relief and rehabilitation measures for victims of communal violence;

make provisions for compensation to the victims of communal violence and provide for special powers to the Central Government in certain cases;
provide for constitution of a National Communal Disturbance Relief and Rehabilitation Council, State Communal Disturbance Relief and Rehabilitation Council and District Communal Disturbance Relief and Rehabilitation council; and
(viii) prohibit any discrimination in providing compensation and relief to the victims of communal violence on grounds of sex, caste, community or religion.

Institutional Arrangements

2.3 The Bill provides for the constitution of the National Council, State Communal Disturbance Relief and Rehabilitation Council and District Relief and Rehabilitation Council. The National Council, which would have representatives from minorities and weaker sections, would advise on the assistance to be given to the State Government and may recommend guidelines for relief, rehabilitation and compensation for the victims of communal violence. The State Council, which *inter alia* would have not less than five persons representing all the important religious groups in the State, would advise the State Government in matters relating to relief and rehabilitation of victims of communal violence. The Bill also provides for establishment of District Councils, with not less than five representatives from the important religious groups in the District concerned, to act as the district level coordinating and implementing body for relief and rehabilitation.

DEPOSITION OF HOME SECRETARY

3.0 The Home Secretary in his presentation before the Committee on the Bill on 9 January, 2006 made the following submissions:-

Though communal violence as commonly understood was violence related to some kind of riots between two religious communities, but the Bill has expanded the definition of communal violence. Under the new definition, communal violence covers all violence based on caste, groups, races and so on;

The Bill provides for awarding punishment, double the one provided in IPC, to the guilty involved in such violence. For speedy trial, a provision for constitution of Special Courts and day-to-day trials have been made in the Bill.

Criminals, under the Bill, have been made liable to pay compensation for the crimes so committed by them against the community or individuals. Institutional mechanism for rehabilitation of the victims of communal violence is another feature incorporated in the Bill.

As regards competence of Central Government to legislate on “law and order” and “police” (items of State List), the Bill draws its strength from Entries 1,2 and 11(a) of the Concurrent List.

In regard to the commencement Clause there were two alternatives before the Government. One was to enact a model law and circulate the same to the States to enact their legislation based on the model law and the second was to prepare a well thought out central legislation that the States would adopt. The Government have adopted the second option.

Clauses 55 and 56 of the Bill have been discussed extensively with legal minds and have to be read in totality for their true implications. Under Article 355 of the Constitution of India a duty is cast on the Centre to protect the State against external aggression and internal disturbances and is not about issuing directions to the States. Article 355 is not a

complete Article in itself as it is an enabling provision of Article 356. The present Bill has been intended to take care of situations such as group clashes and massive violence.

WRITTEN AND ORAL SUBMISSIONS BY OTHERS

4.0 The Home Secretary, during the course of his presentation, informed the Committee that six consultation Seminars were proposed to be held on the Bill wherein Chief Ministers of different States were also expected to participate to present their view points. However only three Seminars were held at New Delhi, Bangalore and Mumbai. The Committee, obtained the proceedings of the seminars and took note of the views expressed in those Seminars.

4.1 The Committee, taking note of the fact that the views of State Governments and recognized Political Parties, which are vital stakeholders of the Bill, had not been sought by the Government, decided to seek their comments as well. Accordingly, all the State Governments and recognised Political Parties were requested to send their comments on the provisions of the Bill, particularly clause 55. In response to Committee's request, comments from twelve State Governments and thirteen recognised Political Parties were received. A list of State Governments and recognised Political Parties that have been asked for comments and those which responded is at *Annexure-III*

4.2 The Committee also has had the benefit of the views of some experts on constitutional law on the provisions of the Bill particularly Clause 55 and experts on criminal law particularly on the necessity of the Bill. The Committee also heard the views of other experts on the Bill. The Committee received written memoranda from some organizations and individuals. A list of persons/organizations from whom written Memoranda were received is at *Annexure-IV*.

THE ISSUES

5.0.0 The Committee noted that during many deliberations and the rounds of oral evidence and in the written memoranda, several issues such as necessity of the Bill, commencement (Parts -II to VI of the Bill), ambit of communal violence, federal structure & Clause 55 of the Bill etc were raised. All these viewpoints, memoranda/views/suggestions were put in a capsule form in a statement and was sent to the Ministry for its comments/reactions. The Ministry furnished written comments which were supplemented by Home Secretary, during the course of the oral evidence before the Committee on 28th & 29th September, 2006.

The suggestions made under each issue and the comments of the Ministry of Home Affairs and the subsequent oral submissions of Home Secretary thereon are explained as under:

5.1.0 Necessity of the Bill

5.1.1 Suggestions

The Bill is not a comprehensive piece of legislation as was expected and does not address the root problem of communal violence.

The Bill is not required as existing provisions under IPC, 1860 and Cr.PC, 1973, etc. are sufficient to deal with communal violence in any part of the country.

Except for relief and rehabilitation part of the proposed legislation, other provisions are not required.

The Bill is necessary to tackle the communal problems facing the country.

The purpose of bringing this Bill is to empower the State Governments and the Central Government and to ensure that the occurrence of communal violence is prevented whenever it is likely to occur.

5.1.2 Comments of the Government

The Bill is a very comprehensive piece of legislation which provides for preventive action, speedy investigation, trial of offences through special courts, enhanced punishment for perpetrators of communal violence and also for rehabilitation and compensation to victims of communal violence.

Though there are provisions in the IPC which address some of those problems, but as there is no separate piece of comprehensive legislation on the subject, the Bill would go a long way in maintaining the secular fabric, unity and integrity, internal security and, above all the democracy in the country.

The Bill is necessary for dealing with problems specific to mass violence specially communal riots and all related matters.

The State Governments have been made accountable for maintaining communal harmony and if they failed to perform, they would have to be accountable for the losses so incurred and they should also compensate the victims.

5.2.0 Legislative Competence of Central Government

Suggestions

Parliament is competent to enact provisions contained in Chapters II to IV of the Bill, because communal violence, which threatens the secular fabric, unity, integrity and internal security of the country, would be covered by the Residuary Entry in the Union List – Entry 97 of List I.

It is a State Subject. Central Government has no competence to legislate on this.

Comments of the Government

Law Secretary had stated that legislative competence of Parliament flowed from Concurrent List. Criminal Law and Criminal Procedure Code by and large were the subject matters which fell within the Concurrent List where the Parliament was competent to enact.

5.3.0 Notification of the Bill

5.3.1 Suggestions

The Bill, when enacted, should be notified in the entire country, including the State of Jammu and Kashmir.

There is no central legislation being brought into force by State Governments. Law enacted by Parliament must be brought into force by Central Government.

There is no need for any change in the procedure provided for in the Bill. It should be notified as proposed in the Bill.

5.3.2 Comments of the Government

The Bill was proposed to be notified by the Centre in respect of Chapter I and Chapters VII to XIII for the entire country.

Chapters II to VI were left to be notified by the States because under the said provisions, most of the actions were required to be taken by the State Governments; they had to form District Councils, infrastructure for trial and investigation and institutional mechanisms for compensation to victims, etc. The States need some time to attend to all these issues.

The Ministry thought to leave it to the State Governments to bring the Bill into force in their respective States as and when they were ready to do so.

The State of J & K was excluded from the provisions of the Bill as IPC and the Code of Criminal Procedure did not extend to that State.

5.4.0 Ambit of Communal Violence

5.4.1 Suggestions

The Bill should confine itself to violence between two communities.

The ambit of Communal Violence to include racial, caste, group, ethnic violence, etc. apart from the violence between two communities, as intended, should be reflected in the long title of the Bill.

5.4.2 Comments of the Government

The title carried the word “Communal”, recognizing the importance of the violence between the religious communities and would be well understood by people of this country.

But violence of big scale between people belonging to different religious communities, racial groups, castes, ethnicity, even groups in the same religious community would attract the legislation .

In Section 3, the word “communal” covers the aforesaid large scale violence

5.5.0 Federal Structure and Clause 55 of the Bill

5.5.1 Suggestions

Clause 55 of the Bill affects the federal features in the Constitution and therefore violates its basic structure.

Though this clause impinges on the federal nature of the Constitution, but it does not violate the federal structure of the country.

This is only a safeguard provision. It is not a violation of the State Government's powers. It does not affect the federal structure.

Provisions in the Bill are ambiguous and contradictory in nature. The contradiction becomes glaring when Clause 55 (3) gives authority to the Centre to notify any area within a State as a "communally disturbed area" and sub-clause immediately following it lays down that deployment of Armed Forces should be on the request of the State Government.

The basic problem with the Bill is that if the Central Government decides to invoke the provisions of the statute and the State Government does not do so, the legislation will be rendered ineffective. Above all, there is no remedy in the Bill against the unwillingness of Central or State Government to declare an area as communally disturbed or in the event of a conflict between the Central and State Governments with regard to the declaration of an area as communally disturbed. It may be advisable to consider the possibility of providing an impartial agency such as the National Human Rights Commission with appropriate powers to act in situations that demand intervention of the Central Government and where the State Government is not intervening to protect the fundamental right to life of citizens.

There must be safeguards in clause 55 to prevent its misuse
5.5.2 Comments of the Government

The following safeguards are provided in Clause 55:

The Bill required that in the opinion of the Central Government, the following events should precede action:

- (a) scheduled offences should be committed within the area in question in a certain manner and on a certain scale involving use of criminal force or violence against members of any group, caste or community resulting in death or destruction of property;
- (b) such use of criminal force or violence should be committed with a view to create disharmony or feelings of enmity or ill-will between different groups, castes or communities ; and
- (c) there should be an imminent threat to the secular fabric, unity, integrity or internal security, which required that immediate steps be taken by the State Government concerned.

After the opinion was formed as above, the Central Government would :

draw the attention of the State Government to the

prevailing situation in the area; and

direct the State to take all immediate measures to suppress such violence.

After all the above-mentioned circumstances got established and the State Government was unable to control such violence the Central Government may :

- (a) issue a notification declaring the area within the State as a communally disturbed area; and
- (b) At the request of the State Government, deploy Armed Forces.

Keeping in view the above mentioned safeguards made by the Centre, Clause 55 did not impinge upon the federal structure.

5.6.0 Depositing of Arms

5.6.1 Suggestions

Clause 7 (1) of the Bill provides for depositing licensed and unlicensed arms and ammunition with the nearest police stations whereas possessing unlicensed arms and ammunition is a punishable offence. It is a draconian provision. Enormous powers have been given to State Governments and District Magistrates. Uniform standard should be adopted while instructing all communities for depositing arms. If some individual or class is exempted from doing so, the competent authority must give reasons in writing as to why it was done.

This provision may be deleted.

5.6.2 Comments of the Government

Home Secretary had agreed to:

Remove the anomaly in the Bill by deleting the words “whether such person had a license to keep such arms, ammunition explosives corrosive substances or not;” in Clause 7(1) of the Bill.

Examine at the stage of framing rules under the Statute, the manner in which the authority exempting an individual or a class of individuals be required to record reasons in writing.

5.7.0 Punishment

5.7.1 Suggestions

Enhanced punishment for perpetrators of communal violence provided in the Bill is welcome. But there should be provision for minimum scale of punishment also to the perpetrators of communal violence.

Enhanced punishment will not serve any purpose.

Punitive fine should be imposed in the disturbed area.

5.7.2 Comments of the Government

The enhanced punishment under the Bill becomes applicable for the scheduled offences committed within the definition of communal violence.

Minimum punishment was provided under clause 19 (2) wherein a public servant commits communal violence.

5.8.0 Definitions

Suggestions

‘Communal procession’ and ‘communal organisation’ may be defined in the definition clause.

Scheduled violence should be defined as an offence punishable under the IPC and other relevant laws, motivated by hatred and revenge.

Comments of the Government

An organization is a legal entity under the law. To that extent any organization, including its management, would be answerable for committing acts that are prejudicial

to communal harmony as indicated in the Bill. It is, therefore, not necessary to define 'communal organization' as the terms 'communal' and 'procession' had generally accepted connotations and needed no elaboration.

5.9.0 Immunity to Public Servants

Suggestions

Protection is given to public servants by mentioning 'wilfully'. Such protection should not be given.

Granting immunities to the bureaucrats should be totally withdrawn. Punishment for Public servants acting in a *mala fide* manner is a welcome provision (Clause –17).

It empowers the State Government and its officers but does not provide for their accountability.

Sanction of State Government for taking cognizance of the offence should be presumed if not provided within 30 days under proviso to sub-section (2) of Section 17.

