

# Legislative Brief

## Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005

### Highlights of the Bill

Bill introduced in the Rajya Sabha on Dec 5, 2005

Standing Committee Report due by first week of monsoon session, 2006

- ◆ The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 provides for (a) prevention and control of communal violence, (b) speedy investigation and trials, and (c) rehabilitation of victims.
- ◆ The state government can declare an area as communally disturbed under certain conditions. The district magistrate or the competent authority appointed by the state government can take measures such as regulating assembly, directing persons to deposit their arms, searching premises etc. to control communal violence.
- ◆ The Bill provides double the punishment as provided by other existing laws. The state government shall establish special courts to try offences under this law. These courts may direct convicted persons to pay compensation to victims or dependents.
- ◆ Communal Disturbance Relief and Rehabilitation Councils will be formed at the national, state and district levels.
- ◆ The district council shall pay at least 20 percent of total compensation as immediate compensation to victims.

### Key Issues and Analysis

- ◆ The Bill makes it lawful for the state government to take all measures necessary to control the situation. These could include measures that are currently illegal.
- ◆ Most of the provisions pertaining to prevention and control of communal violence are already covered under existing laws. The draft law may prove ineffective if the executive dithers from taking prompt action to control communal violence.
- ◆ Given the requirement of prior sanction of the state government to take cognizance of an offence by a public servant and the absence of a chain of command responsibility, any prosecution is unlikely.
- ◆ The competent authorities appointed by the state government and the district magistrates have been given the same powers. This could lead to dual authority within an area.
- ◆ The Bill lays down the procedure for payment of immediate compensation but does not discuss when and by whom the remaining compensation will be paid.

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March 29, 2006

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February 17, 2006

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## PART A: HIGHLIGHTS OF THE BILL<sup>1</sup>

### Context

India has witnessed several large-scale communal riots in recent years such as those in Gujarat (2002), Mumbai (1992-93), and Delhi (1984). In addition, there are reports of frequent clashes between caste and linguistic groups. The Common Minimum Programme of the UPA government highlighted the need for a comprehensive law to deal with communal violence. The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 seeks to empower the government to prevent and control communal violence, provide for speedy investigation and trial of offences and rehabilitate victims of such violence.

### Key Features

#### Prevention and Control of Communal Violence

- The Bill defines communal violence as any offence specified in the schedule.\* The state government can notify an area as 'communally disturbed' if a scheduled offence is committed against any group, caste or community, which results in death or destruction of property, creates enmity between groups and poses a threat to security. Such notification is valid for a maximum of 30 days, but can be extended.
- Measures to prevent and control violence shall be enforced by the District Magistrate, and other officers of the state government appointed as "competent authorities".
- The competent authority can direct persons in the area to deposit their arms, ammunition, explosives and corrosive substances (even if they hold a license). When such directions are issued, the local police officer can search any house or premises for such items.
- The competent authority can regulate assembly and movement of persons, and prohibit acts which could disturb peace, such as carrying of arms, knives etc., usage of loudspeakers and burning of effigies.

#### Investigation and Punishment of Offences under the Act

- Offences shall be investigated by an officer who is at least the rank of a sub inspector. Women police officers shall be provided to record information on offences committed against women and children.
- A review committee constituted by the state government will investigate cases where a charge sheet has not been filed within three months of registering an FIR and may review cases where the trial ends in acquittal. The state government can constitute special investigation teams to investigate offences if these offences were not investigated in a fair and impartial manner.
- The state government shall establish Special Courts for the trial of scheduled offences. The Bill also provides for the establishment of Additional Special Courts outside the state if the state government feels that the trial within the state is not likely to be fair and impartial, it is in the interest of justice, or it is required for the safety of the accused, witnesses, public prosecutor or the Judge. Judges will be appointed by the state government in concurrence with the Chief Justice of the High Court.
- The Special Court can conduct proceedings at a protected place, avoid mentioning the identity of the witness in its orders and judgments and issue directions to protect the identity of the witness if it considers it necessary or on the basis of an application by the witness or public prosecutor.
- The Special Court can order the removal of a person likely to commit a scheduled violence from the communally disturbed area. Any person not in compliance with such orders can be taken into custody.
- The Supreme Court may transfer cases from one Special Court to another.
- The punishment provided in the Bill is double that provided under other Acts for the same offence. Any convicted person cannot hold public office for six years from the date of conviction.
- A public servant is liable to be punished with a fine and/ or imprisonment upto a year if he acts in bad faith such that he causes death or destruction of property or if he fails to exercise his authority to prevent communal violence or maintain essential supplies to the community. The prior sanction of the state government is required to prosecute a public servant.

#### Relief and Rehabilitation

- Communal Disturbance Relief and Rehabilitation Councils will be formed at the national, state and district levels. These national and state level councils will make recommendations and issue guidelines on relief, rehabilitation and compensation to victims. The district council will assess compensation to victims, set up relief camps and prepare plans for prevention of communal violence.

\* Specific sections under the (a) Indian Penal Code (b) Arms Act, 1959 (c) Explosives Act, 1884 (d) Prevention of Damages to Public Property Act, 1884 (e) Places of Worship (Special Provisions) Act, 1991 (f) Religious Institutions (Prevention of Misuse Act, 1988 have been listed in the schedule of the Bill.

