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# COMMUNAL VIOLENCE BILL 2011

Threat to National Integration, Social Harmony  
and Constitutional Federalism

## OVERTLY COMMUNAL AND PATENTLY ILLEGAL BILL

This Communal Violence Bill clearly discriminates between the Majority and Minority groups. The drafters and their apologists give lame logic and excuses that the Bill is exclusively for the Minorities just as the Domestic Violence Bill is exclusively for wives only. The absurdity of such arguments needs no special explanation. Our Constitution and laws don't permit such blatant discrimination in making laws. In fact while the question of making laws on communal grounds was settled long ago during the debates in the Constituent Assembly itself the Courts in the country too have affirmed the legal position in such matters very clearly.

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Jagaran Prakashan, Bangalore

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*Published by :*

**JAGARANA PRAKASHAN**

# 74, Rangarao Road

Shankarapuram, Bangalore - 560 004

Ph : 080-26610081

[www.samvada.org](http://www.samvada.org)

First Edition : 2011

Price : Rs. 10/-

*Printed at:*

**Rashtrottana Mudranalaya**

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# COMMUNAL VIOLENCE BILL 2011

Threat to National Integration, Social Harmony and  
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Ever since the UPA Government came to power in 2004 there started a cacophony about bringing a stricter law to prevent communal violence in the country. In its first term the UPA Government had, as its alliance partners, the Left parties as well as leaders like Lalu Prasad Yadav and Ram Vilas Paswan etc. It may be worthwhile to recall that it were these very people who had launched a massive campaign of disinformation about the then existing anti-terrorism law called the Prevention of Terrorism Act (POTA). They finally succeeded in getting the POTA repealed on the specious ground that it was being used to harass innocent Muslims. Any amount of statistical data contrary to their false claims against POTA wouldn't convince them because the main objective behind the campaign against the POTA was to play the same old game of vote-banks. Incidentally after the 9/11 attacks on the Twin Towers in New York many countries in the world including America have introduced fresh stringent laws against terror while India became the only country to repeal the existing laws thus leaving the security agencies without any instrument to tackle the huge challenge of terror.

Not content with repealing the existing anti-terrorism laws the new UPA Government decided to bring in a new act in the name of preventing communal violence in the country. Although sounding noble, it was clear from day one that the real motive of the protagonists for this act was to harass the Hindu groups and organizations in the country. For them the violence in Gujarat in 2002 became a good excuse to justify introduction of a law that

would prevent what they described as the ‘Majoritarian violence against the hapless Minorities’. Leaders like Lalu Prasad went to the extent of making ridiculous suggestions that carrying sticks should be banned under the new act. For him the stick is identified with the RSS uniform.

Finally the UPA Government did introduce a draft Bill in the Parliament in 2005. It was described as THE COMMUNAL VIOLENCE (PREVENTION, CONTROL AND REHABILITATION OF VICTIMS) BILL, 2005. Official declaration described this bill as below:

*A bill 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 and rehabilitation of victims of such violence and for matters connected therewith or incidental thereto.*

The draft Bill was placed before the Parliament in December 2005 by the then Home Minister Sri Shivraj Patil. Since the intentions of the Government of the day were suspect there was opposition from various quarters to the draft. As mentioned above the draft talks of imposing a ban on even *lathis* – sticks, calling them weapons. However the draft Bill does make some significant points. It sufficiently empowers the State Governments as stakeholders in preventing communal violence. It also extends the application of the Bill to all forms of communal violence by all groups, irrespective of their religion or social background.

### **Objections from Muslim and Christian Groups**

However the Bill didn’t find favour with anybody. Leaders of several political parties felt that the draft Bill provides sweeping powers to the Central Government thus undermining the authority of the State Governments. But the most vocal opposition to this draft Bill came from the Muslim, Christian and pseudo-Secular quarters. Their contention was just the opposite of what the political leaders were saying. In the eyes of the so-called civil

society groups and Muslim and Christian groups the 2005 draft Bill is completely toothless. They argued that the Bill lacked accountability. They demanded that the powers of managing communal violence be vested in non-Government actors and make governments and administration accountable for communal violence.

The All India Christian Council was in the forefront of this campaign against the draft 2005 Bill. In a letter written to the Prime Minister the AICC conveyed the following concerns about the draft Bill, by then revised once and called the Bill – 2009.

1. The Bill doesn't adequately address the question of hate campaigns and the "communalisation process" (i.e. hate speech published in local language media) that precedes communal violence. This well-studied phenomenon of activities, some already illegal but not often prosecuted, is a root issue.

2. The Bill doesn't take into account the demography and pattern of living of various communities. Specifically, anti-Christian violence is normally dismissed by public officials as "sporadic" (although there may be a serious incident daily in some areas). Because other minorities live in concentrated or contiguous areas, those "communally disturbed areas" are more easily identified. In Orissa, Kandhamal would likely not fit the Bill's definition but we know what happened there in 2007-2008.

3. The Bill doesn't give States guidelines on reparations and compensation. We need a uniform national policy as well standards on the assessment of damages after riots in order to prevent ghettoisation.

4. The Bill doesn't fully address police and administrative impunity properly or adequately. The "good faith" clause, which exempts police and public servants from prosecution unless there is permission from the executive branch, is a major concern.

The Muslim bodies too had started a protest campaign against the draft. More than 20 Muslim scholars and leaders, under the leadership of Syed Shahbuddin, issued a statement arguing against

the draft Bill. They wanted provisions to make police and civil administration and state authorities accountable. The Joint Committee of Muslim Organisations for Empowerment (JCMOE) has made the demand on behalf of these organizations. JCMOE also urged the government to convene a meeting of leaders of targeted communities to note their views on the bill.

“The Bill does not make police or administration or state authorities accountable and provide for timely and effective intervention by the National Human Rights Commission, if the communal violence spreads or continues for weeks, or by the Central Government under Articles 355 and 356 of the Constitution, duly modified. On the other hand, ironically, the Bill grants more power to the local police and administration, which, more often than not acts in league with the rioters by declaring the area as ‘communally disturbed area’” JCMOE statement said.

“The undersigned call upon the Government to provide for prompt registration of communal crimes, their urgent investigation by special agencies and prosecution of identified culprits, including policemen, administrators and politicians, in Special Courts with Special Prosecutors, who are acceptable to the victims and in such cases the provision of prior sanction of the government should not apply to such culprits. The undersigned also demand a uniform scale of compensation for the whole country, irrespective of religion of the victims or the culprits or the venue of communal violence, for loss of life, honour and property and as well as destruction of and damage to religious places with the provision to revise the scale every 10 years and assessment of losses and damage by a Special Commissioner from outside the state occurrence.”

“The undersigned, for the reasons mentioned above do not find the Bill of 2009 acceptable and request the Government not to introduce it in a hurry without consulting the representatives and leaders of the civil society, particularly the communities which are generally targeted and to revise the Bill in the light of their suggestions and observations.”

