

Suggestions of NCM on Communal Violence Bill 2005

Suggestions of NCM for amendments to 'The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005'

'The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005' was introduced in Rajya Sabha on 5.12.2005. Thereafter, the Bill was referred to the Parliamentary Standing Committee on Home Affairs. The Bill is still under consideration of the Standing Committee. Important features of the Bill are measures for prevention of acts leading to communal violence, enhanced punishments for communal violence and certain other offences, speedy investigation and trial of offences through special courts and institutional arrangements for relief, rehabilitation and compensation.

2. Title of the Bill

2.1 The Bill seems to strengthen a cliché that all incidents of ethnic violence in the country have been occurring between the religious communities only. Many parts of the country have been engulfed in caste wars, violence against linguistic minorities and clashes between tribal communities and between two sects of the same religious community. All these types of violence are as reprehensible as violence between two religious communities.

2.2 On account of some factors, largely historical and particularly occidental presentation of Indian history, the words 'Communal Violence' in the Indian context have come to mean clashes between Hindu and Muslim communities. This cliché appears to be ingrained in the mindset of substantial section of law and order enforcement machinery. Moreover, instances of police and civil administration acting on bias against particular religious communities have not been rare. Therefore, the words 'Communal Violence' in the title of the Bill and wherever they appear in the text of the Bill should be replaced with the words 'Sectarian Violence'. The replacement may facilitate elimination of religious bias in the mindset of the police and civil administration and adoption of uniform approach to deal with all types of sectarian violence.

3. Sectarian Violence is not a mere law and order problem – breeding grounds of sectarian violence in India.

Sectarian violence cannot be treated as a mere law and order problem. Sectarian riots are most likely to occur when the following elements are present:-

(i) Severe long-standing antagonism on religious lines in particular villages and urban localities.

(ii) An emotional response of members of religious communities to a precipitating event.

(iii) A feeling in the minds of rioters and the larger religious group to which they belong that sectarian violence is justifiable.

(iv) The assessment by the rioters that the reaction from the police to sectarian violence will be either absent or partisan or ineffective.

3.1 Till the year 2002, sectarian violence in India was mostly taking place in particular cities. One can say that before 2002, sectarian violence in India was an urban phenomenon. Only a few of Indian cities are being affected by communal violence again and again. It is also a fact that sectarian strife is taking place in 4-5 States of the country. Sectarian violence in India, therefore, has a strong locational bias and therefore, particular areas of the country are being affected by sectarian strife again and again.

3.2 The studies also show that the areas or regions where there is little interaction among members of different religious groups are most likely to be affected by sectarian violence. The less vulnerable to sectarian violence are the areas/regions where members of different religious groups daily interact with each other in organized work in offices, factories etc. as well as in simple routines of neighborhood life. Exclusive habitation or 'ghettos' of a minority religious group in a city or town separated from the areas in the same city or town inhabited by the majority religious community, increases the risk of sectarian violence.

3.3 The Statement of Objects and Reasons of the Bill should emphasize that communal violence is not merely a law and order problem but has a serious socio-economic basis and ramifications.

4. Rights of the victims of sectarian violence.

Most of the provisions of the Bill particularly the Sections on compensation, institutional arrangements for relief and rehabilitation are acknowledgement of the rights of the victims of the sectarian violence. Unfortunately, the Statement of Objects and Reasons of the Bill does not make any mention of the rights of the victims. This deficiency in the Statement of Objects and Reasons should be removed.

5. Reports of Inquiry Commissions set up by the Union Government and State Governments to inquire into communal or sectarian riots.

The Union Government as well as State Governments have set up many Commissions of Inquiry to inquire into incidents of communal or sectarian violence over the years. After the Inquiry Commissions submit reports to the Union/State Governments, the recommendations made in the reports are not mostly followed up, with the result that remedial action in pursuance of the recommendations is not taken. The reports of the Inquiry Commissions are

not available for dissemination by the members of public as a result the civil society remains unaware of the recommendations. With the enactment of 'The Right to Information Act, 2005', it has become imperative that the reports of Inquiry Commissions are made available in public domain. The Bill should have a provision making it mandatory for the authorities in the Union/State Governments setting up the Inquiry Commissions by Gazette notifications to make the reports of respective Commissions of Inquiry available in public domain.

6. Punishable offences listed in the schedule of the Bill

The 'definition' part of every legislation is an important component; the importance becomes paramount in a prohibitory legislation to restore or maintain public order. As the Bill is primarily a prohibitory legislation, its 'definition' component has to be fail proof. The definitions appear in Section 2(1) of the Bill.