Comments of the Government

Public servants are the instruments through which the State execute its policy. Clause 17 provided for punishment of two types for officers:

- (a) Those who exercised their authority in a *mala fide* manner thereby causing harm or in a manner likely to cause harm or injury to person or property; and
- (b) Those who wilfully omitted to exercise their lawful authority and thereby failed to prevent communal violence, breach of public order etc.

The State would require time for examining if any of those officers had so violated the law as to attract penal provisions. In order to do so, Clause 17 required previous sanction of the State Government and time limit provided for such sanction is 30 days.

Chapter XII protected action taken in good faith.

5.10.0 Communally Disturbed Area

Suggestions

Communally disturbed area is notified when use of communal force results in death. It is very restrictive and limits the scope of the Act. It does not cover cases like rape or parading women naked which is more heinous.

The manner and the scale of violence, which tends to create internal disturbance has to be certified by the Home Secretary of the concerned State as words "on such a scale and in such manner" in clause 19 (1) appears to be vague and indeterminate.

An area should be declared as a communally disturbed area before the commission of a scheduled offence on the basis of strong intelligence report as preventive measure

Comments of the Government

The State Government and the Central Government, respectively should be "of the opinion" about the fitness of circumstances for declaring an area as communally disturbed. Such "opinion" would be based on strong intelligence and the knowledge of the manner and scale of violence.

Further responding to Clause 3 (1) (a) "in such manner and such scale which involves the use of criminal force or violence against any group, caste or community, resulting in death or destruction of property" the Home Secretary noted the observation of the Committee that too much emphasis had been given on 'violence resulting in death' and said that the Ministry would look into it.

Relief & Rehabilitation Councils

Suggestions

Relief and Rehabilitation Council from National level to District level be represented by leaders of minority communities/women/religious leaders and public representatives/officers of minority community.

National and State Councils be presided over by the Home Minister and the Chief Minister, respectively.

National Council is superfluous. District Council is competent to assess the damages and to provide relief and rehabilitation to the victims of communal violence.

Comments of the Government

Clause 39 (h), Clause 42 (2) (f), Clause 45 (2) (iv), provided for representation to minorities in the Councils.

The Home Secretary further responded that it wanted the National Council to function independently of the Ministry of Home Affairs having its own elbowroom and independent thought process within the overall control of the Ministry of Home Affairs.

Similarly, the Chief Secretary has been recommended at the State level to preside over the State Council. He would be reporting to the Chief Minister. It was a kind of creating a tier between the political leadership and the people who actually do the work at the ground level.

5.12.0 Compensation

5.12.1 Suggestions

Uniform Compensation to the victims of communal violence across the country and should be paid within a definite time frame.

Compensation should be paid to the victims irrespective of conviction or acquittal.

Compensation for loss of movable/immovable property should be paid at market rate.

Compensation for loss of life, limb, honour and property be delinked from the progress of prosecution and accepted as a duty of the State.

The share of contribution in State Rehabilitation Fund by State and Centre should be defined.

Timely and adequate infrastructure for special courts should be provided.

Monetary compensation by offender contemplated under section 53, is not practical as economic status of such offenders is generally low.

All educational institutions and places of religious importance destroyed during riots should be restored to their original position by the 'State'.

Public Prosecutor under section 29, should not belong to any political persuasion and should have the confidence of victims.

5.12.2 Comments of the Government

The suggestion that there should be uniform compensation to the victims of violence across the country and it should be paid within a timeframe was well-accepted. The victim must be compensated.

Compensation to the victim would be irrespective of conviction or acquittal of the accused.

If an educational institution is State-owned it would be restored. If it is privately owned it would come under compensation clause wherein the party could claim compensation.

Clause 29 prescribed the role and selection of public prosecutors and that should be respected.

Other requirements pertaining to this chapter would form part of the rules.

5.13.0 New Ideas

5.13.1 Suggestions

There should be a separate chapter dealing with women's cause in the draft Bill because women are the first and the worst victims of communal violence.

Sexual violence in a communal situation should be equated to custodial rape as mob exercises complete control and is in a position of authority. Hence, the Bill should provide for enhanced punishment and also shift the burden of proof from the victim to the perpetrator.

The concept of 'Reparations', which is broader than the concept of 'compensation' or relief should be incorporated in the draft Bill. Each category of crime within sexual violence should be treated as a single category of crime for the purpose of reparation.

When all family members have been killed, the *ex gratia* amount should be paid to the voluntary organization engaged in large-scale relief and rehabilitation for their community or locality e.g. for construction of housing colonies and infrastructure like schools and for establishment of orphanage.

The Bill is silent about the role of media in fomenting communal violence. The media should be restrained from biased and negative and also exaggerated reporting.

'Rape' should be redefined, and for the purpose of this Bill, the definition of 'rape' should be expanded.

Central Government may depute a central observer (of JS rank) to the disturbed area to watch whether all the legal provisions or laws and so on are being implemented by the District Administration. He may submit a report to the Central Government.

Persons convicted for communal violence should be disqualified to contest elections for a specified period.

5.13.2 Comments of the Government

The Bill had based communal violence upon scheduled offences which were defined in the IPC and several other Acts. In order to implement these recommendations, the definitions of the scheduled offences in the original Statute would require review.

Representation of women would be facilitated in all Councils so that their issues were addressed.

The sexual offences against women are being addressed separately, in a greater detail.

Responding, the Ministry stated that compensation covered the reparations aspect adequately.

On the issue of restraining media from biased and negative and also exaggerated reporting fomenting communal violence, the Law Secretary stated that such a measure would be an infringement on the freedom of press.

Adding to it the Ministry stated that a strong recommendation from this Committee in this regard would be quite welcome.

States do not welcome deputing a central observer in a communally disturbed area.

On the issue of disqualifying convicted persons contesting election, the Ministry responded that Clause 62 of the draft Bill contained specific provisions in this regard.

CLAUSE-BY-CLAUSE CONSIDERATION

5.14.0 The Committee received a large number of suggestions on various clauses from Members of the Committee, constitutional and legal experts, women's organisations, some individuals/organisations representing minority communities, State Governments and recognised Political Parties. The Committee also took note of the suggestions which emerged in the three seminars organised by the Ministry of Home Affairs on the Bill at

Delhi, Mumbai and Bangalore. The Committee has duly considered all the suggestions made on various clauses of the Bill and deliberated extensively upon each clause. A gist of suggestions, deliberations and recommendations of the Committee on each clause is given as under:

5.14.1 Before taking up clause-by-clause consideration of the Bill, the Committee dwelt at length on the following basic issues:

Necessity of the Bill;

Legislative competence of Parliament

to enact the Bill;

Long Title of the Bill.

Necessity of the Bill

5.14.2 Some of the witnesses who appeared before the Committee and some Members of the Committee were of the view that the existing legal provisions/laws if implemented effectively were sufficient to take care of the exigencies envisaged in the proposed Bill. After some discussion the Committee felt that violence on large scale, whether communal or social conflicts or even caste conflicts, which threatens the secular fabric, unity, integrity and internal security of the Nation, cannot be dealt with by the ordinary law. The Bill brought by the Government before Parliament is necessary to deal with such violence. The Committee, therefore, is unanimously of the view that there is a necessity of such a Bill being enacted into law.

Legislative competence

5.14.3 As regards legislative competence of Parliament, one of the views presented before the Committee was that the subject matter of the Bill was directly related to 'Law and Order' which was a State subject. Should Parliament decide to legislate on a matter in the State List, then there should be a resolution of the Rajya Sabha passed by a two-thirds majority or a proclamation of Emergency should be in force or the legislatures of two or more States have passed resolutions empowering Parliament to legislate on a matter in List-II. However, in the present case none of the requirements of Articles 249, 250 and 252 have been met.

5.14.4 On this, the Home Secretary clarified that the Bill drew its strength from the relevant entries in the Concurrent List. According to him, it was not simply to address the issue of 'communal violence' of a minor scale. The Bill was addressing a scenario far beyond that. The Bill made its intention clear when its long title said "to empower the State Governments and the Central Government to take measures to provide for the prevention and control of communal violence which threatens the secular fabric, unity, integrity and internal security of the nation." It meant 'communal violence' of such a scale and in such a manner that it had a bearing on those factors; and hence this kind of a Bill.

5.14.5 Clarifying this further, the Law Secretary also stated that even though 'Public Order' and 'Police' are on the State List, (Item No. 1), 'Criminal Law', 'Criminal Procedure' and 'Administration of Justice' are on the Concurrent List. So, the Bill draws its strength from Entries 1, 2 and 11A of the Concurrent List. The Law Secretary, in support of the legislative competence of Parliament also stated as under:

“The provisions of the Bill deal mainly with enhanced punishment for offences committed in communally disturbed area. These offences are all Indian Penal Code offences and offences under the Acts which have been passed by the Parliament. So, Parliament has competence to amend any of these laws”.

5.14.6 After considering the arguments both for and against, the Committee is convinced that the Bill is within the legislative competence of the Parliament.

LONG TITLE:

5.14.7 The Committee agrees with the views of the Home Secretary that the Long Title articulates the intentions of the legislation and indicates the level of violence which threatens the secular fabric, unity, integrity and internal security of the country and feels that the same should be retained as such.

Clause 1

5.15.0 This clause provides for the short title of the proposed legislation, the area of its operation and its commencement.

Committee’s observation/recommendation

5.15.1 The Committee considered the alternative terms for “Communal Violence” like ‘social violence’ ‘mass violence’ and ‘sectarian violence’.

5.15.2 The Committee feels that the words ‘communal violence’ are well understood by every one. For the purpose of this Bill, a violence may be called communal violence if it threatens unity, integrity, secular fabric and internal security of the country. The Bill takes care of mass violence, violence between ethnic groups, religious communities (both inter and intra) and different castes. The Committee, therefore, decided that the words ‘communal violence’ may be retained.

5.15.3 The clause is adopted without any change.

Clause 2

5.16.0 The Clause contains definitions of certain words and expressions used in the Bill viz. “Communally Disturbed Area”, “Communal Violence”, “Competent Authority”, “Relief & Rehabilitation”, “Scheduled Offence”, “State Fund”, “Unified Command”, etc.

5.16.1 Suggestions

The word “communally” may be replaced by “socially”.

The Bill should confine itself to violence between two communities. The term ‘communal violence’ may be defined without mixing it up with caste, ethnic and other problems. ‘Communal procession’ and ‘communal organization’ may be defined.

The definition of ‘communal violence’ should be wider because caste violence, group violence, sectarian violence etc. would require consideration.

Clause 2(c) should be amended as follows: “Communal violence” means any act ‘of omission or commission which threatens the secular fabric, integrity, unity or internal security of the Nation and which constitutes a scheduled offence, punishable under section 19”.

The special powers of the Central Government to deal with communal problem should be strictly directed against communal disturbances only and not other kinds of protests.

Sexual violence may be covered under the Bill and ‘rape’ may be redefined. The crimes against women such as sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization may be included within the definition of communal violence. Genocide, a crime against humanity, may be included in the scope of the Bill.

Rename the Councils as “Social Peace and Justice Councils”.

Scheduled violence should be defined as an offence punishable under the IPC and other relevant laws, motivated by hatred and revenge.

The offences under the Explosive Substances Act, 1908, the Information Technology Act, 2001 and the SC/ST (Prevention of Atrocities) Act, 1989 should also be included in the Schedule of Offences.

“Schedule Offence” may be defined as an offence punishable under the Sections specified in the Schedule.

Special Courts will not serve the purpose.

Robbery and dacoity should be included in the Schedule.

Government’s Views

5.16.2 It is not necessary to define all those expressions as they are generally accepted connotations and need no elaboration. The Home Secretary agreed to re-examine the reference to ‘sub-clause (i) of clause (c) of sub-section (1) of Section 3’ in clause 2(1)(b) which should read as “sub-section (1) of Section 3”. An official amendment was proposed by Home Secretary to clause 2(1) (l) to insert the words “punishable under the Sections” after the word “offences” which was technical in nature.

Committee’s observation/recommendations

5.16.3 The Committee took note of the drafting error as pointed out by one of the witnesses in clause 2(1)(b) viz. that the reference to sub clause (i) of clause (c) of sub-section (1) of section 3 should read as ‘sub-section (1) of Section 3’. The Committee recommends that in sub-clause (1) (b) of clause 2, the words “sub-clause (i) of clause (c) of” may be deleted.