The Muslim leaders have requested “all secular forces, the civil society and the political parties represented in the Parliament to press the Government to revise the Bill before introduction in order to remove the inadequacies, defects and flaws which have been pointed out and objected to by the targeted communities, in order to assure them of absolute Equality before Law and guarantee their Security and Dignity.”

What is interesting and important to note is that these two statements, the Muslim and the Christian, come at around the same time as though they were premeditated. Simultaneously the so-called civil society, a euphemism for pseudo-Secular intelligentsia, too started raising the pitch against the draft.

From their arguments in opposition of the draft Bill it is clear that they wanted a Bill that would consider only the Christians and Muslims as the “generally targeted” victims of communal violence; that the word ‘communal violence’ be defined in such a way that only the Muslims and Christians are treated as victims and Hindus as ‘rioters’; that the local police and administration, including the State administration, is always hand-in-glove with the perpetrators of violence; that the Bill should empower the Central Government to invoke Art.355 and 366 of the Constitution in the event of communal violence.

Since the Prevention of Communal Violence Bill – 2005 as amended as Prevention of Communal Violence Bill – 2009 doesn’t discriminate the perpetrators and victims of communal violence on religious grounds and also it envisages the State administration as an equal stake holder in preventing such violence these groups wanted the Bill to be withdrawn.

It is around that time that the new National Advisory Council – NAC - had been constituted by the UPA Government under the chairmanship of Ms. Sonia Gandhi. The UPA Government promptly handed over the matter to the newly constituted NAC and asked it to come up with a fresh draft.

## History of Communal Strife in India

India has a long history of communal strife between various communities. Before Independence the country's history was replete with worst communal violence. Post-Partition the scale of communal violence has come down considerably although it has not been completely mitigated. Sporadic incidents of violence continued and occasionally some major riot would take place here and there. Most of the communal strife and violence in the country occurs in places where the specific Minority groups, especially the Muslims are in greater numbers.

Under Rajiv Gandhi, the Union Government had embarked on identifying communally sensitive districts in the country and ended up identifying mostly those districts that have Muslims as the demographic majority. Some of the communally sensitive spots in the country like Mumbai, Hyderabad, Ahmedabad, Lucknow, Meerut, Delhi, Kolkata etc have large presence of Muslims.

This one factor negates the propaganda that the Hindus are the perpetrators of communal violence. There is a general global understanding that the majority is always a bully and the minority a victim. However in India we don't have such majorities and minorities. Secondly the country remains largely peaceful essentially due to the demographic majority of the Hindus only. There are enough instances in our country where the so-called minority groups were found to be the instigators and perpetrators of communal violence.

Hence the basic premise that the Majority community – read Hindus – are the perpetrators of communal violence in India and the minority – read Muslims and Christians – are the victims is essentially wrong. Equally wrong is the premise that a particular government or party is good in governance and the other bad. History of India provides enough evidence to suggest that highest number of communal clashes take place in Congress-ruled states and in many instances of communal violence political interests too play a vital role.

Writing in Economic and Political Weekly author of the book Communal Riots in India Steven I Wilkinson observes: “In the book I highlight examples of Congress and Muslim League politicians’ complicity in partition-era riots in Bihar, UP, and in Calcutta (pp 5,74). I also point out that in the post-independence era Congress has at times benefited electorally from Hindu-Muslim violence (p 50) and I find that we can identify no robust statistical relationship between Congress rule and the level of riots, a result I attribute to the widely varying communal character of the party and its leadership across time and place (p 153). Lest anyone be in doubt about my position, I say on p 153 that “at one time or another, Congress politicians have both fomented and prevented communal violence for political advantage. Congress governments have failed, for example, to prevent some of India’s worst riots (e g, the Ahmedabad riots of 1969, the Moradabad riots of 1980, and the Meerut riots of 1987) and in some cases Congress ministers have reportedly instigated riots...and have blocked riot enforcement.”

Following chart shows the major incidents of communal violence in Indian between 1947 and 2003.

Year	City / State	Casualties/ Injured	C.M.	Ruling Party
1947	Calc/WBengal	5000/25000	Prafull Ghosh	Congress
1947	Punjab	5000/3000	Gopichand Bhargav	Congress
1964	W. Bengal	2000	Prafull Sen	Congress
1967	Ranchi/Bihar	183	Mahamaya Prasad	Congress
1968	Asam	82	B.P. Chalina	Congress
1969	Gujarat	512	H. K. Desai	Congress
1970	Maharashtra	120	V.P. Naik	Congress
1972	Nonari / U.P.	76	K. P. Tripathi	Congress
1977	Varanasi / U.P.	5	Ram Naresh Yadav	Janata Party
1978	Sambhal / U.P.	25	Ram Nresh Yadav	Janata Party
1978	Hydrabad/ A.P.	19	J.Vengal Rao	Congress
1979	Jamshedpur/Bihar	120	Karpoori Thakur	Janata Party

Year	City / State	Casualties/ Injured	C.M.	Ruling Party
1980	Moradabad/ U.P.	2000	V.P. Singh	Congress I
1981	Biharsharif/ Bihar	80	Jagannath Mishra	Congress I
1982	Meerut / U.P.	12/30	Sripati Mishra	Congress I
1982	Baroda / Gujarat	17/50	M.S. Solanki	Congress I
1983	Malur/Karnataka		Ramkrishna Hedge	Janata Party
1983	Malegaon/Maharashtra		VasantRao Patil	Congress I
1983	Hazaribagh/ Bihar		ChandraShekher	Congress I
1983	Hydrabad / A.P.	45/150	N.T.Ramarao	TDP
1984	Maharashtra	146/611	VasantRao Patil	Congress I
1984	Delhi	2733	Central Govt.	Congress I
1985	Ahemdabad	300	M.S. Solanki	Congress I
1986	Ahemdabad	59/80	Amarsinh chodhary	Congress
1987	Meerut/ U.P.	3000	Bir Bahadur Singh	Congress
1989	Indore	27	Moti Lal Vora	Congress
1989	Kota/Rajasthan		S. C. Mathur	Congress
1989	Bhadrak/Orissa	17	J.B. Patnaik	Congress
1990	Gujarat	265/775	ChimmanbhaiPatel	Janata Party
1990	Jaipur / Rajasthan	72/644	B.S. shekhawat	Janata Party
1990	Uttar Pradesh	94/69	Mulayam Singh	SJP
1990	Delhi	100		Central Govt.
1990	Assam	37	P.K. Mahantha	AGP
1990	Maharashtra		Sharad Pawar	Congress
1990	Bihar	996	Jagannath Mishra	Congress
1990	Madhya Pradesh	3/150	Sunderlal Patwa	BJP
1990	Karnataka	60	S. Bangarappa	Congress
1990	Hydrabad/A.P.	299/350	M.Chenna Reddy	Congress
1991	Banaras/U.P.	50	Kalyan Singh	BJP
1991	Baroda/Gujarat	66/170	Chimmanbhai Patel	Janata Party
1992	Sitamardi/Bihar	44	Laloo Prasad Yadav	Janata Dal
1992	Surat/Gujarat	200	ChimmanbhaiPatel	Janata Party