6.1 The words 'communal violence' and 'scheduled offence' defined in Clauses (c) and (l) respectively of Section 2(1) of the Bill.

Clauses (c) and (l) of Section 2(1) of the Bill defining the words 'communal violence' and 'scheduled offence' are reproduced below:-

(i) Section 2(1)(c) - 'communal violence' means any act of omission or commission which constitutes a scheduled offence and which is punishable under Section 19.

(ii) Section 2(1)(l) - 'scheduled offence' means an offence specified in the Schedule.

7. The 'Schedule' of the Bill

The 'Schedule' of the Bill does not specify the offences punishable under Section 19 but lists out a large number of IPC Sections and few Sections of other Acts like 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. A summary of the IPC Sections and the Sections of the other Acts listed in the schedule is given in the Annexure. A close look at the Annexure will show that while the IPC Sections and Sections of the Arms Act and the Prevention of Damage to Public Property Act listed in the schedule provide for the offences, the same cannot be said about the Sections of the Explosives Act and the Places of Worship (Special Provisions) Act and the Religious Institutions (Prevention of Misuse) Act listed in the schedule. The deficiencies noted in the schedule are :-

(i) Sections 6(3) and 8(2) of the Explosives Act, 1884 listed in the schedule do not simply exist at present. Both these Sections were omitted as many as 23 years back, by the Act 32 of 1978 which came into effect on 2.3.1983.

(ii) Section 6 of the Places of Worship (Special Provision) Act, 1991 does not define any offence; it only prescribes the punishments for contravention of Section 3 of the said Act

which prohibits conversion of any place of worship of any religious denomination into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof. Therefore, the Bill's Schedule should have listed Section 3 of the above-cited Act as an offence punishable under Section 19 instead of listing Section 6 of the said Act.

(iii) Similarly, Section 7 of the Religious Institutions (Prevention of Misuse) Act, 1988 prescribes only the punishments for contravening the provisions of Sections 3 to 6 of the said Act. Section 3 of the Act prohibits use of religious institutions for promotions or propagation of any political activity, harbouring of convicts, storage of arms or ammunition etc. Section 4 of the Act prohibits entry of arms or ammunition into religious institutions. Section 5 of the Act prohibits use of funds of religious institutions for benefit of any political party or for commission of any illegal act. Section 6 of the Act provides that no religious institutions or manager thereof shall allow any ceremony, festival, congregation, procession or assembly organized or held under its auspices to be used for any political activity. Therefore, the Bill's Schedule should have listed Sections 3 to 6 of the above-cited Act as the offences punishable under Section 19 instead of listing Section 7 of the said Act.

8. "Declaration of Certain Areas as Communally Disturbed Areas" – Chapter II of the Bill

Chapter II (Declaration of Certain Areas as Communally Disturbed Areas) comprises two Sections, viz. Section 3 and Section 4. Section 3 deals with powers of the State Government to declare an area to be a communally disturbed area in certain circumstances. Under this Section, the State Government will have the power to issue a notification declaring any particular area of the State to be a communally disturbed area. Section 4 lays down the measures to be taken by the State Government to prevent and control communal violence in a communally disturbed area.

8.1 If a State Government does not issue a notification under Section 3 of the Bill declaring any particular area of the State as communally disturbed area, Section 4 of the Bill will be totally ineffective. There are many other Sections of the Bill appearing in Chapter III (Prevention of Acts Leading to Communal Violence), Chapter V (Investigation) and Chapter VI (Special Courts) which are dependent on issue of notification under Section 3 by the State Government declaring an area of the State as a communally disturbed area. Unless the notification is issued by the State Government, the following Sections of the Bill will be totally ineffective:-

(i) Sections 6 to 10 (of Chapter III) providing for powers of competent authority to take preventive measures in a notified communally disturbed area.

(ii) Sections 11 and 12 (of Chapter III) providing for punishment for various offences like loitering near prohibited places in violation of orders, being in possession of arms, etc. without licences, for assisting offenders, for giving financial aid for the commission of certain offences and for threatening witnesses.

(iii) Section 16 (of Chapter III) providing for punishment for the driver, owner or any person in-charge of goods transport vehicle or carrying more persons than permitted under the Motor Vehicles Act, 1988 or the rules made thereunder.

(iv) Section 18 (of Chapter III) providing for punishment of violation of orders u/s 144 of the Code of Criminal Procedure, 1973.

(v) Sections 21, 22 and 23 (all of Chapter V) providing of declaration of places to be police stations, constitution of committees to review cases of scheduled offences and constitution of special investigation teams respectively.

