

National Advisory Council

Communal Violence Bill Secretariat Summary

11 July 2010

The following is a summary of the discussions on the proposed Communal Violence Bill based on the deliberations of the Working Group (WG) on the subject, discussions with representatives of the Civil Society Groups and consultations with the Ministries of Home Affairs (MHA) and Law and Justice (MLJ).

The WG is meeting with representatives of the Civil Society again on 12 July 2010 to firm up their recommendations.

The discussion issues have ranged around the 80 Amendments to the Communal Violence Bill plus another set of 12 Amendments forwarded by the MLJ to MHA for final decision. Of these Amendments several are of a routine nature, the status of those which are more fundamental in character is indicated below.

Category I: Proposals of the anti-communal groups/NAC Working-group, which MHA has agreed fully or partially or likely to agree

- 1) Title of the Bill be 'Communal and Sectarian Violence Bill' rather than 'Communal Violence Bill'
- 2) Expansion of the definition of sexual assault
- 3) Punishment for public servant to be enhanced from 'one year or fine' to 'three years and fine'
- 4) Providing protection and special rights to victims and witnesses
- 5) Creating uniform and mandatory standards for rescue, relief, compensation, rehabilitation, resettlement, restitution and reparation in relation to Communal Violence incidents
- 6) Management of the aftermath of Communal Violence
Interim Relief, Reparation, Rehabilitation, Reconciliation between communities in the longer term.
- 7) On the issue of Accountability of Public Officials who are protected by the 'good faith' and 'prior sanction from government' clause and also because prosecution must prove 'malafide' and 'willful omission' of exercise of lawful authority, it is suggested that 'malafide' and 'willfully' in Draft Bill (Clause 17), 'good faith' in clause 57 and 'prior sanction for prosecution' in clause 17 (3) be deleted. MHA may be willing to look at removal of the term 'malafide' and 'willfully', however, on the question of 'prior sanction for prosecution' they are not agreed to removing it. They are, however, willing to fix a time period during which time Government

must (i) either accord sanction (ii) refuse sanction and record reasons for doing so (iii) if neither of (i) and (ii) are forthcoming then the sanction will be deemed to have been given.

Category II: Proposals of the anti-communal groups/ NAC Working-group, which MHA has not agreed.

- 1) Doing away with the framework of the Act which rests on declaration of a specified area as 'disturbed area', for the purpose of invoking the provisions of the Act. MHA feel that such a change alters the fundamental architecture of the Act and it is not possible to do so without going back to the 'drawing board'.
- 2) Setting up of National, State and District level Councils for dealing with the aftermath and their composition to be chaired by Judges. (MHA is not in favour of having Judicial officers chair the Councils)
- 3) Inclusion of Hate Speech as one of the offences under the Act, as provisions already exist under IPC which require prior sanction from government
- 4) Creation of a National Authority, a permanent, independent, statutory body at national level with binding powers to ensure prevention, prosecution, relief & reparation a body which is given the power under the law to assume full control over the 'internally disturbed area' or 'notified area' so declared.
- 5) Proposal for removal of prior sanction for prosecution of public servants who committed some commissions or omissions

Category III: Issues on which NAC Working group is trying to forge consensus among the anti-communal groups, on account of different views among the groups.

- 1) One group is proposing a National Authority and another group is proposing Communal Harmony, Justice, Reparation Commission (CHJRC). The salient features of these proposed entities are detailed below
 - (i) National Authority:
 - Declare an area as internally disturbed
 - Assume full control in matter of prevention & prosecution of crimes (including arrest and detain)
 - Local/District Administration, including police personnel to aid and assist as directed
 - All local investigation transferred to agency specified by Authority
 - Authority to organize relief camps
 - Authority to establish special courts and monitor trial
 - (ii) Communal Harmony, Justice, Reparation Commission (CHJRC):
 - Notify application of CV Act in any jurisdiction, and declare it protected area (instead of 'disturbed area') if State govt. has not done so already
 - All provisions of this Act come into force
 - Issue directions to State govt. and administration to take preventive measures, including calling in forces, if not done so already
 - Receive victims complaints - threats, intimidation, recommend action

- Receive and enquire into complaints of dereliction of duty by investigating and prosecuting agencies
- Monitor rescue, relief, compensation, rehabilitation, resettlement
- Be consulted in appointment of Special Public Prosecutors
- Monitor investigation and trials
- Promote action/activities that will foster unity and harmony, especially in known communally sensitive areas

Category IV: MHA or MLJ have proposed but anti-communal groups and WG of NAC have reservations.

- 1) Amendment proposed by MLJ: Shift burden of proof on accused for sexual assault and rape. Civil Society and WG of NAC have mixed responses to the issue and are yet to firm-up their recommendation.
- 2) The MHA amendments provide for 'death penalty' or 'life imprisonment' for rape. Civil Society and WG of NAC oppose these extreme measures
- 3) MHA has finalized an amendment to empower the Central Government to deploy central armed forces in a State without its consent, if it feels that the State government is not acting. (Clause 55). Civil Society and WG of NAC are opposed to this as they feel that the States will oppose such a provision and stall the Bill on these grounds.