Year	City / State	Casualties/ Injured	C.M.	Ruling Party
1992	Bombay	1000	Sudhakarrao Naik	NCP
1992	Bhopal/M.P.	143	Sunderlal Patwa	BJP
1995	Madras/Tamilnadu	4	Jayalalita	AIADMK
1995	Karnataka	½	HD Devegoda	Janata Dal
1995	Kerala	2	AK Antony	Congress
1995	Bihar	5	Laloo Prasad Yadav	RJD
1995	Hydrabad/AP	2/100	Chandrababu Naidu	TDP
1998	Ajmer/Rajasthan	25	B S Shekhawat	BJP
1998	Moradabad/UP	3/50	Kalyan Singh	BJP
1998	Hydrabad/AP	4/16	Chandrababu Naidu	TDP
1998	Munger/Bihar	3/39	Rabri Devi	RJD
1998	Suratkul/Karnataka	12	JH Patel	Janata Party
1999	Surat/Gujarat	7/27	Keshubhai Patel	BJP
2001	Nalanda/Bihar	8/6	Rabri Devi	RJD
2001	Moradabad/UP	6	Rajnath singh	BJP
2001	Maharashtra	2/30	Vilasrao Deshmukh	Congress
2001	Malegaon	16	Vilasrao Deshmukh	Congress
2002	Gujarat	1000	Narendra Modi	BJP
2002	Maharashtra	9/16	Sushil Shinde	Congress
2003	Kerala	9	A.K Antony	Congress

(This is not an exhaustive list)

One of the major reasons for communal strife in our country is the unabashed Minority politics of the sections of political establishment. These communal politics with an eye on vote banks have not benefitted anybody, certainly not the Minority community. They only helped politicians climb up the rungs using the minorities as vote-banks. The communities remained poor and backward, illiterate and unemployed and as a result easy prey to divisive and terrorist forces. In addition this vote-bank politics has widened the gulf between the communities.

In this scenario what we need to tackle the communal violence in the country are laws that are non-discriminatory and universal; politics that is responsible and neutral; and Governments that are responsive and universally accountable. Sadly what we get is just the opposite, laws that are overtly discriminatory; politics that smacks of blatant partisanship; and Governments that are driven by hate and utter disregard for communities, parties and other governments.

The proposed new Prevention of Communal and Targeted Violence (Justice & Reparations) Bill – 2011 is just a bundle of all that evil; an epitome of all that we should be negating.

As the opposition to the draft Bill grew louder the UPA Government decided to rope in a body called the National Advisory Council – NAC – to help redraft the Bill. Thus the mandate of redrafting the Bill landed in the hands of this unofficial body of activist-intellectuals. Before proceeding further to understand what the NAC had done with the mandate it is pertinent to know what the NAC is all about in the first place.

### **The National Advisory Council – NAC**

One of the first things that the UPA government did when it came to power at the Center in early 2004 was to constitute the National Advisory Council. It was constituted on 31 May 2004 by a Government Order with a mandate: ‘a) to monitor the progress of the implementation of the Common Minimum Program; b) to provide inputs for the formulation of policy by the Government and to provide support to the Government in legislative business.’

Smt. Sonia Gandhi became the Chairperson of the NAC with Cabinet Minister rank. As per the GO of the NAC the Prime Minister, in consultation with the Chairperson, would appoint the members. That means it is more like the fiefdom of Chairperson Sonia Gandhi. The term of the NAC after several extensions came to an end on 31 March 2008.

After the reelection of the UPA Government at the Center in 2009 the NAC also got reconstituted on 29 March 2010. Smt. Sonia Gandhi has again been nominated as the Chairperson with the rank of Union Cabinet Minister. Initially a 14-Member Council has been constituted on 31 May 2010 with the following Members:

1. Prof. M.S. Swaminathan, MP
2. Prof. Ram Dayal Munda, MP
3. Prof. Narendra Jadhav, Member, Planning Commission
4. Prof. Pramod Tandon, VC, North East Hill University, Shillong
5. Dr. Jean Dreze, GB Pant Social Sciences Institute, Allahabad
6. Ms. Aruna Roy, Mazdoor Kisan Shakti Sanghatan, Rajsamund, Rajasthan
7. Sri Madhav Gadgil, Agharkar Research Institute, Pune
8. Sri N.C. Saxena
9. Dr. A.K. Shiv Kumar, Advisor, UNICEF, New Delhi
10. Shri Deep Joshi
11. Ms. Anu Agha, Thermax Ltd, Pune
12. Ms. Farah Naqvi
13. Shri Harsh Mander
14. Ms. Mirai Chatterjee, Coordinator, SEWA, Ahmedabad

(All the Members, except Jean Dreze, continue in the Council to this day)

While some of the Members of the Council are reputed in their respective fields some seem to have gained entry due to their proximity to the Chairperson or rabid Minorityist and anti-Hindu moorings. At least people like Harsh Mander and Farah Naqvi don't enjoy any other reputation than their rabid anti-Hindutva credentials. Another Member Aruna Roy is a darling of the ultra-Left CPI (ML) in India.

What is interesting is that it is these two Members – Farah Naqvi and Harsh Mander – who were made the joint coordinators of the committee for redrafting the ill-fated Bill. In fact going through the line up of drafting and advising panels constituted for the purpose of redrafting the Bill would make it amply clear that the end product would be nothing but a disaster for the nation.

### **Drafting Committee**

- \* Gopal Subramaniam
- \* Maja Daruwala
- \* Najmi Waziri
- \* P.I. Jose
- \* Prasad Sirivella
- \* Teesta Setalvad
- \* Usha Ramanathan (upto 20 Feb 2011)
- \* Vrinda Grover (upto 20 Feb 2011)

### **Conveners of Drafting Committee**

- \* Farah Naqvi, Convener, NAC Working Group
- \* Harsh Mander, Member, NAC Working Group

### **Advisory Group Members**

1. Abusaleh Shariff
2. Asgar Ali Engineer
3. Gagan Sethi
4. H.S Phoolka
5. John Dayal
6. Justice Hosbet Suresh
7. Kamal Faruqui
8. Manzoor Alam
9. Maulana Niaz Farooqui
10. Ram Puniyani
11. Rooprekha Verma

12. Samar Singh
13. Saumya Uma
14. Shabnam Hashmi
15. Sister Mary Scaria
16. Sukhdeo Thorat
17. Syed Shahabuddin
18. Uma Chakravarty
19. Upendra Baxi

1. Aruna Roy, NAC Working Group Member
2. Professor Jadhav, NAC Working Group Member
3. Anu Aga, NAC Working Group Member

### **Joint Conveners of Advisory Group**

- \* Farah Naqvi, Convener, NAC Working Group
- \* Harsh Mander, Member, NAC Working Group

With people like Teesta Setlawad, Asgar Ali Engineer, John Dayal, Ram Punyani, Shabnam Hashmi and Syed Shahabuddin what else can we expect but a thoroughly communalist and anti-Hindu Bill? The draft Bill put up on the website of the NAC early this year horrendous to put it mildly. It is quintessential evil in the form of a Bill.