5.16.4 The Committee takes note of the proposal made by the Home Secretary for amending Clause 2 (1) (l). The Committee agrees that the Schedule actually lists the sections which prescribe the punishment and not the offence. The Committee agrees that sub-clause (1) (l) of Clause 2 may read as under:

“Scheduled offence” means an offence punishable under the sections specified in the Schedule.”

5.16.5 Subject to the above, the clause is adopted.

Clause 3

5.17.0 The clause deals with the powers of the State Government to declare an area to be a communally disturbed area in certain circumstances.

5.17.1 *Suggestions*

In Clause 3 (1) (a) Communally disturbed area is notified when use of communal force results in death. It is very restrictive and limits the scope of the Act. It does not cover cases like maiming, rape, parading women naked which are more heinous.

Substitute the words ‘danger’ by ‘threat’, ‘secular fabric’ by ‘social harmony’ and ‘may’ by ‘shall’ in Clause 3 (1) (C). The words ‘threatens the secular fabric’ be replaced by ‘for establishing communal harmony’ in the same clause.

The words ‘resulting in death’ appearing in clause 3 (1) (a) may be substituted by the words ‘it results in commission of any cognizable offence’ or ‘it results in the commissioning of any scheduled offence’.

‘public peace and tranquility’ is not a ground for notification, but is a ground for extending the notification for continuance of communally disturbed area in sub-clause 2. Clause 3 should be amended to enable the State Government to declare an area as communally disturbed even before the commission of the scheduled offence.

Whenever series of incidents of scheduled violence, numbering ten or more such incidents are brought to the notice of the State Government that area can be declared as communally disturbed area. In Clause 3 (1), the words “of the opinion” be replaced by “satisfied”.

The Bill provides for appointment of different competent authorities for different provisions of the Act. This may lead to conflicts and contradictions among different competent authorities exercising the provisions of this Act. Safeguards and precautions should be provided.

Provisions should be included that all preventive measures should be taken in consultation with the District Council comprising of representatives of all communities including minority community and victim community.

The words “violence against any group, caste or community” in clause 3 (1) (a) should be deleted.

In the first instance an area may be declared to be a communally disturbed area for a period of thirty days which may be extended upto a maximum period of six months. After that there should be a fresh notification.

Government’s Views

5.17.2 The Home Secretary agreed to the suggestion of the Committee that the words “death or destruction of property” in Clause 3(1)(a) be substituted by the words “grievous hurt, loss of life, extensive damage or destruction of property”. He also agreed for substitution of the word “danger” by “threat” in Clause 3 (1) (c). Further, an upper cap of six months for extending the period of notification was agreed to.

Committee’s observation/recommendations

5.17.3 The Committee agrees with the view that making death and destruction of property *sine qua non* for notification would be very restrictive. There may be a situation where a single death might not have taken place but a large number of people are grievously hurt. Such a situation is not covered under this clause. The Committee, therefore, recommends that sub-clause (1) (a) of clause 3 may be amended as under:

‘in such manner and on such a scale which involves the use of criminal force or violence against any group, caste or community, resulting in grievous hurt, loss of life, or extensive damage or destruction of property.’

5.17.4 The Committee agrees to the suggestion that the word ‘danger’ be substituted by ‘threat’ and ‘may’ by ‘shall’ in clause 3 (1) (c), and recommends these amendments in the clause.

5.17.5 The Committee recommends that a provision may be made in the proviso to sub-clause (2) of clause 3 to the effect a notification issued under sub-clause (1) shall not in any case be extended beyond six months. If, however, the situation warrants declaration of an area to be communally disturbed, beyond that period, the State Government may issue a fresh notification by following the procedure prescribed in sub-clause (1).

5.17.6 Subject to the above, the clause is adopted.

Clause 4

5.18.0 The clause lays down the measures to be taken by the State Government to prevent and control communal violence in a communally disturbed area. It may request the Central Government to deploy Armed forces of the Union to control communal violence.

5.18.1 Suggestions

(i) It vests a very wide discretion in the State Government to take measures such as requesting the Central Government to deploy para-military forces and the army in aid of civil administration in an area declared as communally disturbed.

(ii) Clause 4 (2) may be substituted by the following:

“If violence is not controlled within seven days, the State Government shall request the Central Government to deploy armed forces of the Union to control the situation.”

Committee’s observation/recommendation

5.18.2 The Clause is adopted without any change.

Clause 5

5.19.0 The clause lays down the powers of District Magistrate to take preventive measures in case of a situation which has arisen causing apprehension of breach of peace or creation of discord between members of different groups, castes or communities.

5.19.1 Suggestions

The words ‘Commissioners’ and ‘Commissionarates’ should also be included. The words ‘or Commissioners of Police’ should also be included after the words ‘District Magistrate’ in Clause 5 (1) and (2) wherever necessary.

Maintaining a community *goonda* register or sheet may be a good preventive measure.

These powers are already available with the administration under Sections 107 and 144 of IPC. This will infringe the rights of the citizens of that area available to them under Articles 19 and 21 of the Constitution. These powers may be misused by the authorities.

The words “a Situation has arisen or he has received such an information that there is an apprehension” may be added after the words “in any area within his jurisdiction”.

Contravention of the provisions of sub-clause (1) of clause 5 should be punished with imprisonment which may extend to one year or with fine or with both.

In sub-clause (3) of clause 32, punishment for contravention of direction of special court is imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees. Since sub-clause (3) of clause 5 deals with punishment for contravention of an order made by District Magistrate, it should be in consonance with sub-clause (3) of clause 32.

Government’s Views

5.19.2 Responding to the suggestion regarding inserting the words “Commissioner of Police” alongwith District Magistrate, the Home Secretary stated that in police districts such powers are exercised by the Commissioners of Police under the Police Act, 1861. The Home Secretary agreed that the words “or an information has been received” may be inserted after the words, “has reason to believe” in line-2 of clause 5(1) to check misuse of discretion by District Magistrate. As to the suggestion for bringing the provision of sub-clause (3) of clause 5 in conformity with sub-clause (3) of clause 32, the Home Secretary agreed that the Committee may like to flag the issue for consideration by Government.

Committee’s observation/recommendations

5.19.3 The Committee is of the view that there is a need to amend clause 5 (1) by adding the words “or he has received an information” after the words ‘has reason to believe’. The Committee recommends that clause 5 (1) may be amended accordingly.

5.19.4 The Committee takes note of the suggestion that in sub-clause (3), the amount of fine should be mentioned. It apprehends that under the existing provision of sub-clause (3), an offender may get away with fine only. The Committee, therefore, recommends that the words “or with fine or with both” may be substituted by the words “and with fine”

5.19.5 Subject to the above, the clause is adopted.

Clause 6

5.20.0 The clause lays down the powers of the competent authority to take preventive measures in a notified communally disturbed area.

5.20.1 Suggestions

The following provisions should be introduced:

A provision for a minimum punishment of 3 years with fine for contravention of Section 6(1).

Prohibition of funeral processions and similar punishment for violation.

Closure of communal breeding grounds.

Explicit provision for prevention of display of posters, banners etc. and closure of concerned printing presses.

Introduction of a mechanism to synchronize the system as there are multiple competent authorities.

Government’s Views

5.20.2 The Home Secretary submitted before the Committee that a punitive clause for violation of orders mentioned under sub-clause (1) of clause 6 is missing. He suggested that the same may be inserted.

Committee’s observation/recommendation

5.20.3 The Committee takes note of the omission pointed out by the Home Secretary and recommends addition of the following new sub-clause (3) in clause 6 as under:

“Whoever contravenes the provisions of an order made under this section, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine”.

5.20.4 Subject to the above, the clause is adopted.

Clause 7

5.21.0 The clause provides for the power of the competent authority to order to deposit arms and ammunition in communally disturbed area.

5.21.1 Suggestions

It is a draconian provision. Enormous powers have been given to State Governments and District Magistrates. Clause 7 (1) of the Bill provides for depositing licensed and unlicensed arms and ammunition with the nearest police station whereas possessing unlicensed arms and ammunition is a punishable offence.

Uniform standard should be adopted while instructing all communities for depositing arms. If some individual or class is exempted from doing so, the competent authority must give reasons in writing as to why it was done.

(iii) This clause may be deleted.

Committee's observation/recommendation

5.21.2 The Committee agrees with the suggestion of deleting the words 'whether such person has a licence to keep such arms, ammunition, explosives, corrosive substance, or not' in Clause 7(1), as this provision is likely to be misused and the citizens may be harassed. The Home Secretary endorsed the suggestion. The Committee, therefore, recommends that the words 'whether such person has a licence to keep such arms, ammunition, explosives, corrosive substance, or not' in sub-clause (1) of clause 7 may be deleted.

5.21.3 Subject to the above, the clause is adopted.

Clause 8

5.22.0 It gives powers to the officer in charge of police station to search, detect and seize arms and ammunition in the communally disturbed area.

Suggestions

5.22.1 (i) The power to search may be given to the officer not below the rank of Deputy Superintendent of Police instead of Sub-Inspector.

(ii) It should be at least an officer of the rank of Inspector.

Government's Views

5.22.2 The Home Secretary clarified that most of the police stations in the country were headed by Sub-Inspectors. It might entail some jurisdictional problems. However, he agreed to examine the suggestion.

Committee's observation/recommendation

5.22.3 The Committee feels that the suggestion of substituting the words 'Sub-Inspector' by the words 'Deputy Superintendent of Police' may not be practicable. The Committee, however, feels that the power to search, detain and seize arms etc. in communally disturbed area should be exercised by an officer not below the rank of Inspector of Police. The Committee, therefore, recommends that the word "Sub-Inspector" may be substituted by the word "Inspector".

5.22.4 Subject to the above, the clause is adopted.

Clause 9

5.23.0 The clause empowers the competent authority to prohibit certain acts in the communally disturbed area.

5.23.1 Suggestions

The words 'Public cry' may be substituted with "incitement".

The words, "public utterance of cries" should be deleted.

The words "singing of songs, playing of music" should be deleted. Those may be substituted by the words "public utterances, singing of songs, playing of music which create incitement."

Committee's observation/recommendation

5.23.2 The Committee feels that the words 'public utterances of cries' in sub-clause (1) (e) are vague and inapt. 'Incitement' is an appropriate word. However, the Committee is of the view that incitement should be related to singing of songs and playing of music as well. The Committee, accordingly, recommends that sub-clause (1) (e) of clause 9 may be amended as under:

"the public utterances, singing of songs and playing of music which cause incitement".

5.23.3 Subject to the above, the clause is adopted.

Clauses 10 & 11

5.24.0 These clauses provide for power to the competent authority to make orders regarding conduct of persons in communally disturbed area and for punishment for loitering near prohibited places.

5.24.1 Suggestions

Provisions of Articles 19 and 21 of the Constitution should be kept in mind.

In clause 11(1), after the words “being ordered” add the word, “in writing”.

The word “loitering” may be substituted by the words ‘frequenting without just cause’ or by the words ‘hanging around without cause’.

Committee’s observation/recommendation

5.24.2 The clauses are adopted without any change.

Clause 12

5.25.0 It provides for punishment for being in possession of arms without licenses in the communally disturbed area.

5.25.1 Suggestions

It may be misused by implicating an innocent person for keeping unlicensed arms.

The situation envisaged is taken care of by Section 25 of the Arms Act.

The words “without licence” may be substituted by the words “with or without any lawful authority”.

Committee’s observation/recommendation

5.25.2 The Committee held detailed discussion on the implication of this clause and its likely misuse in its present form. The Committee feels that the very purpose of deleting reference to unlicensed arms in clause 7(1) may be defeated if clause 12 is allowed to remain in its present form. In order to bring clause 12 in consonance with clause 7(1), as amended by the Committee, it recommends that the words ‘is found to be in possession of or carrying’ may substitute the words ‘has in his possession’ in clause 12.

5.25.3 Subject to the above, the clause is adopted.

Clause 13

5.26.0 It provides for punishment for assisting offenders.

5.26.1 Suggestions

(i) Delete the words “on having reasonable cause to believe” to avoid misuse.

(ii) The expression “any person who knowing or having reasonable cause to believe” is a loose formulation. This can be misused. The words “from the circumstances” may be added after the words “having reasonable cause to believe.”

Committee’s observation/recommendation

5.26.2 The Committee agrees with the view that the expression ‘any person who knowing or having reasonable cause to believe...’ is a loose formulation which can be misused. The Committee, therefore, recommends that after the words ‘having reasonable cause to believe’, the words ‘from the circumstances’ may be inserted.

