

The Minority Question

Anti-Communal Violence Bill

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OSTENSIBLY DIRECTED AT preventing outbreaks of communal violence, the National Advisory Council Draft Bill, titled "Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011", has been roundly critiqued by minority groups, who are almost invariably the worst-hit in incidents of communal violence. Speakers at a national consultation of Christian leaders recently held in Delhi, presided over by the Archbishop of Delhi, noted that the draft Bill contains disturbing features which, they argued, were contrary to the purposes of a law aimed at combating communal violence, thus defeating its purported objectives. 'It is a cause of serious concern for all of us that a Bill which contains regressive and draconian principles has been adopted by the NAC,' read a statement that was endorsed and circulated by the Christian leaders on the conclusion of the consultation.

One of the major grousing of minority and human rights activists who participated in the meeting was with how the Bill defines what it terms 'communal and targeted violence'—as an act that 'destroys the secular fabric of the nation.' This definition is central to the Bill, and all offences and rights of victims to justice and reparation would ensue only if the action warrants description as a communal and targeted violence as per this extremely restrictive definition. The statement endorsed by the Christian leaders pointed out that it was arguable if any event of violence in post-independence India, whether against religious minorities or Scheduled Castes or Scheduled Tribes, could be said have actually destroyed the 'secular fabric' of India. Presumably, then, such violence may not come under the definition of 'communal and targeted violence' as laid down in the Bill. Accordingly, the statement reads, the definition 'has ousted the most vulnerable from its statutory protection, rendering this Bill toothless and meaningless.'

As is well known, in various incidents of communal violence agencies of the state have played a central role, including in instigating violence as well as in turning a blind eye to murderous mobs. Presumably, communal violence cannot last long if officials, including political leaders, the police and bureaucrats, take a tough stand on the matter. Human rights activists have been trying, with little success, to insist on stiff punishment for officials complicit in acts of omission and commission relating to communal and targeted violence. On this score, the Bill fails. It does not, so the statement claims, incorporate crimes such as disappearances of people, although India is a signatory to the Convention Against Enforced and Involuntary Disappearances and has, in a recent pledge before the Human Rights Council at the UN, stated that it would work towards ratification of the Convention. The definition of torture of civilians in the Bill also falls short of expectations, and even of the definition proposed by the Rajya Sabha Select Committee on the Prevention of Torture Bill. The Bill's definition, as contained in certain clauses, of command or superior responsibility as well as of offences by public servants which extends criminal liability to those who mastermind, sponsor and allow communal and targeted violence, lacks legal certainty and precision, the statement insists. Hence, it argues, the Bill fails to rein in the impunity of persons occupying top echelons of political and administrative authority. Yet another cause for unease with regard to the Bill, according to the statement, are the powers that it provides to the Government to encroach on civil liberties. It empowers the state and central government the power to intercept telephonic communication, and censor and control the same.

The statement stresses that the Bill does not adequately address the harrowing conditions that victims of targeted and communal violence find themselves in in the aftermath of such attacks. Clause 61 of the Bill recognizes the need to assist displaced victims in order to initiate legal proceedings. Yet, it points out that the recommendation that the police officer visiting the relief camp would record statements and conduct an inquiry into the circumstances and cause of each individual being displaced and transferred to a relief camp is problematic, arguing that it would be better if the officer recorded statements of victims with respect to commission of cognizable offences, dispatch such statements to be registered as FIR and investigated by the police station of competent jurisdiction. Similarly, it contends that Clause 64 (1) of the draft Bill is 'misconceived' as it makes it compulsory for the statement of a victim- informant to be recorded by a Magistrate on oath, while not recognizing the situation in which victims find themselves after a communal and targeted assault. Hence, it notes, this provision would only heighten the vulnerability of victims, particularly in light of the scant protection offered to witnesses by this Bill. The Bill places no obligation on the State to protect witnesses after they depose against the socially and politically powerful. It purports to offer protection during trial by keeping the identity of the witnesses confidential. However Clause 88 of the Bill makes it mandatory for all court proceedings under this law to be video recorded and a copy of this recording to be given to the accused person, among others. The statement indicates that there is a serious possibility that these video recorded proceedings may increase the vulnerability of the witnesses and victims, thus failing in its stated objective of helping him or her secure justice.

Given what they regarded as major loop-holes in the Bill, which, they pointed out, fail to properly protect and address the concerns of the victims of communal violence, the participants in the consultation insisted that they could not accept it. Instead, they stressing, instead what their statement termed as their commitment to 'continue [their] struggle' for a 'meaningful and effective' Bill against targeted and communal violence by 'engaging government and civil society in the process'. □□□