

# THE PREVENTION OF COMMUNAL AND TARGETED VIOLENCE (ACCESS TO JUSTICE AND REPARATIONS) BILL, 2011: A CRITICAL ANALYSIS

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## I. INTRODUCTION

The major instances of the communal violence were first and second world war, sikh riots, Babri mosque demolition. In India as well as in other countries some basic rights are given to the human being through various statutes. Universal Declaration of Human Rights, part third of the Constitution, Protection of Human Rights Act, have been adopted by for the protection of the human rights. The objects of all these laws are to save humanitarian value in the society but the violence does not respect any humanitarian approach. During violence life, liberty, dignity, freedom, equality, is the words suitable to speak in seminar only. Here we can say that violence is the better mean to be uncivilized. Any act which violates the basic human rights can be termed as violence and anti humanitarian. The main object of Communal Violence is to show one superior to state, Constitution and other community. During these violence numbers of people effected who has no business with such violence for example mazdur, rickshaw puller, hawker, their aim is to find two time food but the violence compelled them to die. Curfew freeze street highways, train, school, hospital, food, water, internet, which resulted in violation of right to life granted under Art. 21. Parts third of the Constitution of India gives us some basic fundamental rights so that we can develop our personality but when a group of person attack on another without any lawful justification it can be termed as violation of fundamental rights. It is an anti humanitarian act. "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, which destroys the secular fabric of the nation"<sup>1</sup>. The Act also define the "group" as 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<sup>2</sup>.

## II. NATIONAL AUTHORITY FOR COMMUNAL HARMONY, JUSTICE AND REPARATION

The Central Government shall constitute a body known as National Authority for Communal Harmony, Justice and Reparation; The National Authority shall consist of a Chairperson, a Vice-Chairperson and five other Members appointed by the President on recommendations of a Selection

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<sup>1</sup> Sec. 2(c), of the Prevention of Communal And Targeted Violence (Access To Justice And Reparations) Bill, 2011.

<sup>2</sup> Sec. 2(c), of the Prevention of Communal And Targeted Violence (Access To Justice And Reparations) Bill, 2011.

Committee consisting of: (i) The Prime Minister - Chairperson (ii) Leader of the Opposition in the House of the People - Member (iii) Minister in-charge of the Ministry of Home Affairs in the Government of India - Member (iv) Leader of each recognized national Political Party in the House of People – Members. A person is qualified to be appointment as Chairperson, a Vice-Chairperson if (a) having expertise in relation to law or criminal justice or human rights; (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<sup>3</sup>.

### **III.PUNISHMENT UNDER THE BILL**

Punishment for sexual assault.- Whoever commits an act of sexual assault, shall be punishable(a) where the act is contained in sub-clause (i) of clause (a) of section 6 and clause (i) of clause (b) of section 7, with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine. (b) where the act is contained in section sub-clause (ii) of clause (a) of section 7, with rigorous imprisonment for a term which shall not be less than twelve years but which may be for life and shall also be liable to fine. (c) where the act is contained in sub-clause (iii) of clause (a) of section 7, rigorous imprisonment for a term a term which shall not be less than fourteen years but which may be for life and shall also be liable to fine. (d) where the act is contained in sub-clauses (ii) to (vi) of clause (b) of section 7, rigorous imprisonment for a term which shall not be less than seven years but which may extent to ten years and shall also be liable to fine.

Punishment for hate propaganda - The offence of hate propaganda shall be punishable with imprisonment which may extend to three years or fine or both. Punishment for organized targeted violence.- Whoever commits organized targeted violence shall be punished with rigorous imprisonment for life, and shall also be liable to fine.

Punishment for aiding financially, materially or in kind the commission of offence under this Act.- Whoever is guilty of the offence under section 10 shall be punished with imprisonment for a term, which may extend to three years, and shall also be liable to fine. Punishment for offences under Schedule II.- When offences under Schedule II are committed, they shall be punishable with penalty provided in the Indian Penal Code, 1860 or under this Act, whichever is higher. Punishment for torture.- Whoever commits torture shall be punishable with rigorous imprisonment for a term which shall not be less than seven years but which may be for life and shall also be liable to fine. Punishment for dereliction of duty.- Whoever being a public servant is guilty of dereliction of duty shall be punished with imprisonment for two years which may extend to five years and shall be liable to fine. Punishment for offences by public servants for breach of command responsibility.- Whoever is guilty of an offence under section 14 shall be punishable with rigorous imprisonment for life, when such failure relates to organized targeted violence and in any other case with imprisonment for a term of ten years and fine.

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<sup>3</sup> Sec. 21,22,23, of the Prevention Of Communal And Targeted Violence (Access To Justice And Reparations) Bill, 2011.

Punishment for offences by other superiors for breach of command responsibility.- Whoever is guilty of an offence under section 15 shall be punishable with rigorous imprisonment for life, when such failure relates to organized targeted violence and in any other case with imprisonment for a term of ten years and fine. Punishment for attempt.- Whoever attempts to commit any offence punishable under this Act or causes such attempt to be committed and in such attempt does any act towards the commission of the offence shall be punishable with the punishment provided for the offence. Punishment for abetment- whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence. Punishment for preparation.- If any person makes preparation to do or omits to do anything which constitutes an offence punishable under this Act and from the circumstances of the case it may be reasonably inferred that he or she was determined to carry out his or her intention to commit the offence but had been prevented by circumstances independent of his or her will, he or she shall be punishable with rigorous imprisonment for a term which shall not be less than one-half of the minimum term (if any), but which may extend to one-half of the maximum term of imprisonment with which he or she would have been punishable in the event of his or her having committed such offence, and also with fine which shall not be less than one-half of the minimum amount (if any), of fine with which he or she would have been punishable, but which may extend to one-half of the maximum amount of fine with which he or she would have ordinarily (that is to say in the absence of special reasons) been punishable, in the event aforesaid: Provided that the court may, for reasons to be recorded in the judgment, impose a higher fine<sup>4</sup>.

### **Shortcoming of the Bill**

- The definition of Communal violence includes the violence based only religious and linguistic it does not talk about race, color, caste.
- The punishment for dereliction of duty is merely two years; it should be not less than five years but which may extent to ten years.

## **IV.CONCLUSION**

Recently in Gujrat, Haryana, the views, thoughts, will, pain, anger, has been expressed through mischief, robbery, dacoit, murder, rape, etc. God gives us mouth to speak Art. 19(1)(a) recognize right to speak as fundamental right but violence overruled the value attached to the right. We must avoid weapons as means of self expression until Constitutional machinery are existed. Dr. Ambedkar said that we must hold fast to the Constitutional methods of achieving our social and economical objects. It means that we must abandon the methods of civil disobedience, non cooperation, satyagraha. When there was no left for Constitutional methods of Achieving economics and social objectives, there was some justification for the unconstitutional methods. These methods are nothing but grammar of anarchy and soon they are abandoned better for us. Thus chief architecture of the constitution told us that soon we abandon violence better for us. It means maintenance of law, order and respecting the rights of other is the better way of civilization. Maintenance of law and order is the final way of civilization.

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<sup>4</sup> Sec. 114-122, of the Prevention Of Communal And Targeted Violence (Access To Justice And Reparations) Bill, 2011.