5.26.3 Subject to the above, the clause is adopted.

Clauses 14-15

5.27.0 These clauses provide for punishment for giving financial assistance to the offenders and punishment to those who threaten witness.

Suggestion

5.27.1 Provisions should be incorporated for freezing of bank accounts; prohibition for raising funds for the welfare of the accused; prevention of flow of foreign funds; and confiscation of illegal funds.

Committee's observation/recommendation

5.27.2 The clauses are adopted without any change.

Clause 16

5.28.0 The clause provides for punishment for the driver, owner or any person in charge of goods transport vehicle for carrying more persons than authorized.

Suggestion

5.28.1 The words 'goods transport' should be deleted and substituted by the words "any vehicle."

Government's View

5.28.2 The Home Secretary agreed to delete the word "goods" from the clause and marginal heading to the clause.

Committee's observation/recommendation

5.28.3 The Committee agrees that the words 'goods transport vehicle' are very restrictive and do not include other vehicles. The Committee feels that there is a need to bring all the vehicles under the ambit of this clause. The Committee also takes note of the explanation of the Secretary, Legislative Department that in the Motor Vehicles Act, 1988 there is only the definition of 'transport vehicle' and not 'vehicle'. Taking into consideration the explanation given by the Legislative Secretary, the Committee recommends that the word 'goods' may be deleted from the clause and marginal heading thereto.

5.28.4 The Committee also takes note of the Home Secretary's submission that the Government propose to add the words 'or arms, explosives or corrosive substance' after the words 'rules made thereunder'. The Committee agrees with the suggestion and recommends that the amendment may be carried out.

5.28.5 Subject to the above, the clause is adopted.

Clause 17

5.29.0 *This clause provides for punishment for public servants acting in mala fide manner and for failure to discharge their duties through wilful commissions or omissions.*

5.29.1 Suggestions

Punishment for public servants acting in a *mala fide* manner is a welcome provision.

Protection is sought to be given to public servants by using the expression 'wilfully'. which is not called for. Therefore, the word 'wilfully' should be omitted.

Immunities sought to be given to the bureaucrats should be completely withdrawn.

It empowers the State Government and its officers but does not provide for their accountability.

Judicial enquiry to look into complaints against officials – payment by them of compensation if the complaints are found to be genuine.

Sanction of State Government should be presumed if not provided within 30 days under proviso to sub-section (2) of Section 17.

Accountability for non-declaring an area as a communally disturbed area will have to be suitably provided and fixed.

If the State Government does not give prosecution sanction then what will happen? Who is going to punish the public servant? Whether Central Government will give direction to such a State?

If by *mala fide* commission or omission of a public servant, something untoward happens, then what would be his liability and punishment?

Punishment should be “imprisonment for one year and with fine”

Committee’s observation/recommendation

5.29.2 The Committee took note of the fact that the offences for which punishment is provided in clause 17 (1) become non-cognizable if the punishment is only one year imprisonment. The Committee feels that the offences need to be made cognizable and for this purpose, the punishment will have to be enhanced to three years imprisonment. By making the quantum of punishment to three years, there would be uniformity in clause 17 and clause 19. Further, if this amendment is not made in clause 17, then clause 19 becomes redundant. The Committee, therefore, recommends that the words “one year” may be substituted by the words “three years” in sub-clause (1) of clause 17.

5.29.3 Subject to the above, the clause is adopted.

Clause 18

5.30.0 *The clause provides for the punishment for violation of orders under section 144 of the Code of Criminal Procedure, 1973 in a communally disturbed area.*

Committee’s observation/recommendation

5.30.1 The clause is adopted without any change.

Clause 19

5.31.0 This clause prescribes the criterion for communal offence and enhanced punishment for committing communal violence.

5.31.1 Suggestions

The manner and the scale of violence, which tends to create internal disturbance should be certified by the Home Secretary of the concerned State as the words “on such a scale, in such a manner” in clause 19 (1) appears to be vague and indeterminate.

Enhanced punishment for perpetrators of communal violence provided in the Bill is welcome. But there should be provision for minimum scale of punishment also to the perpetrators.

Punitive fine should be imposed in the disturbed area.

collective fine will also be discretionary for the executive authorities so where discretion is concerned most probably it might go against minorities.

The Bill does not address the issue of political will. Mere enhancement of punishment in the absence of political will to enforce accountability and responsibility will not work.

Speedy and fair trials are the most effective deterrent for prevention of violence.

The proviso in this clause is discriminatory and violates Art. 14 of the Constitution.

Person convicted under the Act should also be disqualified to contest the elections to Parliament, State Legislative Assemblies and local bodies and to hold elected posts.

Government’s View

5.31.2 An official amendment was proposed by the Home Secretary to the effect that the minimum punishment for delinquent public servant should be three years instead of five years.

Committee's observation/recommendation

5.31.3 The Committee considered the Government's proposal. It also took note of the fact that this is the only provision in the Bill which prescribes a minimum punishment.

5.31.4 The Committee feels that the minimum punishment of imprisonment as proposed to be reduced by the Government to three years is sufficient to work as a deterrent. The Committee, therefore, recommends that the word 'five' in the proviso to sub-clause (2) of clause 19 may be substituted by the word "three".

5.31.5 Subject to the above, the clause is adopted.

Clause 20

5.32.0 The clause provides that the scheduled offences shall be cognizable offences for the purposes of the proposed legislation.

5.32.1 Suggestions

All offences under the Bill, except the one coming under clause 17, should be made cognizable and non-bailable.

Minimum and maximum punishments should be three years and seven years of imprisonment, respectively.

Bail provisions should be made stringent. Anticipatory bail should not be made applicable.

Law enforcing agencies should be empowered to intercept telephonic/internet/wireless communications.

Remand period should be extended for 30 days.

A mechanism should be devised to restrain the media from making biased and negative reporting.

Confessions made before a Police Officer of and above the rank of Superintendent of Police (SP) should be made admissible evidence.

The words 'or Executive Magistrate' should be deleted.

Government's Views

5.31.2 On the suggestion of deleting the words 'Executive Magistrate', the Home Secretary stated that the problem would be of logistics. He added that the impact of any new legislation or amendment would be huge on the judiciary. In spite of fast track courts and various steps taken, the pendency of cases was not getting reduced. As far as possible, cases would be referred to Judicial Magistrate. The Home Secretary explained that this provision had been made for referring cases to the Executive Magistrate wherever it would be found necessary.

Committee's observation/recommendation

5.32.3 The Committee feels that the Executive Magistrate will not have as much independence as the Judicial Magistrate. Moreover, Executive Magistrate is directly accountable to the Government. Therefore, the Committee recommends that the words 'or Executive Magistrate' in sub-clause (3) of clause 20 may be deleted.

5.32.4 Subject to the above, the clause is adopted.

Clause 21

5.33.0 The clause provides for declaring any post or place within a communally disturbed area as police station.

Suggestion

5.33.1 For declaring any post or place to be a police station, provision should be made in the clause for seeking prior approval of the Director General of Police (DGP) of the State.

Government's Views

5.33.2 Responding to the suggestion, the Home Secretary clarified that the competent authority to declare any post or place in the communally disturbed area was the State Government which was higher than the DGP.

Committee's observation/recommendation

5.33.3 The clause is adopted without any change.

Clause 22

5.34.0 The clause empowers the State Government to constitute a Review Committee headed by an officer of the level of Inspector General of Police (IGP) to review cases of scheduled offences where the trial ends in acquittal and to issue orders for filing of appeals, wherever required.

Suggestion

5.34.1 Review Committee is proposed to be headed by Inspector General of Police (IGP). Since review of acquittals and appeals are done by law officers, they should be associated with the Review Committee.

Government's Views

5.34.2 The Home Secretary clarified that the clause was meant to take care of acquittals on procedural, technical and administrative grounds which can be ascertained from chargesheet and case diary and not on questions of law. A study of the chargesheet and a case diary by a person well versed in matters relating to investigation and preparation of chargesheet is more effective than perusal by a law officer.

Committee's observation/recommendation

5.34.3 The Committee, however, feels that a Law officer also should be associated with the Review Committee. Therefore, the Committee recommends that Government may bring suitable amendment in sub-clause (1) of clause 22 for the purpose of associating a law officer of the State, with the Review Committee.

5.34.4 Subject to the above, the clause is adopted.

Clause 23

5.35.0 The clause provides for the constitution of one or more Special Investigation Teams (SIT) by the State Government in case the State Government comes to the conclusion that the investigation of offences committed in a communally disturbed area were not carried out properly in a fair and impartial manner.

5.35.1 Suggestions

No power other than what is vested with the State Government under the Cr.P.C. should be given as there is every possibility that this proposed provision can be misused.

Special Investigation Team (SIT) should be constituted by the State Government, in consultation with the State Council, wherever more than ten deaths occur or more than ten scheduled offences are committed within the jurisdiction of any police station. The SIT shall conduct investigation under the supervision of the State Government.

Provisions may be introduced to fix a time limit for disposal of cases to the effect that if the case is not finalized within the statutory period the Judge shall send a report explaining the reasons to the High Court. In the case of non-compliance, the High Court may take such action as may be necessary to ensure speedy disposal.

Statutory limits by themselves do not work. The Chief Justice should be under an obligation to take effective measures to see that disposal is done in time.

Clause 23 is not required as the power of constituting SIT is already available with the State Governments.

Government's Views

5.35.2 The Home Secretary stated that setting up of SIT by the State Government for communal violence cases was in conformity with the provisions of Cr. P.C. On the suggestion of constituting SIT in consultation with the State Council, the Home Secretary was of the view that the Council was meant for dealing with compensation, relief and rehabilitation and therefore, it should be left to focus on the assigned functions.

Committee's observation/recommendation

5.35.3 The Committee is of the view that a provision already exists in Cr. P.C. empowering State Governments to constitute SIT. The Committee, therefore, recommends that clause 23 may be deleted.

Clause 24

5.36.0 The clause provides that the State Government shall, by notification in the Official Gazette, establish one or more Special Courts for the trial of scheduled offence, committed during the period of disturbance.

5.36.1 Suggestions

In order to ensure efficiency a mandatory provision be made under this statute that Special Judges should be imparted training before they are posted as such judges.

Timely and adequate infrastructure for Special Courts should be provided.

"Shall" should be substituted by "may".

The power to transfer any case from the jurisdiction of one High Court to another vests in Supreme Court under section 406 of Cr.P.C. Thus, the Central Government can not establish Additional Special Court outside a particular State without obtaining the approval of the judiciary. Therefore, the words "with the permission or in consultation with the Supreme Court of India" may be added at the end of clause 24(2).

Government's Views

5.36.2 The Home Secretary stated that under the General Clauses Act, 1897 "may" includes "shall". On the issue of transferring cases outside the jurisdiction of the State, the Home Secretary stated that based on strong public opinion the State may send the case to the Central Government which may collect information about it and after following the due process of law, may provide for trial of such case to take place outside the jurisdiction of the State. The Home Secretary added that such a decision can be taken only with the concurrence of the Supreme Court.

Committee's observation/recommendation

5.36.3 The Committee discussed at length the implications of this clause. At present Central Government or a State Government does not have the power to transfer a case from one High Court to another High Court. This is the power given to the Judiciary. Section 406 of Cr.P.C. provides that the Supreme Court can transfer a case from one High Court to another High Court. Giving this power to the Central Government is

illegal and takes away the powers of Judiciary. Clause 24 is repugnant to the provisions of Section 406 of Cr.P.C. The Committee is, therefore, of the strong view that such a power should remain with the judiciary only. The exigencies visualized in this clause whereunder a State Government may request the Central Government to establish an additional Special Court outside the State for trial of scheduled offences, are impracticable and highly improbable as no State Government would indulge in self indictment stating that justice cannot be dispensed within that State. The Committee, therefore, recommends that clause 24 may be re-looked in the light of Section 406 of Cr. P.C.

5.36.4 Subject to the above, the clause is adopted.

Clause 25

5.37.0 The Clause provides for composition and appointment of Judges of Special Courts

5.37.1 Suggestions

In order to ensure efficiency a mandatory provision be made under this statute that Special Judges should be imparted training before they are posted as such judges.

Timely and adequate infrastructure for special courts should be provided.

Government's Views

5.37.2 On the issue of making provisions for timely and adequate infrastructure for Special Courts, the Home Secretary stated that it could not form part of the Act. At best, it could be provided in the rules and to facilitate the same a request could be placed with the State Governments and the High Courts.