Nationwide hue and cry followed after the draft was made available for comments from the public. Recommendations poured in from various quarters but most of them were in the nature of admonitions. Sections of intelligentsia and political class have taken up cudgels against the draft. Several articles appeared in the media condemning the brazenness of the Members of the Draft Committee for coming out with such a blatantly communal draft. The Drafting Committee and NAC Members found it hard to defend themselves in the TV debates and media appearances except of course coming out as a bunch of rabid communalists.

Even the officialdom, which is invested with the responsibility of drafting such bills, was aghast at the draft. It is reliably learnt that some of the officials who were consulted by the Drafting Committee during the course of their work had strongly advised them against such a draft stating that no Government can pass bills discriminatory to one religion or the other.

After months-long debate the draft was modified and prepared for presentation to the Parliament. Final draft is now available on the NAC website. However the changes appear to be merely cosmetic and the core thrust of the Bill remains the same. The NAC seems determined to pursue its agenda.

Before discussing the contents of the Bill a very serious question needs to be raised with regard to the *locus standi* of the NAC. It is a committee appointed by the Prime Minister in consultation with the Chairperson, in this case Sonia Gandhi. Thus it lacks any consensus or democratic mandate. It claims to represent Civil Society but there is no definition to who constitute Civil Society. Effectively it is an NGO of a bunch of Sonia-loyalists and activist-pseudo-intellectuals (with some honourable exceptions). In a democratic system of governance it is the duty of the Parliament to promulgate laws and there is a bureaucracy to help them in that job. If the drafting of such important bills can be outsourced to an NGO like the NAC why should we have the bureaucracy? Why should the Members of Parliament accept a draft prepared by an NGO for discussion on the floor of the House? If an NAC can be allowed to draft bills because it happens to be handpicked by an extra-constitutional authority called Sonia Gandhi can the same model be followed by present governments in states and future governments at the Center? What will happen to our democratic system then? To extend an open mandate to an extra-Constitutional entity is fraught with serious consequences to our democratic polity.

### **The Draft – Intentions and Agenda**

The draft that is available on the NAC website now is the modified version. Before getting into the modified version and its

implications we must first have a look at the intentions of those who are behind the draft. There is an ‘Explanatory Note’ on the draft prepared by the drafting committee outlining the rationale behind bringing such a law. This Explanatory Note speaks volumes about the mindset of the committee.

The most fundamental problem with this draft Bill is the premise on which it is based. Let me quote the very first paragraph of the explanatory note:

*“The Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011 is intended to enhance State accountability and correct discriminatory exercise of State powers in the context of identity-based violence, and to thus restore equal access to the law for Scheduled Castes, Scheduled Tribes, and religious and linguistic minorities. That such acts of violence occur repeatedly is a tragedy for a modern democracy. However, when they do, then it is the Constitutional right of every citizen, no matter how numerically weak or disadvantaged, to expect equal protection from an impartial and just State. Evidence from state records and several of Commissions of Enquiry has confirmed institutional bias and prejudicial functioning of the State administration, law enforcement and criminal justice machinery when a non- dominant group in the unit of a State, based either on language or religion, or a member of a Scheduled Caste or Scheduled Tribe, is attacked because of their identity in the unit of that State. This prevents such non-dominant groups from getting full and fair protection of the laws of the land or equal access to justice.”*

The basic premise is that: a) there is a non-dominant group in every State in the form of religious and linguistic minority which is always a victim of violence; b) the dominant majority in the State is always the perpetrator of violence; and c) the State administration is, as a rule, biased against the non-dominant group.

This premise in itself is flawed, so is the arithmetic of it. In many States if the religious and linguistic minorities and SC, ST communities are taken together they form the majority and the rest a minority. What is more important is to conclude that in all cases of communal and targeted violence dominant religious and linguistic group at the State level is always the perpetrator and the other the victims. Similarly the conclusion that the State machinery is invariably and always biased against the non-dominant groups gross misstatement of the sincerity and commitment of millions of people who form State administration in the country.

Not once, but repeatedly the explanatory note returns to this condescension and condemnation of the dominant groups and the State administration. And there is no ambiguity in this abnormal belief. In fact the drafting team brazenly declares that:

*“Existing laws of the land and the machinery of the State are found to work relatively impartially when targeted identity-based offences are committed against dominant groups in a State”.*

The implication is that they work with bias when it comes to non-dominant groups. In fact the note is explicit in stating that the Bill is ‘for non-dominant groups’ only.

This flawed premise is the real danger with this Bill. It leads to a number of anomalies and contradictions. For example a particular religious group can be a ‘non-dominant’ one at the State level but dominant in several districts. But the Bill is applied only on the basis of State level data. Similarly in a situation of violence between the SC & ST communities and religious minorities like the Muslims and Christians, as is often the case, which act will apply? It is the SC & ST Atrocities Act or the present Communal Violence Act? Also to argue that in a given violence if the dominant group is the victim then the IPC sections would apply whereas if a non-dominant group is the victim then the new Act will be applied is a weird logic. Normally in all these types of violence both the so-called dominant and non-dominant groups suffer.

One can safely conclude that the scriptwriters of this Bill are themselves blind with biases. All these premises are essentially wrong. In India communal violence happens mostly because of politico-communal reasons. In many instances it is the so-called minority group that triggers the trouble. We need laws that can prevent such violence irrespective of whoever perpetrates it. To argue that since the administration is always biased in favour of the dominant group we need acts that are biased in favour of the non-dominant group is imprudent and puerile.

### **The Draft and the Horror of it**

The final draft is available on the NAC website now ([nac.nic.in](http://nac.nic.in)). One is not sure if the same will be placed before the Parliament or not. This has become doubtful especially after the strong opposition it encountered from the Chief Ministers of various states. However a close scrutiny of the draft is essential to understand the serious implications of and threats from it for our national integration, social harmony and Constitutional Federalism.

As usual and with every other Act Art 1 of this Act too will apply to whole country except the State of Jammu and Kashmir. What is interesting to note is that J&K is one of the two states in India (excluding the North East and other tiny UTs) that has Hindus as a Minority – the ‘non-dominant group’ according to this Bill, Punjab being the other State where the Sikhs constitute the dominant group. In the rest of the entire country it is the Hindus who constitute ‘dominant group’ and by implication the perpetrators of communal violence, according to this Bill.

The mischief of the drafting committee primarily lies in the ‘Definitions’ part contained in Art.3 of the first chapter. Art.3 (C) defines Communal and Targeted Violence as under:

*“Communal and targeted violence” means and includes any act or series of acts, whether spontaneous or planned, resulting in injury or harm to the person and or property, knowingly directed*

against any person by virtue of his or her membership of any group.

All the mischief is centered round the word ‘Group’. Art 3 (E) defines what constitutes a ‘Group’.