8.2 Section 55, however, empowers the Central Government to give directions to the State Government to take immediate measures to suppress communal violence. This Section also provides that if the Central Government directions are not followed by the State Government, the Central Government itself may issue a notification declaring any area within the State as a 'communally disturbed area' and also deploy Armed forces on a request having been received from State Government to do so. The question arises as to what can be done if the State Government does not request the Central Government to deploy the Armed forces or opposes such deployment in the State. Secondly, communal violence inflicts loss of life and property with lightning speed. By the time the Central Government can issue the directions to the State Government under Section 55, much damage may have already taken place. The Bill does not provide for any instantaneous remedy in a situation where there is a time gap between inaction of the part of a State Government and Central Government intervention.

9. Special Courts - Chapter VI (Sections 24-37) of the Bill

For the first time in the history of Indian law making, a critical issue of Government control for crimes committed during communal disturbance has been sought to be addressed. Section 24 (1) of the Bill empowers the State Government to establish one or more Special Courts for trial of 'scheduled offences' committed during the period of communal disturbance. Section 24(2) of the Bill empowers the Central Government to establish an Additional Special Court outside the State on request from the State Government, if the State Government feels that trial within the State is not likely to be fair, impartial and expeditious. There are many other path breaking features in this chapter. Some of the significant features are:-

(i) Section 30 empowers the special court to take cognizance of a civil offence without an accused being committed to it for trial. Simply receiving a complaint of facts that constitute such an offence or a police report of such facts will be enough for a special court to take cognizance of and try a crime. This will enable the human rights groups, minority rights groups and even individuals to send complaints to the Special Courts.

(ii) Section 32 (1) of the Bill provides for the much-needed measures of witness protection.

9.1 However, keeping in view the aftermath of the Bhagalpur riots of 1989 and the Gujarat carnage of 2002, it is felt that the Bill should provide for statutory powers of NHRC to monitor

the performance of the Special Courts set up by the State Governments and Additional Special Courts set up by the Union Government. The Bill should also provide that the NHRC reports of monitoring the performance of Special Courts/Additional Special Courts are placed before the legislature of the concerned States as well as before the Parliament.

9.2 Section 29 of the Bill provides for appointment of a Public Prosecutor/Addl. Public Prosecutor in every Special Court (including Additional Special Courts). Sub-section (2) of Section 29 provides that Advocates in practice for not less than 7 years or persons holding posts (requiring special knowledge of law) under the Union or a State for not less than 7 years are eligible to be appointed as Public Prosecutors/Addl. Public Prosecutors. In order to ensure transparency and accountability in performance of Public Prosecutors and to ensure that practicing Advocates of long experience are appointed as Public Prosecutors, it is suggested that :-

(i) The Public Prosecutor to be appointed for a Special Court/Addl. Special Court should belong to a State other than the State where the communal disturbance has taken place.

(ii) The Public Prosecutor has to be an Advocate who has been in practice for at least 10 years in a High Court of a State other than the State where the communal disturbance has taken place.

9.3 The Bill should provide for statutory powers of NHRC to monitor the performance of Public Prosecutors and laying of the NHRC reports of monitoring the performance of Public Prosecutors in the legislature of the concerned States as well as in the Parliament.

9.4 The Bill should unequivocally provide for holding the D.M and S.P responsible in the event of outbreak of sectarian violence, which, according to the Special Court verdict, could have been prevented had advance action been taken to preempt the situation from deteriorating.

9.5 The Special Courts set up for inquiring into incidents of sectarian violence should finish their tasks within three months. If necessary an extension of three months could be considered. Appropriate provision for this should be made in Chapter VI of the Bill.

9.6 The Bill should also provide that those found guilty of involvement in sectarian violence and indicted by the Special Courts, would be debarred permanently from Government jobs and from contesting for any public office.

9.7 Chapter VI of the Bill should have a provision that in case it is found by the Special Courts that the print or electronic media have played a negative role or were responsible for misreporting, a fine should be imposed on the concerned newspaper/ channel/station.

10. Institutional Arrangements for Relief and Rehabilitation - Chapter VII (Sections 38-44) of the Bill

The functions of the State Communal Disturbance Relief and Rehabilitation Council are given

in Section 40 of the Bill. Briefly, the State Council will be responsible for planning relief, including immediate relief and rehabilitation measures. The State Council will also be responsible for co-ordination and monitoring the implementation of such measures and issue suitable directions for their implementation. The composition of the State Council is provided in Section 39. It is felt that the Chairperson of State Human Rights Commission and Chairperson of State Minorities Commission should also be the ex-officio members of the State Council of the States where such Commissions exist. For this purpose, the following clauses may be added in Section 39:-

- (i) The Chairperson of the State Human Rights Commission – Member (ex-officio) in a State where the State Human Rights Commission exists.
- (ii) The Chairperson of the State Minorities Commission – Member (ex-officio) in a State where the State Minorities Commission exists.