Committee's observation/recommendation

5.37.3 The Committee recommends that while framing the rules, endeavour should be made for providing timely and adequate infrastructure for the Special Courts.

5.37.4 Subject to the above, the clause is adopted.

Clause 26

5.38.0 The Clause provides for the place of sitting of a Special Court

5.38.1 Suggestion

The proviso to the clause should be deleted in view of the fact that the Court should decide the place of sitting instead of depending upon the certificate of Public Prosecutor.

Government's Views

5.38.2 In regard to the certificate of the Public Prosecutor for holding of trial at any other place other than the usual place of sitting, the Home Secretary stated that the decision for the trial to take place at any other place was left with the court. The initial application would be from the Public Prosecutor. Then the court would hear the accused and then the court records its reasons in writing as to why it should take place at any other place. He agreed for rewording it.

Law Secretary stated that the Public Prosecutor's certificate becomes binding on the court and if the court differs, it has to give reasons. He was, however, of the opinion that the proviso can be deleted.

Committee's observation/recommendation

5.38.3 The Committee recommends that the proviso to the clause may be deleted.

5.38.4 Subject to the above, the clause is adopted.

Clause 27

5.39.0 The clause provides for jurisdiction of Special Courts.

Committee's observation/recommendation

5.39.1 The clause is adopted without any change.

Clause 28

5.40.0 The clause provides for powers of Special Courts with respect to other offences.

Committee's observation/recommendation

5.40.1 The clause is adopted without any change.

Clause 29

5.41.0 The Clause provides for the appointment of Public Prosecutors. Under the clause, eligibility for appointment of Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor is (i) practice as an Advocate for not less than seven years or (ii) one has held any post in the State or Centre for not less than seven years requiring special knowledge of law.

5.41.1 Suggestions:

The clause does not have any provision to Public Prosecutors being responsive to the victims and survivors.

The victim should have the right to appoint a Special Prosecutor.

Public Prosecutor, under Section 29, should not belong to any political persuasion and should have the confidence of victims.

The word "qualified" may be inserted before the word "person" in sub-clause (1), and the words "in accordance with law and with the consent of the victims" be added before the proviso to sub-clause (1) of the clause.

The Public Prosecutor should be appointed on the recommendation of the State Council and should work under the supervision of the State Council.

As soon as an area is declared communally disturbed, a Committee should be formed to appoint prosecutors on case to case basis. The Committee should include the Home Secretary, the DGP and the Law Secretary of the State as ex-officio members which would eliminate the possibility of subversion in the process of appointment of Public Prosecutors.

Government's views:

5.41.2 The Home Secretary stated that the clause had been deliberated upon and retained due to the fact that the legal community was very busy in a large number of cases.

Committee's observation/recommendation

5.41.3 The Committee is of the view that a person holding a post in the State or the Central Government for not less than seven years having special knowledge of law may not prove himself to be effective prosecutor in cases of communal violence. Special knowledge is different from practical knowledge. Practical knowledge and experience are very important for dealing with legal cases. The Committee, therefore, feels that the eligibility for appointment as a Public Prosecutor should be confined to practice in law for not less than seven years. The Committee also does not agree with the explanation of the Home Secretary that the provision for appointment of officers of the Union or a State having special knowledge of law as public prosecutors has been made to ease burden on the already over burdened legal practitioners. The Committee, accordingly, recommends

that the word ‘or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law’ may be deleted in sub-clause (2) of clause 29.

5.41.4 Subject to the above, the clause is adopted.

Clause 30

5.42.0 The clause provides for procedure and powers of Special Courts.

5.42.1 Suggestions:

Definite time frame for commencement and completion of the trial should be provided. Stay/adjournment/postponement of proceedings is not allowed under the Prevention of Corruption Act, 1998 and enquiries are conducted in the absence of the accused or his counsel. Similar provisions should be inserted in the clause.

Assigning powers of summary trial to the Special Court is against the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution.

The words ‘without the accused being committed to it for trial’ appearing in sub-clause (1) should be deleted.

Under Section 262 (2) of the Code of Criminal Procedure sentence of imprisonment beyond three months cannot be given under a summary trial. Punishment in second proviso to sub-clause (3) should be six months instead of two years for summary trial of communal violence cases.

There will be plethora of cases on flimsy grounds if complaints are allowed to be filed without police report in Special Courts.

Sub-clause (3) should be deleted.

Government’s views:

5.42.2 In regard to the requirement of a police report for taking cognizance of a scheduled offence, the Home Secretary stated that it should be incumbent on the Court to take cognizance of offences on the basis of police reports. In regard to summary trial of cases, as provided in sub-clause (3), the Home Secretary stated that the said provision had been deliberately kept with the objective of dealing with cases of communal violence speedily. However, in view of the apprehensions expressed by the Members of the Committee, he agreed to have a re-look at sub-clauses (1), (3) and (4).

Committee’s observations/recommendations

5.42.3 The Committee has held extensive discussion on the clause. The Committee considered the implications of the clause whereunder a Special Court may take cognizance of any scheduled offence without the accused being committed to it for trial and its effect on the right to life and personal liberty guaranteed under Article 21 of the Constitution. The Committee apprehends that the receipt of complaints by Special Courts without any police report may lead to a plethora of flimsy complaints in those Courts. The Committee also takes note of the fact that summary trial is well defined in Chapter XXI of the Code of Criminal Procedure. The Committee is, therefore, of the view that the provision of summary trial should be deleted from the clause.

5.42.4 In the light of the reservations of the Committee on the maintainability of the clause vis-à-vis Article 21 of the Constitution guaranteeing protection of life and personal liberty of a person and Chapters XV and XXI of the Cr.P.C., the Committee recommends that the Government may have a re-look at clause 30 to bring it in harmony with the above mentioned constitutional and statutory provisions.

5.42.5 Subject to the above, the clause is adopted.

Clause 31

5.43.0 The Clause provides for power of Supreme Court to transfer cases.

5.43.1 Suggestions

Clause 31 does not specify on what basis the Supreme Court may pass such order for transfer of a case.

The Supreme Court enjoys this power under the Constitution. Besides, such provisions also exist in Sections 406 and 407 of the Cr. P.C. Therefore, this clause should be deleted.

Since similar provisions of transferring cases from one High Court or any Subordinate Court thereto, to another High Court or Subordinate Court thereto, by the Supreme Court is already there in Section 406 of the Cr. P.C. The clause is superfluous.

This clause is unnecessary and not well thought of as Special Courts are constituted after taking into account all relevant aspects including fair trial. Visualizing a situation for transfer of cases from one Special Court to another puts a question mark on the very purpose of constituting Special Courts.

Government's views:

5.43.2 The Secretary, Legislative Department, Ministry of Law & Justice, clarified that clause 31 is different from other existing provisions of the Cr.P.C. Section 406 of Cr.P.C. deals with cases where the Supreme Court can transfer a case from one High Court to another High Court. Section 407 deals with the power of the High Court to transfer a case from one court to another court. However, the power given under this clause to the Supreme Court is to transfer a case from one Special Court to another Special Court. This is slightly different. He also stated that it was proposed to send a message that the Supreme Court in certain cases could transfer a case from one Special Court to another Special Court in the interest of justice.

Committee's observation/recommendation

5.43.3 The clause is adopted without any change.

Clause 32

5.44.0 The clause provides for protection of witnesses.

5.44.1 Suggestion

The provision in the clause for protection of witnesses is not adequate and therefore a specific provision should be made. They should have the right to get police protection the moment the witness and victims feel threatened.

Committee's observation/recommendation

5.44.2 The Committee, after some discussion, felt that the clause is necessary for protection of witnesses and victims.

5.44.3 The clause is adopted without any change.

Clause 33

5.45.0 The clause provides for power of transfer of cases to regular courts.

Committee's observation/recommendation

5.45.1 The clause is adopted without any change.

Clause 34

5.46.0 The clause provides for removal of a person likely to commit scheduled offence.

5.46.1 Suggestions

Power to extern should be with the District Magistrate/Commissioner of Police and not Special Court.

Special Court has been given the powers of District Magistrate. It should be re-looked.
Government's View

5.46.2 The Home Secretary responded to the suggestions. Appreciating the view point of the Committee, the Home Secretary acceded that the Special Court should not be given the powers of District Magistrate, and this clause may be re-looked. He also agreed for deletion of the words '*suo motu or*' in sub-clause (1).

Committee's observation/recommendation

5.46.3 The Committee feels that the powers, functions, responsibilities of the three organs of the State, i.e., Legislature, Executive and Judiciary are well demarcated in the Constitution and under Clause 34. There seems to be an attempt to transfer the power of maintenance of law and order from Executive to the Judiciary. The Committee, therefore, recommends that the words '*suo motu or*' may be deleted in sub-clause (1) of clause 34. The Committee also recommends that the entire clause may be re-looked.

5.46.4 Subject to the above, the clause is adopted.

Clause 35

5.47.0 The clause provides for procedure to be followed in case of failure of a person to remove himself from a communally disturbed area and attempt to return to that area after removal.

5.47.1 Suggestion

This clause may also be amended in the light of suggestions made in respect of Clause 34.

Government's View

5.47.2 Keeping in view the suggestion of the Committee, the Home Secretary assured the Committee to have a re-look at Clause 35 along with Clause 34 as both are inter-connected.

Committee's observation/recommendation

5.47.3 The Committee feels that Clause 35 which is connected with Clause 34 is also required to be re-looked.

5.47.4 Subject to the above, the clause is adopted.

Clause 36

5.48.0 The clause provides for appeal.

Committee's observation/recommendation

5.48.1 The clause is adopted without any change.

Clause 37

5.49.0 This clause provides for abolition of certain Special Courts

Committee's observation/recommendation

5.49.1 The Clause is adopted without any change.

Clause 38

5.50.0 The clause provides for State Communal Disturbance Relief and Rehabilitation Council.

5.50.1 Suggestions

When there is no communal violence in a State, then there is no need to establish such a Council. A State Government should establish it if the Central Government advises on a perception of the conditions in that State.

Rehabilitation does not mean simply keeping them in camps for a while and then shifting them somewhere else under ghetto. They should be allowed to go back and resume control of their property.

Committee's observation/recommendation

5.50.2 The clause is adopted without any change.

Clause 39

5.51.0 The clause provides for constitution of State Council.

5.51.1 Suggestions

Relief and Rehabilitation Council from national level to district level be represented by leaders of minority communities/women/religious leaders and public representatives/officers of minority community.

National and State Council be presided over by the Home Minister and the Chief Minister, respectively.

National Council is superfluous. District Council is competent to assess the damages and to provide relief and rehabilitation to the victims of communal violence.

The word "Chief Secretary" may be substituted by "Chief Minister".

The Home Minister of the State Government should be the Chairperson of the State Council. Women should be given adequate representation in the State and District Councils.

The State Government be given the power to appoint the Chairmen and Members of these Councils.

The State Government should be empowered to fix the tenure of non-Government representatives.

Representatives of Reserve Bank of India and Insurance Sector should also be represented in the State Council.

Local Member of Legislative Assembly and Member of Parliament should also be made Members in the State Council.

The entire chapters VII and VIII are absolutely bureaucratic in tone and content. Provision be made so that the Chief Minister presides over the State Council.

Government's View

5.51.2 Responding to the suggestions, the Home Secretary stated that the proposed composition of the State Council is a conscious decision of the Government because in many cases allegations were made that riots and such other things would have political backing and, therefore, the Council as proposed would act as a safeguard. He further stated that the Chief Secretary had been made the Chairperson ex-officio to keep the functioning of the Council away from political control so that it can give independent views and recommendations. However, the final decision on the recommendations of the Council would be taken by the Chief Minister as the head of the Government. On the issue of giving adequate representation to women in the Council, the Home Secretary stated that under clause 39 (g)&(h) the State Governments are expected to nominate

women representatives but it should be specifically mentioned therein. On the issue of nominating representatives of RBI and Insurance Sector, he responded that the representatives of the Ministry of Finance (Banking and Insurance Divisions) could be co-opted in the Council meetings as 'special invitees'.

Committee's observations/recommendations

5.51.3 The Committee recommends that the State Council should be presided over by the Home Minister of the concerned State. The application of mind at the political level can take place at that stage itself rather than the proposal being sent by the Council, for consideration of the Chief Minister.

5.51.4 The Committee feels that adequate representation needs to be provided for women in the State Council with at least one woman representative each under sub-clauses (g) and (h), in view of the fact that women are the first and the worst victims of communal violence.