*“Group” means a religious or linguistic minority, in any State in the Union of India, or Scheduled Castes and Scheduled Tribes within the meaning of clauses (24) and (25) of Article 366 of the Constitution of India;*

Having thus established that the individual member of the Minority community is always considered a part of that Minority group the Bill goes on to add several detrimental clauses subsequently. Art 3 (F) defines ‘Hostile environment against a group’ thus:

*“Hostile environment against a group” means an intimidating or coercive environment that is created when a person belonging to any group as defined under this Act, by virtue of his or her membership of that group, is subjected to any of the following acts:*

- (i) boycott of the trade or businesses of such person or making it otherwise difficult for him or her to earn a living; or,*
- (ii) publicly humiliate such person through exclusion from public services, including education, health and transportation or any act of indignity; or,*
- (iii) deprive or threaten to deprive such person of his or her fundamental rights; or,*
- (iv) force such person to leave his or her home or place of ordinary residence or (livelihood without his or her express consent; or,*
- (v) any other act, whether or not it amounts to an offence under this Act, that has the purpose or effect of creating an intimidating, hostile or offensive environment.”*

Note the Clause (v) - *‘Any other act, whether or not it amounts to an offence under this Act’*. The intention here seems to be to make anything and everything an offence, even if it doesn’t come under any definition of an offence. It is clear that the entire definition of ‘hostile environment’ is *malafide*.

Clause (k) defines who is a ‘victim’. Here the draft makers are very explicit.

*“victim” means any person belonging to a group as defined under this Act, who has suffered physical, mental, psychological or monetary harm or harm to his or her property as a result of the commission of any offence under this Act, and includes his or her relatives, legal guardian and legal heirs, wherever appropriate;*

‘Victim’ can only be belonging to a ‘group’ as defined under this Act. And the group as defined under this Act is the Minority – the ‘non-dominant group’. That means this act will consider only the Minority as the victims. And he or she will become a ‘victim’ if he or she ‘has suffered physical, mental, psychological or monetary harm...’ Now, physical harm is measurable; mental harm is difficult to gauge, but how on earth can anyone define ‘psychological harm’? The Bill doesn’t define it. Then how can the so-called ‘psychological harm’ be one of the reasons for victimhood?

With such utterly ridiculous clauses just imagine the kind of case scenarios that could emerge:

Scenario1: Two bicycles collide on a street. It is just an accident, which might lead to a small quarrel. If one of the cyclists happens to be a member of the Minority community he can invoke this Act by virtue of his being from the ‘non-dominant group’. He is not just another individual; he is always from a ‘non-dominant group’. We must remember that many communal clashes in our country begin with such frivolous incidents only.

Scenario 2: A person approaches some house for rent. The house owner refuses to give his house on rent for whatever reason.

This is a very common thing in our country. House owners have various considerations including vegetarianism etc. But in this particular case if the person asking for rent happens to be a person from the Minority community the house owner can refuse his offer only at his own peril. It can be interpreted as ‘public humiliation’ as defined in Art 3 (f) (ii); or ‘depriving of fundamental right’ as in Art 3 (f) (iii); or even Art 3 (f) (iv) or (v).

Scenario 3: If a teacher, as part of his lecture, makes some comments on, say, the 9/11 terrorist attack on the US, any student in the class belonging to a ‘non-dominant group’ may interpret it as causing ‘psychological harm’. Or if a Ramdev Baba or some other Swami says that India should have a Uniform Civil Code as per the Directive Principles of our Constitution, he might be dubbed as indulging in creating ‘hostile environment’ as any member of the ‘non-dominant group’ may stand up and say that he was hurt ‘mentally and psychologically’ by the comments of the Swami.

Eminent columnist and thinker Swapan Dasgupta has very rightly pointed out the absurdity of these definitions in one of his articles. He wrote in his column titled ‘NAC’s Bill would land Dikshit in jail’:

“Amid the annual madness over college admissions, Delhi is witnessing a sideshow in St Stephen’s College, which its Principal has described as a “national treasure”. It seems that Sandeep Dikshit, a Delhi MP and son of Chief Minister Sheila Dikshit, was dropped as the alumni representative on the college’s governing body. The college authorities say that Dikshit hadn’t attended a single meeting since 2009 and Dikshit has retorted that St Stephen’s has lost the plot and functions like a “communal institution.” In reply, Principal Valson Thampu has charged Dikshit of failing to distinguish between communalism and “minority rights.”

Despite the headline-grabbing potential of anything to do with St Stephen’s, this controversy is somewhat stale, and unless

someone says something rash, is certain to peter out in the coming week. However, my reason for invoking this minor skirmish is different.

If the Communal Violence Bill (CVB) as drafted by the National Advisory Council is passed by Parliament, it is entirely possible that the Congress MP for East Delhi could well be confronted with a non-bailable warrant on the charge of creating a “hostile” and “offensive environment” against a minority institution [clause 3 (f) (5)]. A member of a minority group could walk up to any Police Station and submit that Dikshit’s expression of disgust with St Stephen’s had contributed to his “mental” and “psychological” harm [clause 3 (j)]. He would claim that Dikshit’s outburst “could reasonably be construed to demonstrate an intention to promote or incite hatred” against the Christian minority [clause 8]. Since the proposed legislation stipulates that “Every Police Officer shall take action, to the best of his or her ability, to prevent the commission of all offences under this Act” [clause 18 (2)], the relevant *thana* will have to register a case under the new legislation.

Nor can the politician in Dikshit brush off the case as yet another occupational irritant whose handling is left to a lawyer and forgotten. The CVB is explicit that “unless otherwise specified, all offences under this Act shall be cognizable and non-bailable” [clause 58].”

Having thus established a victim, a crime and an alibi the draft Bill goes on to fix the perpetrators.

‘Knowledge is dangerous’ is a parody to the maxim ‘ignorance is bliss’. But the saying is literally true for the majority community in the context of this draft Bill. In any given incident the knowledge that the person with whom you are engaging is from the non-dominant (read Minority) group compounds your crime according to Art 4 of the draft Bill. That means the Majority community has to be doubly careful with known people from the Minority community since any conflict with them will immediately

construed as a wanton attack on the entire Minority community. The flip side is that a person from the Minority community can more easily fix a known person – a friend or a neighbor – in any crime using this Bill.

**Read the relevant Art 4 (a):**

*4. Knowledge.- A person is said to knowingly direct any act against a person belonging to a group by virtue of such person's membership of that group where:*

*(a) he or she means to engage in the conduct against a person he or she knows belongs to that group;*

Art 7 of the draft Bill defines 'sexual assault'. It is by far the most widely covered definition that is very much needed to protect women from becoming targets of sexual violence as part of communal violence. But again the problem is that this definition is applicable to the women belonging to Minority group and women of the Majority community can't benefit from it. Secondly, it also states that in a case of communal violence sex by consent also can be construed as a crime.

The relevant sentence is here:

*Provided that where sexual assault under sub-section (a) or (b) is committed as part of or in the course of organised communal and targeted violence, it shall not be necessary to prove that the said act was committed against the victim without their consent or against their will.*

Ideally such a protection should be available in all cases of violence against women in all situations. But one cannot forget cases like Jhabua Nuns Rape Case and Kandhamal Nun Rape Case where the nuns had used false cases of sexual assault to implicate and harass people of the Majority community. Under this present draft too such a possibility becomes much more convenient to make false allegations of sexual assault.