10.1 At least two Members of the State Council should be women. Section 39 of the Bill should be amended accordingly.

11. National Council - Chapter VIII (Sections 45-48) of the Bill

Section 45 has three clauses. Section 45(1) seeks to empower the Central Government to constitute, by notification a National Communal Disturbance Relief and Rehabilitation Council. The powers and functions of the National Council are given in Section 49 of the Bill. Briefly, the National Council will make recommendations to the appropriate Government as to what kind of relief should be given to the victims, how they should be rehabilitated and the kind of compensation to be given to them. The National Council will also advise the State Government regarding assistance to be provided to the riot victims and perform 'such other act, which may help to control and contain communal violence and help to give relief and rehabilitation and compensation to the victims of communal violence.'

11.1 Section 45(1) restricts the number of members of the National Council to eleven. The composition of the National Council is given in Section 45(2). Section 45(2) should be amended to include the following also as ex-officio members of the National Council:-

- (i) Either the Chairperson or a Member of the National Commission for Minorities.
- (ii) Either the Chairperson or a Member of the NHRC.

11.2 Section 45(1) should be amended to raise the limit of number of Members of National Council to thirteen.

11.3 A new clause (clause 4) is required to be added in Section 45 to provide that at least two Members of the National Council should be women.

12. District Communal Disturbance Relief & Rehabilitation Council.

Section 42 (1) seeks to empower a State Government to establish, by notification a District Communal Disturbance Relief & Rehabilitation Council in respect of each district in the State. The composition of the District Council is given in Section 42 (2) of the Bill. A new sub-clause is required to be added in Section 42 (2) to provide that at least two Members of the District Council should be women.

13. Compensation

The Bill does not lay down any uniform scale of death compensation or compensation for injury, rape, damage to moveable and immoveable properties (commercial as well as residential). The Bill is also silent about the responsibility of the Union/State Governments regarding desecration of or damage to religious properties / places of worship during communal disturbance. No Government help was provided in restoration of the Gurdwaras damaged during the 1984 anti-Sikh riots. During the Gujarat carnage of 2002, 293 Dargahs and 202 Mosques were destroyed but the State Government did not spend any amount to rebuild anyone of them.

13.1 It is unfortunate that even after 56 years the country became a Republic with the adoption of Indian Constitution in November 1949, there has been no legal instrument laying down any uniform scale of compensation for death, injury, rape and destruction of individual and religious properties during communal riots. Hardly anybody knows the level of death compensation provided to the victims of Bhagalpur riots of 1989 which had claimed the lives of about 1500 people. Hardly any compensation was provided to the victims of Nellie massacre (1983). 18 years after 41 Muslims were brutally killed by the Provincial Armed Constabulary of U.P. Government, in Hashimpura (Meerut) in 1987, their next of kin have been paid a mere Rs. 40,000 each. For 1169 persons who perished in Gujarat carnage of 2002, death compensation @ Rs. 1.5 lakh was paid.

13.2 On consideration of the reports of the two committees set up by the Ministry of Home Affairs in pursuance of an assurance given by Hon'ble Prime Minister and Union Home Minister during discussion on the report of Justice Nanavati Commission in Lok Sabha and Rajya Sabha on 10.8.2005 and 11.8.2005 respectively, the Union Cabinet had cleared on 29.12.2005, a package comprising enhanced ex-gratia and relief and rehabilitation in assistance to the victims of the 1984 anti-Sikh riots, amounting to around Rs. 715 crore. The following are the features of the package as decided by the Union Cabinet:-

(i) The death compensation in each case would be Rs. 3.5 lakh. This amount will be in addition to the amount of death compensation already paid.

(An amount of Rs. 2 lakh with interest was paid to the next of kin of the all those who were killed in Delhi during the 1984 riots. But similar compensation for the Sikhs killed in Kanpur, Bokaro, Jabalpur and other places outside Delhi was not paid.)

(ii) The Injury assistance per case would be Rs. 1.25 lakh (minus the amount of injury assistance already paid).

(iii) The compensation for damaged property in each case would be 10 times of the compensation minus the amount already paid.