5.51.5 The Committee is of the view that the composition of the Council does not provide for any representative from Banking and Insurance Sector which play a key role in relief and rehabilitation of victims of communal violence. The Committee therefore, recommends that representative from the Union Ministry of Finance (Department of Economic Affairs, Banking and Insurance Divisions) may be associated as 'Special Invitee' in all the meetings of the State Council.

5.51.6 Subject to the above, the clause is adopted.

Clause 40

5.52.0 The clause provides for functions of State Council.

5.52.1 Suggestions

Empowering the State Council will lead to difficulties in the case of differences between the State Government and State Council. Besides, assessment of compensation and fixing 20% of the full rates of compensation is very difficult during riots.

Other functions of the Council are acceptable except restoration of damaged places of worship.

A time limit should be fixed for payment of immediate or interim relief.

Law and Order should be monitored by the State Council.

The name of the officer appointed as Competent Authority by the State Government shall be placed before the State Council for its approval.

All educational institutions and places of religious importance destroyed during riots should be restored to their original position by the 'State'.

The State Government be given the power to decide the composition of the Council.

District Council should be consulted by the State Council for taking preventive measures.

.Committee's observation/recommendation

5.52.2 The clause is adopted without any change.

Clause 41

5.53.0 The clause provides for the State Plan for promotion of communal harmony and prevention of communal violence.

5.53.1 Suggestions

Impact of District Peace Committee is limited. Area/Mohalla Peace Committees should be constituted for promotion of communal harmony.

Drawing up and implementation of schemes are administrative matters and hence need not be laid on the Table of the State Legislature. This provision may be deleted.

This provision will absolve the Central Government of any financial liability such as grants from PM's Relief Fund. This provision may be deleted.

In the proposed legislation, four chapters have been provided only for rehabilitation of victims but no chapter to promote communal harmony has been provided in the Bill. For promoting communal harmony for prevention and control of communal violence at least two chapters may be added in the Bill.

A provision for "Communal Harmony Scheme" to prevent and control communal violence in all the States may be made in the Bill. All the State Governments may be directed to make adequate funds available to implement the communal harmony scheme to prevent communal violence as done in the State of Maharashtra.

Permission to obtain donations may be given to the commissioners of Police and Superintend of Police to implement the "Communal Harmony Scheme" in all the States.

A provision to constitute "Communal Harmony Committees" may be provided.

Committee's observation/recommendation

5.53.2 The Clause is adopted without any change.

Clause 42

5.54.0 The clause provides for the constitution of the District Council.

5.54.1 Suggestions

The State Government may be given the power to decide who would be the Chairman and members of the District Council.

Women should be given adequate representation in District Council.

Government's View

5.54.2 Responding to the suggestions, the Home Secretary agreed that women representatives should be there in the District Council.

Committee's observation/recommendation

5.54.3 The Committee recommends that women should be given adequate representation in the District Council with atleast one woman representative each under sub clauses (e) and (f).

5.54.4 Subject to the above, the clause is adopted.

Clause 43

5.55.0 The clause provides for meetings of District Council.

Committee's observation/recommendation

5.55.1 The clause is adopted without any change.

Clause 44

5.56.0 The clause provides for functions of District Council.

Suggestion

5.56.1 Provision should be included that all preventive measures must be in consultation of the District Council comprising of representatives of all communities including minority community and victim community.

Committee's observation/recommendation

5.56.2 The clause is adopted without any change.

Clause 45

5.57.0 The clause provides for constitution of National Communal Disturbance Relief and Rehabilitation Council.

5.57.1 Suggestions

Union Home Minister should be made the Chairperson of National Council. Adequate representation may be given to women in the Council.

DM should report communal disturbance to the National Council.

The National Council will impair the powers of the State Government. It is superfluous and not required.

Government's Views

5.57.2 In regard to making the Union Home Minister the Chairperson of the National Council, the representative of the Ministry of Home Affairs stated that the composition of the Council had been proposed to insulate it from political influence and to make it function independently. He, however, assured the Committee that it would be re-looked in the light of the suggestions of the Committee. On the issue of women's representation in the Council, he agreed that it would be taken care of.

Committee's observation/recommendation

5.57.3 The Committee deliberated on the clause. It recommends that the National Council should be presided over by the Union Home Minister so that application of mind at the political level can take place at that stage itself. The Committee also recommends that women may be given adequate representation in the National Council with at least one woman representative each under sub-clauses (iv) and (v).

5.57.4 Subject to the above, the clause is adopted.

Clause 46

5.58.0 The clause provides for terms and conditions of office of Members of National Council.

Committee's observation/recommendation

5.58.1 The clause is adopted without any change.

Clause 47

5.59.0 The clause provides for powers and functions of National Council.

5.59.1 Suggestions

(i) There should be policy of uniform compensation to the victims of Communal Violence throughout the country.

(ii) There should be uniformity in paying compensation for loss of life. There has to be some uniformity because in some communal riots only Rs. 20,000 was paid, and in some cases Rs. 50,000 was paid and yet in other cases Rs. 2 lakh was paid.

(iii) Uniform Compensation to the victims of communal violence across the country to be paid within a definite time frame.

Committee's observation/recommendation

5.59.2 The Committee takes note of the fact that there is no uniformity in the payment of compensation to the victims which is discriminatory and causes discontentment amongst them. The Committee, therefore, recommends that the Government should come out with a policy of paying uniform compensation.

5.59.3 Subject to the above, the clause is adopted.

Clause 48

5.60.0 The clause provides for report of National Council.

Suggestion

5.60.1 The National Councils should also submit reports to the State Government and the State Council.

Committee's observation/recommendation

5.60.2 The clause is adopted without any change.

Clause 49

5.61.0 The clause provides for State Fund.

5.61.1 Suggestions

A State where there is no communal violence need not establish this Fund.

Constitution of State Fund is not a practicable suggestion.

The share of contribution in State Rehabilitation Fund by State and Centre should be quantified.

Committee's observation/recommendation

5.61.2 The Clause is adopted without any change.

Clause 50

5.62.0 The clause provides for scheme for grant of relief.

Committee's observation/recommendation

5.62.1 The clause is adopted without any change.

Clause 51

5.63.0 The clause provides for District Fund.

Committee's observation/recommendation

5.63.1 The clause is adopted without any change.

Clause 52

5.64.0 The clause provides for District Council to function under State Council.

Committee's observation/recommendation

5.64.1 The clause is adopted without any change.

Clauses 53 and 54

5.65.0 Clause 53 provides for compensation to victims by offenders.

5.65.1 Clause 54 provides for immediate compensation to victims by District Council.

5.65.2 Suggestions

In communal violence or caste violence or group violence, it is the lumpen elements who are used for creating violence. They have no capacity to pay any compensation. Monetary compensation by offender being contemplated is not practical as economic status of such offenders is generally low.

The State should give compensation to the Victims.

'Victimology Insurance', was being considered and was being seriously looked into.

Every State could obtain an insurance policy, pay premium for it just like in the motor accident third party cases and from that the compensation could be paid so that liability rests with the State.

The concept of "reparation" which is broader than compensation may be incorporated.

A policy of uniform and time bound compensation to the victims should be adopted.

Clauses 53 and 54 should be swapped.

There are instances where entire buildings were demolished and rupees five hundred was paid as compensation. It should be based on market rate.

Compensation should be paid to the victims irrespective of conviction or acquittal.
Compensation for loss of movable/immovable property should be paid at market rate.
Compensation for loss of life, limb, honour and property be delinked from the progress of prosecution and accepted as a duty of the State.

Government's Views

5.65.3 The Home Secretary stated that whereas clause 54 deals with immediate compensation clause 53 deals with compensation after conviction. Therefore, appropriately clause 54 should come before clause 53 and suggested that both these clauses may be swapped.

5.65.4 On the issue of awarding compensation to a person whose family Members have succumbed to communal violence and the person surviving has also been implicated by the Police, the Home Secretary stated that, in such a situation, chances are that the person may be acquitted. However, if a person is given compensation and is later on convicted it would lead to a different kind of controversy. Keeping in view the concern expressed by the Members of the Committee that a victim who is not actually involved in communal violence and who gets acquitted, may not get any compensation right at the beginning because of his being implicated by the police, he assured the Committee that the Government would come out with some solution to deal with such a situation.

Committee's observation/recommendations

5.65.5 The Committee held detailed discussion on both the clauses. The Committee agrees with the suggestion of the Home Secretary that clauses 53 and 54 may be swapped and recommends accordingly.

5.65.6 The Committee expresses its concern on the likely consequences of sub clause (1) of clause 53 whereunder a Special Court may order payment of compensation by the offender to the victims. Although the victims will receive compensation from the offender yet this may lead to further enmity between the individuals and groups and cause more social tension.

5.65.7 The Committee also flagged the points enumerated in proviso to sub clause (1) of clause 53 and sub clause (4) of clause 54 whereunder assistance/compensation shall not be paid to a person who is involved in a scheduled offence. The Committee appreciates the intention behind these provisions that compensation should not be paid to the perpetrators of communal violence. However, the Committee expresses its concern over the implications of these provisions. Sometimes, a victim of communal violence may be deliberately implicated in a case just to deprive him of the immediate compensation. Though ultimately the victim may be acquitted and compensation awarded to him, but it would be too late and its very purpose may get defeated, as he may not receive the same when it is most needed.

5.65.8 The Committee, therefore, recommends that Government should address the above issues appropriately and bring suitable amendments in the clauses before the Bill is brought for consideration in Parliament.

5.65.9 Subject to the above, the clauses are adopted.

Clause 55

5.66.0 The clause provides for power of Central Government to give directions to State Governments and issue notifications etc.

5.66.1 Suggestions

There is the duty of the State under Article 256 of the Constitution to secure compliance with Central laws. If the State fails to perform this duty under Article 256 then Government of that State is not being carried on in accordance with the Constitution. It must be made clear that every State which defaults in this primary obligation will run the risk of its Government being dismissed and President's Rule imposed. This is not an interference with State autonomy. This is a Constitutional mandate. It is also the Centre's duty towards every person living in that State to ensure that internal disturbance does not take place. This Bill not only refuses to recognize that obligation but it also negates that obligation. To perform that duty of preventing internal disturbance in that State, it is the Central Government's duty to send forces into that State. If this performance of duty is made dependent upon a request from the recalcitrant State, the Centre would be abandoning, jettisoning its duty. Therefore, sub-clause (3) (b) makes the Central Government totally ineffective.

The basic problem with the Bill is that if the Central Government decides to invoke the provisions of the statute and the State Government does not cooperate, the legislation will be rendered ineffective. Above all, there is no remedy in the Bill against the unwillingness of Central or State Government to declare an area as communally disturbed or in the event of a conflict between the Central and State Governments with regard thereto. It may be advisable to consider the possibility of providing an impartial agency such as the National Human Rights Commission with appropriate powers to act in situations that demand intervention of the Central Government and where the State Government is not intervening to protect the fundamental right of life of citizens.

In such clause (b) of the clause instead of the word "direct", the word "request" be substituted. In sub-clause (3) of the Clause the word 'directions' be substituted by the word 'request'.

It is bypassing the entire constitutional scheme as provided in Articles 352 to 356 and creating a new legislative scheme without a safeguard where on a trigger of a caste tension or a religious tension, the Centre acquires powers which are otherwise constitutionally perhaps not with the Centre.

In a federal structure like ours, the law and order is a State subject and Centre will be interfering with their activities under Clauses 55 and 56.

The clause has a direct bearing on the federal structure of the polity. It encroaches upon the jurisdiction of the States and is against the spirit of the Constitution.

Federal nature of the relationship between Centre and States would require amendment of the clause.

The clause may be modified. Role of Central Government should be advisory and not mandatory.

Direct intervention by the Central Government should be avoided. Instead of the word 'direct' the word 'request' may be used in the clause.

The clause almost runs parallel to emergency provisions and may be deleted.

The Bill seeks to declare an "Emergency" in a State without resorting to the provisions of the Constitution which will encourage unitary tendency in our polity.

There must be safeguards in Clause 55 to prevent its misuse.

Clause 55 appears to be colourable exercise of legislation. It can be used as a spring board by the Central Government to invoke Article 356 of the Constitution to dismiss a popularly elected government in a State and take over its administration.

Provisions in the Bill are ambiguous and contradictory in nature. The contradiction becomes glaring when Clause 55 (3) gives authority to the Centre to notify any area within a State as a “communally disturbed area” and the sub-clause immediately following it lays down that deployment of Armed Forces should be on the request of the State Government.