Art 13 & 14 are about the dereliction of duty by the public servants. Both the articles want to make the government officials and the personnel of the security forces accountable for communal violence. While Art 13 defines what constitutes ‘dereliction of duty’ Art 14 wants to punish the officers of the security agencies including the personnel of the Army in case of their failure to quell violence or prevent it. The language and idiom of the articles suggests that the drafting committee is convinced that as a general case they tend to behave in a biased manner.

Then comes another draconian article. Art 15 is about holding higher ups in the hierarchy of the organisations responsible vicariously for the acts of individual members. According to this article “breach of command responsibility” of the superiors is also an offence. What it means is that if a member of an organization is found to be the perpetrator of the so-called communal and targeted violence the higher ups in the organization, even if they are not directly involved in any action, will be held vicariously responsible.

Relevant article reads thus:

*(1) Whoever, being any non-state actor or superior or office-bearer of any association as defined under clause (b) of section 3 of this Act and other than those mentioned under section 14, in command, control or supervision of any association or assuming command vested in him or her or otherwise, fails to exercise control over subordinates under his or her command, control, supervision and as a result of such failure offences under this Act are committed by subordinates under his or her command, control or supervision, shall be guilty of offences committed by such subordinates under his or her command...*

Thus even the perpetrators and the accused have also been defined by these articles. They include actual perpetrators who will always be from the dominant – read Majority – group; government officials in the said jurisdiction for dereliction of duty; police, paramilitary and the armed forces personnel; and leaders of the

organisations whose members are accused to be the perpetrators. That means if an incident under this Act is reported then the accused wouldn't include just those who committed violence, but also those government officials and security personnel who are posted in the region as well. This is because the draft committee believes that a communal incident may happen not in spite of every precaution by the officials, as is the normal understanding but BECAUSE of the active connivance of them with the perpetrators. Reason, the learned drafting committee members explain, is that they all belong to the Majority community only.

### **Seven Wise Men**

This whole section of the draft Bill brings us to the crucial question. If the people of the Majority community are 'rioters', if their superiors in the hierarchy are *de facto* perpetrators, if the officials in the State Government are their collaborators and even the Police and Army are hand in glove with the perpetrators who is there to protect and save the Minority groups? Chapter IV of the draft Bill has the answer for this question.

Art 20 states that the Central Government shall constitute a National Authority for Communal Harmony, Justice and Reparations. This will be a 7-member body out of which 4 members should be from the 'group' meaning the Minority as per this Act. Thus it will be a committee of seven wise men, majority of whom will be from the Minority community.

These seven members will be selected by a Selection Committee comprising of:

- (i) The Prime Minister - Chairperson
- (ii) Leader of the Opposition in the House of the People - Member
- (iii) Leader of the Opposition in the Council of States - Member
- (iv) Minister in-charge of the Ministry of Home Affairs in the Government of India - Member

(v) Chairperson of the National Human Rights Commission - Member

Selection of the members of the National Authority will be by a process of simple majority in the Selection Committee. Once elected these seven members will be invested with all the powers for effective implementation of this Act. In other words the National Authority for Communal Harmony, Justice and Reparations will be a parallel power-center having its jurisdiction over the State Government machinery and also the Law & Order machinery.

Art 31 to 36 enumerate the powers of the Authority. This Of the Minority and For the Minority Authority has such sweeping powers that would breed envy in dictators like Saddam Hussain. Just see a sample of powers vested in this authority:

- Power to observe, monitor and review the performance of duties by public servants
- It can requisition any information from the Central and State Governments;
- While inquiring or investigating, it will have the powers of a Civil Court trying a suit under the Code of Civil Procedure
- It may enter any building or place where the National Authority has reason to believe that any document relating to the subject matter of the inquiry or investigation may be found, and may enter and seize any such document or take extracts or copies there from
- For the purpose of investigating into any matter pertaining to the inquiry it can summon and enforce the attendance of any person and examine him
- It may recommend to the concerned Government or authority the initiation of proceedings for prosecution of any public servant
- It shall be the duty of the Central government, the State Government and public servant at all levels, to take

appropriate action on all advisories and recommendations issued to them by the National Authority under clause (c) of section 29 and submit an Action Taken Report within thirty days.

To put it simply the Seven Wise Men have powers to investigate, summon, interrogate, raid, seize and recommend punitive action. They are the Super Government. Even the State and Central Governments SHALL act on their advisories within a stipulated period.

Recall the debates on Acts like TADA and POTA. There were no special authorities constituted with wise men to implement those Acts. They were given to the respective governments to use in controlling terrorism in the country. Those Acts too had similar powers only, like the power to raid, seize, summon and prosecute terrorists. Unlike in the present Act there was no such distinction in those Acts on religious grounds. In fact TADA and POTA were used against all communities. Yet the very same pseudo-intellectuals ran a relentless campaign against these Acts accusing them of being anti-Minority. Today they want very same powers to an extra-Constitutional authority of seven people to prosecute the Majority community. It shows the diabolical nature of the whole exercise.

### **Seven Wise Men in States Too**

Section V of the draft Bill is about Constitution of State Authorities for Communal Harmony, Justice and Reparation. These will be the next tier of super governments again manned by seven wise men picked up along the same lines of the National Authority. In addition to performing all the functions on the lines of the National Authority and assisting it matters required the State Authority will have an additional power to appoint individuals or non-governmental organisations as ‘Defenders of Human Rights’ under Art 54 of the draft Bill. These Defenders of Human Rights – their number may be decided by the Authority – will assist the State Authority in discharging its duties or executing its authority.

Through all this the draft committee seems to have attempted to also ensure bread and butter for its flock.

## **Guilty until Proved Otherwise**

Chapter VI deals with Investigation, Prosecution and Trial. Under this draft Bill dictum of natural justice that one is ‘innocent until proved guilty’ has been turned upside down. Under the provisions of this draft Bill every accused is deemed to be guilty ‘until proved otherwise’. And the onus of proving otherwise rests on the accused, not the accuser.

### **Art 56 makes it clear:**

*“All offences specified under this Act, shall be cognizable and non-bailable”.*

Art 57 and 58 are designed in such a way that no SHO can work independently if a complaint comes under this Act from a member of the Minority group. He is duty bound under art 57 not only to register the complaint fully but also to supply a copy in true translation in the language that the victim is familiar with. Art 58 confers powers on the victim to approach the officer of the rank of SP in case he is not satisfied with the SHO. And the SP is then duty bound to depute an officer of DSP rank to investigate the complaint bypassing the SHO. Can any police system function if such clauses are imposed?

## **Presumption is Evidence**

Art 70, 71 and 72 deal with the question of evidence. In fact all the three articles conclude that there is no need for any material evidence to be produced by the complainant. Upon receiving a complaint it is “presumed” that the crime is committed “unless the contrary is proved”. That means a person from the Minority group may accuse one from the Majority community of committing a crime against him by virtue of his being a member of a ‘Group’ without producing any material evidence. The onus of proving to the contrary rests on the accused.