- A Communal Disturbance Relief and Rehabilitation Fund will be constituted in every state and a Victims Assistance Fund will be established in each district. Every state government shall notify a scheme to provide immediate compensation to victims or dependants.
- The Special Court may direct a convicted person to pay compensation to victims or dependants.
- There can be no discrimination on grounds of sex, caste or community while providing compensation.

#### **Powers of the Central Government**

- The central government can draw the attention of a state government to communal violence occurring in the state and direct it to take necessary action within a specified time. If such directions are not followed, the central government can notify any area in the state to be communally disturbed.
- The central government can deploy armed forces to control communal violence in a state but only on the request of the state government.

## **PART B: KEY ISSUES AND ANALYSIS**

While the provisions for prevention and control of violence under this Bill just reaffirm provisions of other Acts, the Bill breaks new ground in establishing a framework for compensation and rehabilitation of victims.

### **Declaration of an area as ‘communally disturbed’**

The state government may declare an area as communally disturbed if scheduled offences are committed such that three conditions are satisfied: (a) violence is committed against a group, caste or community resulting in death or destruction of property, (b) the violence is committed with the intention of creating ill will and enmity between groups, castes and communities and (c) unless immediate action is taken, there is a threat to the secular fabric, unity or internal security of the country. According to the Bill, all three conditions have to be satisfied before an area may be declared as ‘communally disturbed’. Communal crimes may be committed with just one or two of these conditions being met but this draft law cannot be invoked in such cases. (e.g. A serious crime like rape may not result in death or destruction of property but may be committed against a particular caste, group or community to create ill will or enmity.)

### **Prevention and Control of Communal Violence**

The Bill makes it lawful for the state government to take all measures necessary to deal with the situation in a communally disturbed area. These could include measures that are illegal under the present legal system. This provision gives the government a wide range of powers and immunity for its actions without any corresponding accountability.

If the executive intends to prevent and control communal violence, the existing laws provide the means to the state machinery to do so. (For e.g. under section 144, the magistrate can issue directions to individuals or to the public to abstain from a certain act if he feels that such order will prevent danger to human life, riots etc. Under Section 129 of the Code of Criminal Procedure, a magistrate or an officer in charge of a police station can use civil forces to disperse an assembly of five or more persons if the assembly is likely to disturb public peace. Under Section 130, the magistrate can also direct the armed forces to disperse the assembly and make necessary arrests.) The Bill does not address the possible situation of the executive dithering from taking steps to control the riots.

“Law and Order” is on the state list of the Constitution of India and the central government cannot intervene on the subject. There may be a case for an independent commission to take cognizance of communal violence and supervise operations to tackle such violence. Article 51 (c), Article 253 and Article 355 of the Constitution<sup>2</sup> provide scope for the Parliament to legislate and vest such powers in an independent commission (for example, the National Human Rights Commission has been established by an Act of Parliament).

#### **Command Structure**

The state government may appoint competent authorities in a communally disturbed area. The district magistrate and the competent authorities have been provided with identical powers. This could result in a case of dual authority within an area.

If the armed forces are deployed, the central or the state government may constitute an authority called the Unified Command to coordinate and monitor the role of the forces. The Bill does not clarify the composition of Unified Command even though such a civilian authority will be issuing directions to the armed forces.

## Accountability of Public Servants

If a public servant acts in a mala fide manner and causes harm to any person or property or if he fails to exercise his authority to prevent communal violence or the disruption in maintenance of essential services to a community, he may be punished with imprisonment upto a year or a fine or both. However, the Bill does not bar him from holding public office.

The court requires the prior sanction of the state government to take cognizance of an offence committed by a public servant. Also, the Bill fails to assign a chain of command responsibility holding everyone from the local official to senior levels in the government responsible for failing to prevent or control communal violence. The provision providing for punishment of public servants might prove to be ineffective if there is no 'intent' on part of the state government to prevent and control communal violence.

## Witness Protection

The Bill has provisions for protecting the identity and address of the witnesses. However, it does not provide for physical protection of witnesses. The Supreme Court and the Law Commission have highlighted the need for both witness identity protection and witness protection programmes.<sup>3</sup>

## Relief and Rehabilitation

Guidelines on assessment of compensation to be paid by the government will be issued by the State Council while the District Councils will assess the actual compensation to be paid. The Bill provides for payment of immediate compensation by the District Council. The amount of immediate compensation will be at least twenty percent of full rate of compensation and will be paid after an inquiry completed within one month from the date of claim. The Bill however does not discuss who will pay the remaining compensation and does not provide a timeline within which it shall be paid.

### Notes

1. Bill introduced in the Rajya Sabha on Dec 5, 2005. Report of the Standing Committee on Home Affairs (chairperson: Ms. Sushma Swaraj) is due by the first week of the Monsoon Session, 2006 of the Parliament.
2. **Article 51 (c)** – The State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized peoples with one another. **Article 253** – Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. **Article 355** – It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.
3. Consultation Paper on Witness Identity and Witness Protection Programmes, Law Commission, Government of India, Aug 2004

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