This clause is required to deal with such State Governments which may deliberately indulge in fomenting trouble for political reasons.

Unified Command should work under a senior officer of the State Government. Unified Command requires clear definition. Unified Command should be the creation of the State Government

Though this Clause impinges on the federal nature of the Constitution, but it does not violate the federal structure of the country.

The Central Government should be given the power to deploy armed forces in communally disturbed area or in the district where more than 50 deaths have taken place, whether or not there is a request for the same by the State Government.

This provision is only a safeguard provision. It is not a violation of the State Government’s powers. It does not affect the federal structure.

Basis for action under Clause 55 should be decision of the Union Cabinet. Notification should be signed by Home Secretary of the Central Government. All notifications shall be laid in Parliament which shall discuss and approve them.

In the event of State Government remaining inactive or unresponsive, the Central Government shall have the power to take all immediate measures to suppress and control the situation to prevent/stop violence.

Articles 256 and 257 (1) of the Constitution make sub-clause (1) (b) of the clause redundant.

Government’s View

5.66.2 The Ministry of Home Affairs in their written comments on the suggestions, has stated as under:

The safeguards provided in clause 55 are as follows:

The Bill requires that, in the opinion of the Central Government, the following events should precede action:

Scheduled offences should be committed within the area in question in a certain manner and on a certain scale involving use of criminal force or violence against members of any group, caste or community resulting in death or destruction of property;

Such use of criminal force or violence should be committed with a view to create disharmony or feelings of enmity or ill-will between different groups, castes or communities; and

There should be an imminent threat to the secular fabric, unity, integrity or internal security, which requires that immediate steps be taken by the State Government concerned.

After the opinion is formed as above, the Central Government shall:

Draw the attention of the State Government to the prevailing situation in that area and;

Direct the State to take all immediate measures to suppress such violence.

After all the above-mentioned circumstances get established and the State Government is unable to control such violence the Central Government may:

(a) Issue a notification declaring the area within the State as a communally disturbed area and;

At the request of the State Government, deploy Armed Forces.

Committee's observations/recommendations

5.66.3 This has been one of the most debated clause in the deliberations of the Committee. A large number of suggestions/comments have been received on the clause. The Committee has had detailed discussion on the impact of the clause on States' autonomy and the federal structure of our polity. In the successive rounds of in-house discussion, each member of the Committee present in those sittings expressed views on the clause and a majority of them articulated reservations thereon. In view of this the Committee thought it appropriate to ascertain the views of all the State Governments and recognized Political Parties on the Bill with particular reference to this clause.

5.66.4 It has been noted that out of thirteen National level and State level Political Parties which responded to the request of the Committee, ten opposed the clause, two supported it and one party while supporting the Bill in principle, did not offer any specific comment on the clauses of the Bill.

5.66.5 As for the State Governments, out of twelve States which responded, eight opposed the clause, one supported it while another extended in principle support. Two States did not offer any comment.

5.66.6 The Committee also had the benefit of the views of some legal/constitutional experts and social/political scientists on the provisions of the Bill particularly this clause.

5.66.7 Towards the concluding stage of discussions on the clause, the view emerged in the Committee was that the apprehension of impingement of the clause on the States' autonomy and federal structure, enshrined in the Constitution, has been adequately addressed and necessary safeguards already provided in the clause to prevent its misuse by the Central Government.

5.66.8 The Committee feels that the clause in its present form may be retained keeping in view the paramountcy of maintaining the secular fabric, unity, integrity and internal security of the Nation.

5.66.9 The Committee has recommended substitution of the words 'death or' by the words 'grievous hurt, loss of life or extensive damage' in sub-clause 1 (a) of clause 3, pertaining to one of the grounds for declaring an area as communally disturbed area by the State Government. Since sub-clause (1) of Clause 55 enumerates the grounds on which Central Government can give directions to the State Government and issue notification etc. to deal with communal violence, there is a necessity for carrying out consequential amendment in the said sub-clause in line with the amendment recommended in clause 3(1)(a).

5.66.10 Subject to the above, the clause is adopted.

Clause 56

5.67.0 The clause provides for power of Central Government to extend or modify notifications issued under Section 55.

Committee's observation/recommendation

5.67.1 The clause is adopted without any change.

Clause 57

5.68.0 The clause provides for protection of action taken in good faith.

Suggestion

5.68.1 A new sub-clause should be added for instituting judicial inquiry to look into complaints of excesses committed by the officials. If excesses are proved in such enquiry, the judicial enquiry can give punishment to them and order payment of compensation to victims.

Government's views:

5.68.2 In support of Clause 57, the Home Secretary stated that there should be some protection for the action taken in good faith.

Committee's observation/recommendation

5.68.3 The clause is adopted without any change.

Clause 58

5.69.0 The clause provides for prohibition against discrimination.

Committee's observation/recommendation

5.69.1 The clause is adopted without any change.

Clause 59

5.70.0 The clause provides that the application of other laws is not barred.

Committee's observation/recommendation

5.70.1 The clause is adopted without any change.

Clause 60

5.71.0 The clause provides for power of Central Government to make rules.

Committee's observation/recommendation

5.71.1 The clause is adopted without any change.

Clause 61

5.72.0 The clause provides for power of State Government to make rules.

Committee's observation/recommendation

5.72.1 The clause is adopted without any change.

Clause 62

5.73.0 The clause provides for insertion of a new sub-clause (ca), in sub-section (2) of Section 8 of the Representation of People Act, 1951.

Committee's observation/recommendation

5.73.1 The clause is adopted without any change.

The Schedule

5.74.0 The schedule provides for various sections of the IPC and other enactments under which offences are punishable under the Bill.

5.74.1 Suggestions

- (i) In the Schedule the following may be added:

Para 1 Add '395, 397' after '392'

Para 3 Delete 'Sections 6 (3), 8 (2)'

Para 5 Read 'Sections 3 and 6' for 'Section 6'

Para 6 Read 'Sections 3,4,5,6 and 7' For 'Section 7'

- Add the following as para 7
 "7. offences under The Explosive Substances Act – 1908:- Sections
 3, 4, 5 and 6."

Government's View

5.74.2 Responding to the suggestions the Home Secretary agreed to include the offences in the schedule and to delete the Sections as suggested.

Committee's observation/recommendation

5.74.3 The Committee recommends that the amendments proposed in the Schedule may be carried out before the Bill is brought in Parliament for consideration.

5.74.4 Subject to the above, the schedule is adopted.

RECOMMENDATIONS/OBSERVATIONS - AT A GLANCE

The Committee considered the alternative terms for "Communal Violence" like 'social violence' 'mass violence' and 'sectarian violence'. (Para 5.15.1)

The Committee feels that the words 'communal violence' are well understood by every one. For the purpose of this Bill, a violence may be called communal violence if it threatens unity, integrity, secular fabric and internal security of the country. The Bill takes care of mass violence, violence between ethnic groups, religious communities (both inter and intra) and different castes. The Committee, therefore, decided that the words 'communal violence' may be retained. (Para 5.15.2)

The Committee took note of the drafting error as pointed out by one of the witnesses in clause 2(1)(b) viz. that the reference to sub clause (i) of clause (c) of sub-section (1) of section 3 should read as 'sub-section (1) of Section 3'. The Committee recommends that in sub-clause (1) (b) of clause 2, the words "sub-clause (i) of clause (c) of" may be deleted. (Para 5.15.3)

The Committee takes note of the proposal made by the Home Secretary for amending Clause 2 (1) (l). The Committee agrees that the Schedule actually lists the sections which prescribe the punishment and not the offence. The Committee agrees that sub-clause (1) (l) of Clause 2 may read as under:

"Scheduled offence" means an offence punishable under the sections specified in the Schedule." (Para 5.16.4)

The Committee agrees with the view that making death and destruction of property *sine qua non* for notification would be very restrictive. There may be a situation where a single death might not have taken place but a large number of people are grievously hurt. Such a situation is not covered under this clause. The Committee, therefore, recommends that sub-clause (1) (a) of clause 3 may be amended as under:

'in such manner and on such a scale which involves the use of criminal force or violence against any group, caste or community, resulting in grievous hurt, loss of life, or extensive damage or destruction of property.' (Para 5.17.3)

The Committee agrees to the suggestion that the word 'danger' be substituted by 'threat' and 'may' by 'shall' in clause 3 (1) (c), and recommends these amendments in the clause.

(Para 5.17.4)

The Committee recommends that a provision may be made in the proviso to sub-clause (2) of clause 3 to the effect a notification issued under sub-clause (1) shall not in any case be extended beyond six months. If, however, the situation warrants declaration of an area to be communally disturbed, beyond that period, the State Government may issue a fresh notification by following the procedure prescribed in sub-clause (1). (Para 5.17.5)

The Committee is of the view that there is a need to amend clause 5 (1) by adding the words “or he has received an information” after the words ‘has reason to believe’. The Committee recommends that clause 5 (1) may be amended accordingly.

(Para 5.19.3)

The Committee takes note of the suggestion that in sub-clause (3), the amount of fine should be mentioned. It apprehends that under the existing provision of sub-clause (3), an offender may get away with fine only. The Committee, therefore, recommends that the words “or with fine or with both” may be substituted by the words “and with fine”

(Para 5.19.4)

The Committee takes note of the omission pointed out by the Home Secretary and recommends addition of the following new sub-clause (3) in clause 6 as under:

“Whoever contravenes the provisions of an order made under this section, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine”.

(Para 5.20.3)

The Committee agrees with the suggestion of deleting the words ‘whether such person has a licence to keep such arms, ammunition, explosives, corrosive substance, or not’ in Clause 7(1), as this provision is likely to be misused and the citizens may be harassed. The Home Secretary endorsed the suggestion. The Committee, therefore, recommends that the words ‘whether such person has a licence to keep such arms, ammunition, explosives, corrosive substance, or not’ in sub-clause (1) of clause 7 may be deleted.

(Para 5.21.2)

The Committee feels that the suggestion of substituting the words ‘Sub-Inspector’ by the words ‘Deputy Superintendent of Police’ may not be practicable. The Committee, however, feels that the power to search, detain and seize arms etc. in communally disturbed area should be exercised by an officer not below the rank of Inspector of Police. The Committee, therefore, recommends that the word “Sub-Inspector” may be substituted by the word “Inspector”.

(Para 5.22.3)

The Committee feels that the words ‘public utterances of cries’ in sub-clause (1) (e) are vague and inapt. ‘Incitement’ is an appropriate word. However, the Committee is of the view that incitement should be related to singing of songs and playing of music as well. The Committee, accordingly, recommends that sub-clause (1) (e) of clause 9 may be amended as under:

“the public utterances, singing of songs and playing of music which cause incitement”.

(Para 5.23.2)

The Committee held detailed discussion on the implication of this clause and its likely misuse in its present form. The Committee feels that the very purpose of deleting reference to unlicensed arms in clause 7(1) may be defeated if clause 12 is allowed to remain in its present form. In order to bring clause 12 in consonance with clause 7(1), as

amended by the Committee, it recommends that the words 'is found to be in possession of or carrying' may substitute the words 'has in his possession' in clause 12.

(Para 5.25.2)

The Committee agrees with the view that the expression 'any person who knowing or having reasonable cause to believe...' is a loose formulation which can be misused. The Committee, therefore, recommends that after the words 'having reasonable cause to believe', the words 'from the circumstances' may be inserted. (Para 5.26.2)

The Committee agrees that the words 'goods transport vehicle' are very restrictive and do not include other vehicles. The Committee feels that there is a need to bring all the vehicles under the ambit of this clause. The Committee also takes note of the explanation of the Secretary, Legislative Department that in the Motor Vehicles Act, 1988 there is only the definition of 'transport vehicle' and not 'vehicle'. Taking into consideration the explanation given by the Legislative Secretary, the Committee recommends that the word 'goods' may be deleted from the clause and marginal heading thereto. (Para 5.28.3)

The Committee also takes note of the Home Secretary's submission that the Government propose to add the words 'or arms, explosives or corrosive substance' after the words 'rules made thereunder'. The Committee agrees with the suggestion and recommends that the amendment may be carried out. (Para 5.28.4)

The Committee took note of the fact that the offences for which punishment is provided in clause 17 (1) become non-cognizable if the punishment is only one year imprisonment. The Committee feels that the offences need to be made cognizable and for this purpose, the punishment will have to be enhanced to three years imprisonment. By making the quantum of punishment to three years, there would be uniformity in clause 17 and clause 19. Further, if this amendment is not made in clause 17, then clause 19 becomes redundant. The Committee, therefore, recommends that the words "one year" may be substituted by the words "three years" in sub-clause (1) of clause 17. (Para 5.29.2)

The Committee considered the Government's proposal. It also took note of the fact that this is the only provision in the Bill which prescribes a minimum punishment.