## **See what Art 71 says:**

*Inference from nature and circumstances of the act.- Where any question arises whether an offence committed against a member of a group was committed against him or her by virtue of his or her membership of a group, it shall be inferred that it was so directed from the nature and circumstances of the act.*

## **And Art 72:**

*Presumptions as to offences under this Act.- (1) If in a prosecution for any offence committed under this Act, it is shown that the accused committed or abetted or conspired to commit the offence of hate propaganda under section 8, it shall be presumed, unless the contrary is proved, that the offence committed was knowingly directed against a person by virtue of his or her membership of a group.*

## **The Trial**

There will be Designated Judges by the State Governments who will conduct the trial under this Act. These judges too have been accorded vast powers including confiscation of the property of the accused under Art 80. It is a very clever and malicious clause, as it would render the houses of individuals, the offices of the organisations and even Mutts and Ashrams of the saints can be taken over under the pretext of some complaint. Art 81 goes one step further and states that upon conviction the property of the accused will be sold by the Authority and the proceeds of the sale will be used in running relief camps or providing succor to the victims of the Minority group.

The draft Bill, while denying even natural justice to the accused extends an olive branch to the purported victim or the accuser. He or she is endowed with lots of rights and good amount of protection and safeguards. Similarly the victims have been provided eminently good reparations. Punishments for crimes committed under this Act range from two to five years of

imprisonment to officials for dereliction of duty to life sentence for the accused and the superiors in the command hierarchy.

### **Scheming behind Inclusion of SC & ST**

The last article of the draft Bill Art 135 states that:

*The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.*

This clause acquires importance in the context of the SC & ST Atrocities (Prevention) Act 1989. This Act is a strong safeguard of the interests of the Scheduled Castes and the Scheduled Tribes of India. Through that Act the nation has taken a solemn vow to put and end to all forms of discrimination, oppression, violence and injustice against the SCs and STs. The nation is also committed to protecting the Bill from any kind of poaching by interested parties.

The present draft Bill, while including the SCs and the STs also in its purview, makes a point to say in the last Article that the old Act remains intact for the SCs and the STs. One question arises though. When such a stringent law is available for the SCs and STs to protect their interests why then should they be included in this new Bill? The only credible answer seems to be that it is a conspiracy to wean away these sections from the rest of the Hindu society. There has all along been a campaign to project the Scheduled Castes and Scheduled Tribes as victims of Upper Caste Hindu oppression and to co-opt them into the league of the minorities. This campaign is the handiwork of certain Christian Missionary groups. The ultimate objective is not the amelioration of the hardships of those communities but to convert the SC and ST population to Christianity and thus weaken Hinduism.

It is misleading to propagate that the new draft Bill on communal violence will be, in the context of the SCs and STs, in addition to the existing Act of 1989. The simple reason is that in any situation of social violence against the SCs or the STs the 1989 Act acts as a better safeguard for them, in a situation of communal violence nobody knows how this new Bill is going to help them.

“ *The present draft Bill, while including the SCs and the STs also in its purview, makes a point to say in the last Article that the old Act remains intact for the SCs and the STs. One question arises though. When such a stringent law is available for the SCs and STs to protect their interests why then should they be included in this new Bill? The only credible answer seems to be that it is a conspiracy to wean away these sections from the rest of the Hindu society.* ”

In fact in many communal clashes in India the history shows that the SCs and STs are on the opposite side of the Muslims and Christians. Take the case of the latest violence in Kandhamal. It was essentially between the Christian Panas and the Kandh tribals. In such a situation the new Bill will help the Christian Panas as against the Kandh tribals. Already even without such blatantly partisan laws available the Missionary machinery has been able to harass thousands and thousands of innocent Kandh tribals through false cases and international propaganda. Imagine a situation where they are also equipped with an Act of this kind!

This Bill is certainly not in the interest of the SCs and the STs.

## Overtly Communal and Patently Illegal Bill

The Bill clearly discriminates between the Majority and Minority groups. The drafters and their apologists give lame logic and excuses that the Bill is exclusively for the Minorities just as the Domestic Violence Bill is exclusively for wives only. The absurdity of such arguments needs no special explanation. Our Constitution and laws don't permit such blatant discrimination in making laws. In fact while the question of making laws on communal grounds was settled long ago during the debates in the Constituent Assembly itself the Courts in the country too have affirmed the legal position in such matters very clearly.

In a landmark judgment in 1960 in a case between the Government of Rajasthan and one Thakur Pratap Singh the Supreme Court had categorically stated that no Government could make laws that exclude certain groups based on religious and communal identity. This case arose for consideration the constitutional validity of one paragraph of a notification issued by the State of Rajasthan under s. 15 of the Police Act, 1861 (V of 1861), under which “the Harijan” and “Muslim” inhabitants of the villages, in which an additional police force was stationed, were exempted from the obligation to bear any portion of the cost of that force.

The inhabitants of certain villages in the district of Jhunjhunu in the State of Rajasthan, harboured dacoits and receivers of stolen property besides creating trouble between landlords and tenants as a result of which there were serious riots in the locality in the course of which some persons lost their lives. The State Government therefore took action under s. 15 of the Police Act. This

Section authorized the State Government to deploy additional Police force in the said villages. It also authorized the Government to impose a levy on the villagers of those villages to recover the costs of deploying the extra force. While issuing this order the Raj Pramukh (Governor) had exempted Muslims and Harijans of those villages from the burden of the levy. Challenging this exemption a case had been filed which finally reached the Supreme Court in 1960.

While disposing off the matter the learned Judges of the Supreme Court had opined that the Government Order exempting any community or religious group is flawed. Their observation was as below:

“ Now this is a very strange argument that only persons of a certain community or caste were law-abiding citizens, while the members of other communities were not. Disturbing elements may be found among members of any community or religion just as much as there may be saner elements among members of that community or religion.” The view here expressed by the learned Judges is, in our opinion, correct. Even if it be that the bulk of the members of the communities exempted or even all of them were law-abiding, it was not contended on behalf of the State that there were no peaceful and law-abiding persons in these 24 villages belonging to the other communities on whom the punitive levy had been directed to be made. In para 5(f) of the petition filed before the High Court the respondent had averred: “ That the aforesaid Notification is ultra vires of the Constitution of India as it discriminates amongst the Citizens of a village on the basis of religion, race or caste, in as much as it makes a distinction between persons professing the Mohammadan religion and others and also between persons who are Muslims and Harijans by caste and the rest. It, therefore, contravenes the provisions of Article 15 of the Constitution of India.” The answer to this by the State was in these terms: “ The Harijan and Muslim inhabitants of these villages have been exempted from liability to bear any portion of the cost of the additional force not because of their religion, race or caste but

because they were found to be peace-loving and law-abiding citizens, in the 24 villages additional force has been posted.” It would be seen that it is not the case of the State, even at the stage of the petition before the High Court that there were no persons belonging to the other communities who were peace-loving and law-abiding, though it might very well be, that according to the State, a great majority of these other communities were inclined the other way. If so, it follows that the notification has discriminated against the law-abiding members of the other communities and in favour of the Muslim and Harijan communities, (assuming that every one of them was “peace-loving and law-abiding”) on the basis only of “ caste “ or “religion “. If there were other grounds they ought to have been stated in the notification. It is plain that the notification is directly contrary to the terms of Art. 15(1) and that para 4 of the notification has incurred condemnation as violating a specific constitutional prohibition. In our opinion, the learned Judges of the High Court were clearly right in striking down this paragraph of the notification.