13.3 The Bill should provide for following uniform scale of compensation:-

- (i) Rs. 5 lakh to the next of kin in each case of loss of life during sectarian violence.
- (ii) Rs. 5 lakh in each case of rape.
- (iii) Rs. 2 lakh as injury assistance per case.
- (iv) For causing damage to moveable and immovable properties (commercial as well as residential), the current replacement value.

13.4 The Bill should provide that the concerned State Government will rebuild or restore or cause to have rebuilt/restored every religious property or place of worship damaged or destroyed during sectarian violence.

13.5 The Bill should also provide that ex-gratia payment of the compensation at the rate suggested in para 12.3 above should be paid within a period of 30 days and that restoration/rebuilding of the religious property or place of worship should be complete within a period of six months.

13.6 The Bill should provide that once the Special Courts verdict is available and culprits have been clearly named and indicted, punitive measures against them and their families such as being debarred from Government jobs, from benefiting from Governments beneficiary oriented schemes, from holding ration cards, gas connections, driving licenses, arms licenses should be put into place.

13.7 The Bill should also provide that the State Government will be responsible for the permanent rehabilitation of all those displaced by sectarian violence and that the State will ensure their permanent rehabilitation within six months.

13.8 NGOs and individuals who have, by general consensus, provided help/support/ relief in the immediate aftermath of sectarian violence should be publicly recognized and honoured for their work and dedication.

14. Summary of NCM recommendations.

To summarize, NCM's recommendations are as follows:-

- (i) The language of the Bill is obfuscatory. It needs to be simplified considerably so as to be intelligible to the public and to lower level functionaries who will be responsible for maintenance of law and order.
- (ii) The Bill should provide that report of every Commission of Inquiry will be available in the public domain.

(iii) Instead of the word ‘communal’, the word ‘sectarian’ should be used in the Bill. The word ‘communal’ is of colonial origin whereas the word ‘sectarian’ more explicitly reflects today’s reality.

(iv) The Statement of Objects and Reasons of the Bill should mention the rights of the victims of sectarian violence. The Statement should also highlight that communal violence is not merely a law and order problem but has a serious socio-economic basis and ramifications.

(v) The schedule of the Bill need considerable reworking since some of the sections of various other Acts referred to, either do not exist today or in some cases sections have been wrongly co-related.

(vi) Those found guilty of involvement in communal violence and indicted by the Special Courts, would be debarred permanently from Government jobs and from contesting for any public office.

(vii) Chapter II of the Bill relating to ‘Declaration of Certain Areas as Communally Disturbed Areas’ needs to be thoroughly reworked so as to provide for any eventuality including a stand-off situation between a State Government and the Centre.

(viii) NHRC should have the power to monitor the working of the Special Courts set up by the State/Central Government.

(ix) NHRC Monitoring Reports should be placed before the concerned State Legislature/Parliament as the case may be.

(x) Specific background and qualifications of the Public Prosecutor as suggested at para 9.2 above need to be incorporated.

(xi) Section 39 providing for institutional arrangements should be amended to include the Chairpersons of the State NHRC and Minorities Commission in the SCDR&R Council.

(xii) Section 45 (1) provides for an institutional arrangement at the National level. The NCDR&R Council should include the Chairman/Member of the NHRC and Chairman/Member of the NCM. Appropriate amendments in Sections 45, 39 and 42 should be carried out to provide that the National, State and District Councils should each have at least two women Members.

(xiii) The Special Courts for enquiring into sectarian violence should finish their task within three months. An extension of three months can be considered, if necessary.

(xiv) In case it is found by the Special Courts that the print or electronic media have played a negative role or were responsible for misreporting, a fine should be imposed on the concerned newspaper/channel/station.

- (xv) There should be a uniform scale of compensation as outlined at para 12.3. The compensation should be paid within 30 days of the incident.
- (xvi) There should be a provision whereby the State Government concerned shall have to rebuild or cause to have rebuilt the religious property or place of worship damaged or destroyed during sectarian violence. The work should be completed within six months.
- (xvii) The Bill should provide that it will be the State Government's responsibility to rehabilitate those displaced by sectarian violence within six months.
- (xviii) The Bill should provide that once the Special Courts verdict is available, those held guilty in its order, will be debarred from Government jobs, the Government beneficiary-oriented schemes etc. Such punitive action will act as a deterrent in future.
- (xix) The Bill should also provide for public recognition of NGOs/individuals who have helped in the relief measures in the aftermath of sectarian violence.
- (xx) The Bill should provide for fixing of responsibility on the D.M and S.P in the event that the Special Courts report indicate that the situation would not have deteriorated had preemptive measures been taken in time.