(Para 5.31.3)

The Committee feels that the minimum punishment of imprisonment as proposed to be reduced by the Government to three years is sufficient to work as a deterrent. The Committee, therefore, recommends that the word 'five' in the proviso to sub-clause (2) of clause 19 may be substituted by the word "three". (Para 5.31.4)

The Committee feels that the Executive Magistrate will not have as much independence as the Judicial Magistrate. Moreover, Executive Magistrate is directly accountable to the Government. Therefore, the Committee recommends that the words 'or Executive Magistrate' in sub-clause (3) of clause 20 may be deleted. (Para 5.32.3)

The Committee, however, feels that a Law officer also should be associated with the Review Committee. Therefore, the Committee recommends that Government may bring suitable amendment in sub-clause (1) of clause 22 for the purpose of associating a law officer of the State, with the Review Committee. (Para 5.34.3)

The Committee is of the view that a provision already exists in Cr. P.C. empowering State Governments to constitute SIT. The Committee, therefore, recommends that clause 23 may be deleted. (Para 5.35.3)

The Committee discussed at length the implications of this clause. At present Central Government or a State Government does not have the power to transfer a case from one High Court to another High Court. This is the power given to the Judiciary. Section 406 of Cr.P.C. provides that the Supreme Court can transfer a case from one High Court to another High Court. Giving this power to the Central Government is illegal and takes away the powers of Judiciary. Clause 24 is repugnant to the provisions of Section 406 of Cr.P.C. The Committee is, therefore, of the strong view that such a power should remain with the judiciary only. The exigencies visualized in this clause whereunder a State Government may request the Central Government to establish an additional Special Court outside the State for trial of scheduled offences, are impracticable and highly improbable as no State Government would indulge in self indictment stating that justice cannot be dispensed within that State. The Committee, therefore, recommends that clause 24 may be re-looked in the light of Section 406 of Cr. P.C. (Para 5.36.3)

The Committee recommends that while framing the rules, endeavour should be made for providing timely and adequate infrastructure for the Special Courts. (Para 5.37.3)

The Committee recommends that the proviso to the clause may be deleted.

(Para 5.38.3)

The Committee is of the view that a person holding a post in the State or the Central Government for not less than seven years having special knowledge of law may not prove himself to be effective prosecutor in cases of communal violence. Special knowledge is different from practical knowledge. Practical knowledge and experience are very important for dealing with legal cases. The Committee, therefore, feels that the eligibility for appointment as a Public Prosecutor should be confined to practice in law for not less than seven years. The Committee also does not agree with the explanation of the Home Secretary that the provision for appointment of officers of the Union or a State having special knowledge of law as public prosecutors has been made to ease burden on the already over burdened legal practitioners. The Committee, accordingly, recommends that the word 'or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law' may be deleted in sub-clause (2) of clause 29. (Para 5.41.3)

The Committee has held extensive discussion on the clause. The Committee considered the implications of the clause whereunder a Special Court may take cognizance of any scheduled offence without the accused being committed to it for trial and its effect on the right to life and personal liberty guaranteed under Article 21 of the Constitution. The Committee apprehends that the receipt of complaints by Special Courts without any police report may lead to a plethora of flimsy complaints in those Courts. The Committee also takes note of the fact that summary trial is well defined in Chapter XXI of the Code of Criminal Procedure. The Committee is, therefore, of the view that the provision of summary trial should be deleted from the clause. (Para 5.42.3)

In the light of the reservations of the Committee on the maintainability of the clause vis-à-vis Article 21 of the Constitution guaranteeing protection of life and personal liberty of a person and Chapters XV and XXI of the Cr.P.C., the Committee recommends that the Government may have a re-look at clause 30 to bring it in harmony with the above mentioned constitutional and statutory provisions. (Para 5.42.4)

The Committee, after some discussion, felt that the clause is necessary for protection of witnesses and victims. (Para 5.44.2)

The Committee feels that the powers, functions, responsibilities of the three organs of the State, i.e., Legislature, Executive and Judiciary are well demarcated in the Constitution and under Clause 34. There seems to be an attempt to transfer the power of maintenance of law and order from Executive to the Judiciary. The Committee, therefore, recommends that the words '*suo motu or*' may be deleted in sub-clause (1) of clause 34. The Committee also recommends that the entire clause may be re-looked. (Para 5.46.3)

The Committee feels that Clause 35 which is connected with Clause 34 is also required to be re-looked. (Para 5.47.3)

The Committee recommends that the State Council should be presided over by the Home Minister of the concerned State. The application of mind at the political level can take place at that stage itself rather than the proposal being sent by the Council, for consideration of the Chief Minister. (Para 5.51.3)

The Committee feels that adequate representation needs to be provided for women in the State Council with at least one woman representative each under sub-clauses (g) and (h), in view of the fact that women are the first and the worst victims of communal violence. (Para 5.51.4)

The Committee is of the view that the composition of the Council does not provide for any representative from Banking and Insurance Sector which play a key role in relief and rehabilitation of victims of communal violence. The Committee, therefore, recommends that representative from the Union Ministry of Finance (Department of Economic Affairs, Banking and Insurance Divisions) may be associated as 'Special Invitee' in all the meetings of the State Council. (Para 5.51.5)

The Committee recommends that women should be given adequate representation in the District Council with atleast one woman representative each under sub clauses (e) and (f). (Para 5.54.3)

The Committee deliberated on the clause. It recommends that the National Council should be presided over by the Union Home Minister so that application of mind at the political level can take place at that stage itself. The Committee also recommends that women may be given adequate representation in the National Council with at least one woman representative each under sub-clauses (iv) and (v). (Para 5.57.3)

The Committee takes note of the fact that there is no uniformity in the payment of compensation to the victims which is discriminatory and causes discontentment amongst them. The Committee, therefore, recommends that the Government should come out with a policy of paying uniform compensation. (Para 5.59.2)

The Committee held detailed discussion on both the clauses. The Committee agrees with the suggestion of the Home Secretary that clauses 53 and 54 may be swapped and recommends accordingly. (Para 5.65.5)

The Committee expresses its concern on the likely consequences of sub clause (1) of clause 53 whereunder a Special Court may order payment of compensation by the offender to the victims. Although the victims will receive compensation from the offender yet this may lead to further enmity between the individuals and groups and cause more social tension. (Para 5.65.6)

The Committee also flagged the points enumerated in proviso to sub clause (1) of clause 53 and sub clause (4) of clause 54 whereunder assistance/compensation shall not be paid to a person who is involved in a scheduled offence. The Committee appreciates the intention behind these provisions that compensation should not be paid to the perpetrators of communal violence. However, the Committee expresses its concern over the implications of these provisions. Sometimes, a victim of communal violence may be deliberately implicated in a case just to deprive him of the immediate compensation. Though ultimately the victim may be acquitted and compensation awarded to him, but it would be too late and its very purpose may get defeated, as he may not receive the same when it is most needed. (Para 5.65.7)

The Committee, therefore, recommends that Government should address the above issues appropriately and bring suitable amendments in the clauses before the Bill is brought for consideration in Parliament. (Para 5.65.8)

This has been one of the most debated clause in the deliberations of the Committee. A large number of suggestions/comments have been received on the clause. The Committee has had detailed discussion on the impact of the clause on States' autonomy and the federal structure of our polity. In the successive rounds of in-house discussion, each member of the Committee present in those sittings expressed views on the clause and a majority of them articulated reservations thereon. In view of this the Committee thought it appropriate to ascertain the views of all the State Governments and recognized Political Parties on the Bill with particular reference to this clause. (Para 5.66.3)

It has been noted that out of thirteen National level and State level Political Parties which responded to the request of the Committee, ten opposed the clause, two supported it and one party while supporting the Bill in principle, did not offer any specific comment on the clauses of the Bill. (Para 5.66.4)

As for the State Governments, out of twelve States which responded, eight opposed the clause, one supported it while another extended in principle support. Two States did not offer any comment. (Para 5.66.5)

The Committee also had the benefit of the views of some legal/constitutional experts and social/political scientists on the provisions of the Bill particularly this clause. (Para 5.66.6)

Towards the concluding stage of discussions on the clause, the view emerged in the Committee was that the apprehension of impingement of the clause on the States' autonomy and federal structure, enshrined in the Constitution, has been adequately addressed and necessary safeguards already provided in the clause to prevent its misuse by the Central Government. (Para 5.66.7)

The Committee feels that the clause in its present form may be retained keeping in view the paramountcy of maintaining the secular fabric, unity, integrity and internal security of the Nation. (Para 5.66.8)

The Committee has recommended substitution of the words 'death or' by the words 'grievous hurt, loss of life or extensive damage' in sub-clause 1 (a) of clause 3, pertaining to one of the grounds for declaring an area as communally disturbed area by the State Government. Since sub-clause (1) of Clause 55 enumerates the grounds on which

Central Government can give directions to the State Government and issue notification etc. to deal with communal violence, there is a necessity for carrying out consequential amendment in the said sub-clause in line with the amendment recommended in clause 3(1)(a). (Para 5.66.9)

The Committee recommends that the amendments proposed in the Schedule may be carried out before the Bill is brought in Parliament for consideration. (Para 5.74.3)

Minute of Dissent

7th December 2006

To

Chairperson

Department-related Parliamentary Standing

Committee on Home Affairs

Respected Madam,

x x x x x x x x x x x

We disagree with the views of the Committee on the following Paras and propose the following amendments to the respective paragraphs.

1. Para 5.14.7: We disagree with the views of the committee that the long title ‘which threatens the secular fabric, unity, integrity and internal security of the nation’ should be retained. These words should be deleted, as these are wide and loose expressions and will be problematic in assessing an incident of communal violence. The Bill should be confined only to communal violence and all other violence between different groups, castes or ethnic groups should be excluded from the purview of the Bill.
2. Para 5.15.5: Communal Violence is not adequately and appropriately defined. All minor offences in the different provisions of many Acts should be excluded from the purview of the legislation.
3. Para 5.16.6: Different competent authorities will be constituted for implementing different provisions of this legislation. This may lead to conflicts and contradictions among different competent authorities. Necessary safeguards and precautions should be provided. Only communal violence should come under the purview of the Bill. The words “danger to the secular fabric, integrity, unity or internal security of India should be deleted as they are wide and loose expressions which are difficult to assess. The Bill should be confined only to communal violence and all other violence between different groups, castes or ethnic groups should be excluded from the purview of the Bill.
4. Para 5.30.3, 5.30.4, 5.30.5: The reference “threatens the secular fabric, unity, integrity or internal security of the nation” should be deleted. The five years’ punishment need not be reduced. Any person convicted for an offence should be disqualified from contesting any elections as a candidate from the date of his conviction and for a period of six years from the date of his release.
5. Para 5.40.4: A victim or a near relation of a victim should be given the right to appoint a Special Prosecutor.
6. Para 5.64.9: Even though the Bill is called the Communal Violence (Prevention, Control and Rehabilitation of Victims) bill, 2005, the Bill does not provide any prompt and adequate financial assistance for the rehabilitation of the victims. Adequate and appropriate measures should be provided for rehabilitation. It is the obligation of the State to protect the life and liberty of citizens and if that obligation is not discharged, adequate compensation should be paid to the victims irrespective of conviction or acquittal. The state should ensure payment of compensation to victims.
7. Para 5.65.10: The unified command should work under a senior officer of the State Government. The forces deployed under this section shall act under the control and as per the directions of the unified command.

8. Para 5.67.3: If it is found that the State Government, Central Government or any officer or authority of such Government or any other person or any member of the State Council, National Council or District Council acted with malafide intention, they should be made answerable for dereliction of the constitutional and statutory duties. No protection need be given to them under Clause 57. The words “intended to be done” in Clause 57 Sub-clause 1 should be deleted.

9. Para 5.73.3: All minor offences proposed in the schedule should be omitted.

Thanking you,

Sd/-
Prasanta Chatterjee

Sd/-
Baju Ban Riyan

Sd/-
T.K. Hamza

² Bill published in the Gazette of India Extraordinary, Part II, Section-2, dated 5 December 2005.

** Rajya Sabha Parliamentary Bulletin Part II No. 42691 dated 7 December 2005.