



PROTECTION FROM COMMUNAL VIOLENCE IN INDIA: AN ANALYTICAL STUDY

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ABSTRACT

This article consists of the meaning of Communal Violence. Some quotes about communal violence and its basic features. It also discusses about the causes and reasons for communal violence. It further talks about the various legislative enactments for the protection against communal violence. It also consists of the overview of the bill, Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011 which was enacted by the Parliament but never got passed due to some lacunas. In the end, some suggestions and solutions are given from protection against communal violence and also some recommendations for the Bill.

KEYWORDS: Communal, violence, offence, communalism, violent, State, Governments, Hindus, Muslims, Victims, bill.

INTRODUCTION

Communal violence is a type of fierceness between various groups. It is a type of violence crosswise over ethnic or communal lines. Communal violence debilitates the mainstream texture, solidarity, trustworthiness and inside security of a country. With a view to engaging the State Governments and the Central Government to take viable measures to accommodate the anticipation and control of communal violence and to restore the casualties of such violence, for expedient examination and trial of offenses including inconvenience of upgraded disciplines, than those gave in the Indian Penal Code, on people associated with communal violence and for issues associated therewith, it was chosen to authorize a law by in the parliament by the UPA Government.

Communal violence includes individuals having a place with two distinctive religious groups prepared against each other and conveying the sentiments of threatening vibe, enthusiastic wrath, abuse, social separation and social disregard. The high level of union in one group against another is worked around strain and polarization. The objectives of assault are the individuals from the 'enemy' community. By and large, there is no authority in communal mobs which could successfully control and contain the uproar situation. It

could subsequently be said that communal violence is construct predominantly with respect to scorn, ill will and exact retribution.

Today, India's one of the foremost and upsetting problems is occurrence of communal violence, which is the most visible sign of communal rivalry and hostility and has become an integral feature of our country. The communal violence is the result of ill-will, distrust and hatred between the two communities. The most serious hurdle to national integration is the happening of communal violence—not so much because of the loss of life, limb or property but because of the loss of confidence and trust; because of the anxiety and uncertainty, etc. It occurs very frequently and has become a major challenge before the Indian political and legal systems.

A person who talks about the interests of Hindu community or Muslim community or Muslim community or Hindu community is taking the first step towards communalism whether he knows it or not. The second step is taken when in a multi-religious society, the secular interests of followers of the religion of economic, social, political and cultural interests are different from the followers of any other religion. Since the secular interests of Hindus are different from the interests of the Muslims, they have taken the second step towards communalism.

The Random House Dictionary of English Language defines the term 'community'¹ as "...a social group sharing common characteristics or interests and perceived or perceiving itself as distinct in some respect from the larger society within which it exists."

According to P. Patel, "communalism can be understood by general social, economic, political and cultural forces that shape and steer the growth of communalism."²

Features of Communalism

Based on the above discussion, the specific characteristics of communalism can be:

- 1) It is an ideology based on prejudices.
- 2) It is a tool in the hands of elite and upper class people.
- 3) It runs the public towards violence.
- 4) It is opposed to secularism and integration.
- 5) It rejects the concept of pluralism..etc.

Meaning

Violent acts have been included in communal violence and it has been included, which can be defined as a crime in the law, but many other acts are not falling strictly under criminal activities. The devastating effect of communal violence was far more dangerous and dangerous than the riot/ crime. The Indian communal code (IPC), 1861 or the Code of Criminal Procedure (CrPC), in 1973, the conditions for 'communal violence' and 'communal riots' have not been defined. The IPC only defines 'illegal assembly', the assembly of five or more persons is named as an "illegal assembly" if the common object of the person writing that assembly ends before the criminal force, or show criminal force, central or any state government or

¹AnamikaShrivastava, *Communal Violence and Administration* (Rawat Publications, Jaipur, 1999).

