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The Proposed Communal Violence Bill Has Too Many Loopholes To Effectively Curb Religious Conflicts, Writes Tarunabh Khaitan Published 21.12.05, 12:00 AM



The United Progressive Alliance government recently introduced the communal violence (prevention, control and rehabilitation of victims) bill in the parliament towards the fulfilment of another key promise in the national common minimum programme. The goal of building an India which does not kill you because of your religious affiliation is unchallengeable. What needs to be examined, though, is whether the means adopted to realize this goal will serve its purpose.

Section 19 of the bill defines communal violence as "any act of omission or commission which constitutes a scheduled offence on such scale or in such manner which tends to create internal disturbance within any part of the State and threatens the secular fabric, unity, integrity or internal security of the nation?". It has three broad goals in dealing with communal violence - prevention, ensuring criminal justice and providing relief and rehabilitation.

The goal of prevention of communal violence is perhaps the most crucial, and yet the most ill-conceived, aspect of the bill. The bill empowers the state government (and in cases it fails to act, the Centre) to declare an area as "communally disturbed?". On such declaration, the state government and its enforcement machinery is vested with powers of frightening breadth. Section 3 declares that "it shall be lawful for the State Government to take all measures, which may be necessary to deal with the situation in such area?". It is also obliged to appoint a "competent authority" in such area who, along with the district magistrate, is given various preventive powers like regulating assembly and confiscating arms. Vesting the same responsibility with multiple authorities may be premised on the desperate hope that someone will act - but in practice, this arrangement can only create confusion and an excuse for abdication of responsibility.

The police is also vested with new powers. Section 8 grants search and seizure powers to an officer without requiring any judicial warrant. Special circumstances may justify this breach of privacy if one could be assured that such power will not be used to harass minority groups or

gain access to their household. A simple test for the efficacy of the bill in preventing communal violence is this ? would it have made any difference if it was in force in Gujarat 2002? The answer seems to be no as the bill fails to locate the root of the problem. The malady was never insufficient power with the authorities, but too much power. Riot after riot has witnessed the partisan role of the police in targeting minorities. An unreformed but empowered force which continues to take directions from politicians can only mean that the new powers will also be abused.

The bill does make an attempt towards accountability of individual officers. Section 17 criminalizes a public servant for the *mala fide* exercise or the wilful omission to exercise lawful authority. However, in reiterating the requirement of a previous sanction of the state government before any court can take cognizance of a complaint against a public servant, it only strengthens the symbiotic relationship between the police and the elected leadership.

The second part of the bill deals with the functioning of the criminal justice system in the immediate aftermath of communal violence. It prescribes enhanced punishment for communal violence and requires the setting up of special courts to conduct daily hearings. To ensure independence of the judges, the state government is required to obtain the concurrence of the chief justice of the high court for their appointment to the special courts. This is a useful idea. In politically charged situations like communal violence, the need to establish the sanctity of the rule of law is urgent. Speedy trial of those guilty of crimes is very important for the health of the democracy.

However, there are four main aspects of criminal justice where the bill is found wanting. One of the main problems indicated by investigations into the incidents in Gujarat was the refusal by the police to register first information reports and even destroy evidence. This is left entirely unaddressed in the bill. Secondly, the bill makes patchy attempts to ensure witness protection, by hiding their identity and criminalizing threats to witnesses. However, harassment of witnesses is a systemic problem that plagues the entire criminal justice system, even though it is more acutely felt in cases of communal violence. A comprehensive law catering to all aspects of witness protection is long overdue.

Thirdly, the role of the prosecutor in ensuring free and fair trial remains unaddressed. It required the intervention of the Supreme Court in the Best Bakery case to see that sham prosecutors who ended up defending the accused were removed. And yet, the bill gives the power to appoint the prosecutors to the state government, without requiring the concurrence of the court or the victims. Finally, there is no attempt to implicate the political leadership for the violence. Those who participate in the crime may well be covered, but a system which can recognize the hierarchy of responsibility for the violence and indict the top leadership is necessary.

The most useful aspect of the bill is the creation of institutional arrangements for relief and rehabilitation of the victims of communal violence. It envisages a three-tier permanent arrangement. At the top is the Centrally appointed 'National Communal Disturbance Relief and Rehabilitation Council' which would prepare guidelines on issues like rehabilitation, compensation. At the state level, the government would have to establish the 'State Communal Disturbance Relief and Rehabilitation Council', which would advise it in matters relating to relief and rehabilitation. If its advice is rejected by the government, the latter has to state its reasons in writing and lay the Action Taken Report in the state legislature. At the lowest level is the 'District Communal Disturbance Relief and Rehabilitation Council' which would assess compensation and review the implementation of relief and rehabilitation.

All these bodies are heavily bureaucratic. The respective governments are also required to appoint certain other representatives of civil society and minority groups. In selecting the civil society representatives, granting a consultative role to the leader of the opposition will make the process more transparent. What is surprising is the absence of the national and state human rights commissions, the women's commission and minorities commission which have special knowledge and expertise in dealing with communal violence.

The bill thus leaves much to be desired. While some of its provisions have been long overdue, it almost entirely misses the point on prevention of communal violence. The age-old formula of 'more power, more crimes, more punishment' has always failed to work - it was unsuccessfully deployed against atrocities like dowry, untouchability, terrorism and violence against women and minorities. It is bound to fail for communal violence too. The administration has enough powers to control and prevent communal violence under general law but lacks the will to exercise them in good faith. The right course of action is to grant the police professional independence and put in judicial mechanisms to ensure institutional and personal accountability, without which the bill will remain an eye-wash.