The appeal fails and is dismissed.”

This judgment of the Supreme Court clearly makes it *ultra vires* to make punitive laws in favour of or against any particular religious group. Thus this draft Bill is against the law and hence not qualified to be placed before the Parliament.

### **Danger to Democracy and Federalism**

We cherish our hard earned democracy. We have interlinked yet independent institutions like the legislature, executive and judiciary to run this system. We have representatives elected through a process of popular mandate and officialdom selected through a stringent examination of skill and merit. This institution of democratic governance is sought to be hijacked and bypassed by some elite through such Bills. These elites have no mandate of the people, hence they are not accountable to people like the elected representatives. Yet they want all the powers accrued to them to rule the country by proxy. They lack any locus standi in the eyes of the people. Yet they seek to use their proximity to the powers-that-be to enjoy benefits that they don't deserve. With a pliable Government in office these elites in glass houses use such Bills to build careers and earn their daily bread and butter. In the process they undermine our democratic institutions. In fact they destroy the faith of the people in institutionalized governance thus paving way for anarchy and rise of nihilist forces like the Maoists.

We have to decide whether the country should be run by representatives and officials who are elected or selected through a constitutionally sanctioned process or 'Seven Wise men' who drop down from nowhere to control the entire governance. What is their eligibility? See what Art 22 of the draft Bill states as the qualifications:

22. *Qualifications.- (1) The Chairperson, Vice-Chairperson and Members of the National Authority shall have the following qualifications and shall be chosen from amongst persons:*

(a) *having expertise in relation to law or criminal justice or human rights or sociology or any other related social science;*

- (b) *having a record of promoting communal harmony;*
- (c) *being of high moral character, impartiality and integrity; and,*
- (d) *who have not been members of any political party for a period of one year prior to their ( selection.*

They don't need to have ANY formal qualification; mere expertise – how can one measure it? – in 'relation' to law OR criminal justice OR human rights OR sociology OR ANY OTHER RELATED SOCIAL Science? Only OR, not even an AND. All other qualifications are also similarly vague. And our entire bureaucracy, police and political class have to work subservient to these worthies. That is what this Bill purports: from Democracy to 'Elitocracy'.

Our Constitution envisages a predominantly Federal System of Governance for the country. In the Federal system State Governments enjoy certain exclusive powers. That includes law and order responsibilities also. Maintenance of law and order is a State Subject. There has been a sinister and sustained effort by the present Government to undermine this Federal obligation decreed by the Constitution. First it created a National Investigation Authority – the NIA - which usurped the powers of the State Police. Now they want to bring in a National Authority for Communal Harmony to hijack the powers of the entire law and order machinery.

In the National Integration Council meeting held in September 2011 the Chief Ministers of various states have raised serious objections over the proposed legislation expressing their concern over the violation of the Federal principle. These Chief Ministers are from various political parties culled from diverse ideological backgrounds. Ms. Jayalalitha had written to all the Chief Ministers in the country and all the Members of Parliament to asking them to oppose this Bill. Ms. Mamata Bannerjee, Ku. Mayawati, Sri Nitish Kumar, Sri Naveen Patnaik and many others took strong exception to this Bill.

The drafting committee gives vague assurances on the question of violation of the Federal principle. This is what the Explanatory Note by the drafting committee says:

*The Federal Principle: This Bill takes care not to violate in any way the federal nature of our polity. The advisories and recommendations of the National Authority for Communal Harmony, Justice and Reparation are not binding on State Governments. Law and order remains entirely with the State Government. All powers and duties of investigation, prosecution, and trial remain with the State Governments.*

However any cursory reading of the Bill makes it clear that it is a blatant transgression of the Federal powers. A National Authority, a State Authority, Designated Judges, an Assessment Authority, Human Rights Defenders, powers to investigate, raid, seize, summon ... it is just a parallel super-government. Using Art 13 it can order the arrest of Collectors, District Magistrates, Government Secretaries or any officials. In the name of Dereliction of Duty it can act against the police officials. Using Art 14 it can even recommend action against a Brigadier or a Colonel.

Although it does say that the action has to be taken by the State Government only Art 74 categorically says that no sanction is needed from the State Government to prosecute public servants.

*The provision of section 196 and 197 of the Code of Criminal Procedure, 1973 shall not apply to offences by public servants under Schedule III and the Designated Judge may take cognizance of such offence when satisfied that the said offence has been committed.*

Even if sanction is sought under special circumstances, Art 75 states clearly that the State Government must respond in 30 days time failing which the Designated Judge is authorized to act unilaterally. The State Government can't say no to the sanction easily. According to the said Article:

*(2) For the purposes of sub-section (1), sanction shall not be refused, except with reasons to be recorded in writing.*

It is clear that this Bill is an easy excuse for the Central Government to harass the State Governments. This makes this Bill extremely dangerous for our Federal polity.

### **Return of Jinnahism**

For a full 19 days Mahatma Gandhi had walked up the steps of Jinnah's residence in 1946 with the sole objective of persuading him to give up his demand for the partition of India into Hindu and Muslim states. Jinnah refused to budge even an inch. He was not even ready to accept the olive branch extended by Gandhiji that he could take over the reins of power from the British and become the first ruler of Independent India.

For Jinnah all this placation and mollification appeared mischievous. "Independent India will be Hindu India", he declared and insisted that once the British had left the Muslims would become second-class citizens under the Hindu majority. That is why he insisted that the British should grant his demand for a separate Pakistan for Muslims before they leave the shores of India. When Gandhiji gave a call to the British to 'Quit India', Jinnah countered with his call 'Divide and Quit'.

The country thought that the perversion of the Majority-Minority debate had ended when the country was divided. But it has been proved wrong time and again. The present draft Bill is a standing proof that Jinnahism – the belief that the Minority is perpetually oppressed in India by the Majority – is still alive and kicking. Jawaharlal Nehru used to say: "Those who forget history are condemned to repeat it". We have not learnt any lessons from history. And we continue to commit blunders. This draft Bill, if passed into becoming an Act, would be another big blunder we would be committing.

Communal harmony is paramount in any country that has multiple religions and communities. We must strive hard to train and educate people in harmonious cohabitation. Where it is necessary we may introduce some laws and regulations also. But all that should promote harmony. The present Bill, unfortunately,

will only promote disharmony. With these kind of laws the LeTs and HuJIs across the border need not have to promote terrorism in our territory anymore. All that they need to do is to encourage a minor communal riot and they can achieve what they want – huge rift between the Majority and Minority communities.

This Bill doesn't deserve to be placed before the Parliament. It should be withdrawn by the NAC forthwith.