²V.V. Singh, *Communal Violence* (Rawat Publications, Jaipur, 1993) at page 81

parliament or legislature of any state, or any government employee, in the use of legitimate power of such Government servant; Or second - to protest any law, or the execution of any legal process; Or third - to make any mischief or criminal offense, or other offense; Or fourth - show of criminal force, or criminal force, to take any person, possession or possession of any property, or to enjoy the right of any person's way, or to deprive the use of water or other The inherent right through which it is in possession or enjoyment, or to enforce any right or right authority; Or through a fifth-criminal force or criminal force, to force any person to do what he is not legally obliged to do or to omit to do what he is legally entitled to do)³ and 'riot' (whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.).⁴ The definition of 'riot' makes every member of an unlawful assembly guilty of rioting. It contains two essentials, namely: (1) Use of force or violence by any unlawful assembly or by any member thereof; and (2) Such force or violence should have been used in prosecution of the common object of such assembly.

Violence may be divided into two broad categories:

- (1) Individual violence; and
- (2) Social violence

'Individual violence' consists of heinous crime of murder and grievous hurt, including attempts at dacoity, robbery, wrongful confinement and serious assaults. The public is tolerant with crime against property but crime of violence generates fear, specially fear of strangers. The fear of strangers has affected social order, mobility, mutual distrust and withdrawal and finally the quality of life.

Social violence refers to violence against another group by another group. It can be based on religious, communal, social or political differences. The above definition applies to groups of other religious community groups.

Communal violence involves people from two different religious communities who are organized against each other and take the feelings of hostility, emotional anger, exploitation, social discrimination and social neglect. The high degree of solidarity against one another in a community has been made around stress and polarization. The targets of the attack are members of the 'enemy' community. Generally, there is no leadership in communal riots that can effectively control and contain the riot situation. It could thus be said that communal violence is based mainly on hatred, enmity and revenge.

CAUSES OF COMMUNAL VIOLENCE

Communal violence has been a frequently used weapon of the ruling class of the big capitalists of India to perpetuate their rule over the workers, peasants and all other toilers of the country. Various religious communities are targeted from time to time. The population of the country has been divided into 'Hindu majority' and 'religious minorities'.

³ Sec. 141, Indian Penal Code, 1860

⁴ Sec. 146, Indian Penal Code, 1860

The causes responsible for the communal violence may be discussed under the following heads:

- General Causes.
- Religious Causes.
- Trivial Causes.

General Causes such as Divide & Rule Policy by the Britishers, Communal conflicts and conflict of interests, Partition of Bengal & Swadeshi Movements, Political factor, Economic factor, Partition of country, Socio Political Issues, Administrative failures, Business conflicts etc.

Religious Causes such as Conversion, Communal Organisations, Hurting religious sentiments, Religious conflicts, Religious processions & celebrations etc.

Trivial Causes such as Clashing of times of prayers of different communities, Cow slaughter, Emotion and insecurity, Intolerance during fairs and festivals, Laying the foundation for new statues, Marriage, eve-teasing and sexual relations between members of the opposite groups or cases of elopement etc.

LEGISLATIVE ENACTMENTS

There are various legal provisions relating to communal violence as contained in general and special laws on the subject, e.g., The Indian Penal Code, 1860; The Code of Criminal Procedure,

1973; The Police Act, 1861; The Arms Act, 1959; The Explosives Act, 1884; The Explosive Substances Act, 1908; The Explosives Rules, 1983; The National Security Act, 1980; The Unlawful Activities (Prevention) Act, 1967; The Prevention of Damage to Public Property Act, 1984; The Places of Worship (Special Provisions) Act, 1991 and various constitutional provisions; etc., and other miscellaneous provisions. The Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011 has also sent for the adoption by the Parliament for prevention and control of communal and targeted violence.

Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011: An Overview

Communal Violence has been one of the major problems the country is faced with. It has been surfacing on Indian horizon time and again. During the freedom movement, the communal forces those aiming at Islamic state or Hindu nation spread venom against the 'other' religious community and many major incidents of violence broke out. It was this communal politics which could not stand the torch of amity amongst religious communities symbolized by the life and preaching of Mahatma Gandhi. He symbolized the opposition to communal politics. Gandhi's work for communal amity was the reason for his murder, which was a calculated move by communal politics.

The Bill is a pro-active measure to prevent communal violence, rehabilitate those affected by violence and make the officers accountable for such atrocities. The Bill was originally introduced by the United Progressive Alliance (UPA-I) Government in 2005 but could not get Parliament's approval due to many factors, including the raw nature of the legislation.

Objectives of the Bill

The Bill seeks to achieve the following objectives:⁵

- To impose duties on the Central Government and the State Governments to exercise their powers in an impartial and non-discriminatory manner to prevent and control targeted violence, including mass violence, against ‘Scheduled Castes’ (SCs), ‘Scheduled Tribes’ (STs) and ‘religious’ minorities in any State in the Union of India, and ‘linguistic’ minorities in any State in the Union of India.
- To make provisions for investigation, prosecution and trial of offences.
- To prohibit any discrimination in providing compensation and relief to the victims of communal violence on grounds of sex, caste, community, or religion etc.

PURPOSE OF THE BILL

The Bill is intended to enhance state accountability and correct discriminatory exercise of state powers in the context of identity-based violence, and to restore equal access to the law for SCs and STs, and religious and linguistic minorities. The Bill does not seek to give additional powers to the state. This is because the administration already has adequate powers to prevent and control communal and targeted violence when it chooses to do so, and thus it is not considered necessary to further enhance any powers.

CRITICISM OF BILL

This proposed bill did never become the Act. The Bill in its present form has been reduced to a mere mockery which is against the core principles of criminal law; it is also pulverized to the extent by incorporating the preferential definition of what constitutes group and victim. The autonomous nature of the National Authority is also a cause of serious concern. If a law has to prevail, then it should be universal in its approach and its enforcement should be coupled with the system of checks and balances. The present bill regrettably promises none of these and is rather looked upon as a political faux pas.

It is surprising why an unelected body like the National Advisory Council (NAC), which is home to Sonia Gandhi groupies, was allowed to draft a Bill that is so crucial to communal harmony.

Second, the Bill is itself communal in nature. , the Bill is not meant to tackle communalism, but to divide the people further into majorities and minorities, with only the latter being privileged enough to be considered a victim of targeted violence.

The NAC draft Bill, if it is passed like anything in its present form, will destroy the federal character of the Indian Union. Law.

The Bill puts civil servants squarely in the firing line. While there is no doubt that civil servants who don't do their duty the Bill puts civil servants squarely in the firing line. While there is no doubt that civil servants who don't do their duty.

⁵See the “Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011”.

Case Laws

There are thousands of case laws happened due to communal riots. There are number of cases which are still pending in the Courts and many of them got closed without having any decision. Govt. itself doesn't want to get involved in such communal riots.

Example of case which is still pending in the Court:

NarodaPatiya Case:⁶

The case related to the massacre that took place in Naroda on Feb 28,2002, in which 97 persons were killed , are still pending before the Gujarat High Court.

The trial Court had sentenced former Gujarat Minister & BJP leader Maya Kodnani, one of the prime accused, to 28 years of imprisonment. However the High Court suspended her sentence in July 2014 on grounds of her ill health.

A review petition filed by Zakia Jafri, wife of former MP Ehsan Jafri, who was killed in this massacre, is also pending before the High Court. She has challenged the lower Court verdict accepting the Special Investigation Team (SIT) report giving a clean chit to the then Gujarat CM NarendraModi and others for masterminding the 2002 riots.

The special trial Court had convicted 32 accused , including former and sitting MLA Maya Kodnani, sitting BJP coporatorKishanKorani&Bajrang Dal leader BabuBajrangi.

The accused were convicted for criminal conspiracy & murder with other charges under IPC.

There are many closed cases such as Ode Village Massacre, Gulbarg Massacre, Best Bakery Case etc.

CONCLUSION AND SUGGESTIONS

The purpose of this study was to investigate various central laws (preventive and also punitive), constitutional provisions, rules, guidelines, and some other issues related to communal violence.

There are laws that provide the stimulus to stop communicating feelings, to stop provocative speeches, writing and publicity. Such activities are punishable under SS. 153-A, 295-A, 298 and 505, IPC. The swelling statement is guilty of penal action under S. IPC for the crime of creating hostility between the communities and religions 295-A. But these provisions are rarely used against criminals. It has encouraged communal forces to suffer minorities through major communal violence.

In recent years, with frequency, the increase in communal violence is really dangerous. What we have seen in Gujarat, Bombay (now changing the name of Mumbai), Bhagalpur, Delhi etc. is not the ugly face of religious madness. The Concerned Civil Tribunal (CCT), Gujarat-2006 has clearly stated that the crimes committed during the Gujarat violence were: 'Crime Against Humanity and Genocide'. Nevertheless, nothing has been done to ensure the punishment of those convicted of these crimes.

There is an obvious lack of political and administrative will to implement the recommendations of National Police Commission (NPC) (March, 1981) as pointed out by the NHRC. The government is also not serious to take up the most vital issue of communal violence, as is obvious from the fact that the directions of the

⁶ AIR 2002

Supreme Court (SC) (September 22, 2006) to reorganize the police system as drafted by the Sorabjee Committee, is not being implemented.

Recommendations

- A separate Central law should provide for appointment of an Independent Inquiry Commission to fix responsibility of defaulting law enforcement agencies.
- Amendments should be made in the Arms Act, 1959 to include weapons like trishul, swords.
- District administration should immediately take prompt legal action against inflammatory statements, publications and speeches.
- Banning of communal groups for their anti-communities activities.
- Enact a law on prevention and punishment of crime of genocide.
- Enact proposed Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011 after thorough revision in consultation with citizen's bodies, human rights groups and anti communal organizations.
- Functioning of the police must be independent of political direction and interference.
- Establish State Security Commission (SSC) in each state as suggested by the NPC.
- Judicial notice and cognizance to be taken immediately in cases in which investigation has been conducted and evidence collected.
- Law Enforcement machinery should be made impartial and effective.
- Make some special provisions in the law and procedure to ensure that the course of justice runs smoothly while deciding the cases of communal violence.
- National Commission of Communalism should be constituted to fix the responsibility at all levels.
- Police should always be reminded of the duties that they owe to the people.
- Police should be required to act with utmost objectivity, and dismissed and prosecuted for criminal laxity when shown to have failed to do so.
- Special arrangement for First Information Reports (FIRs), investigations, prosecution and trial.
- State Investigating Squad (SIS) should be set up to investigate crimes committed during communal violence.

Some Suggestions for the Proposed Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011

- Investigation should be conducted in a gender-sensitive manner.
- In the provision defining 'torture' there should not be any exceptions
- Delay in lodging a First Information Report (FIR) should not impact the case in any manner.
- Instead of the word communal, the word sectarian should be used in the Bill.
- It needs to protect the dignity and confidentiality of the survivors of violence at all stages, from recording of complaints and statements, to investigation and trial.
- Medical evidence should not be insisted upon as corroborative evidence.

- Relief, rehabilitation, etc., should be extended to affected persons from the group, not only those facing direct injury.
- The Bill should also provide for public recognition of Non Governmental Organisations/individuals, who have helped in the relief measures in the aftermath of sectarian violence.
- There must also be special measures prescribed for widows and orphans.
- The National Authority and State Authorities should have the power to appoint Special Judge and Special Public Prosecutor like the State Government.
- Agitations must be prevented in order to ensure public peace.
- Anti-social and communal elements should be identified and exposed before public so that whole community does not suffer.
- Eradication of caste and communal prejudices.
- Loudspeakers at religious places should not be allowed except on special occasions.
- Political parties should not mix religion with politics.
- Police must keep a close eye over the religious functions, ceremonies, etc.
- Victims of communal violence should seek justice and not revenge to break cycle of violence.

The incorporation of above stated measures in the legal regime pertaining to prevention and control of communal violence will certainly make the regime more effective

