



PARLIAMENT OF INDIA RAJYA SABHA

122

**DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON HOME AFFAIRS**

ONE HUNDRED AND TWENTY SECOND REPORT

ON

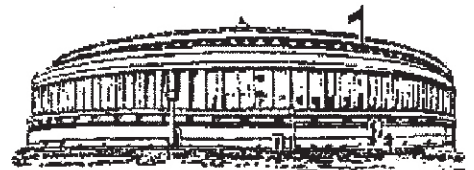
**THE COMMUNAL VIOLENCE (PREVENTION, CONTROL AND
REHABILITATION OF VICTIMS) BILL, 2005**

(PRESENTED TO RAJYA SABHA ON 13TH DECEMBER, 2006)

(LAID ON THE TABLE OF LOK SABHA ON 13TH DECEMBER, 2006)

**RAJYA SABHA SECRETARIAT
NEW DELHI**

DECEMBER, 2006/AGRAHAYANA, 1928 (SAKA)



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COMMITTEE ON HOME AFFAIRS
(Constituted on 5 August, 2005)

#1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri V. Narayanasamy
3. Shri Rishang Keishing
4. Shri R.K. Dhawan
5. Shri N. Jothi
- 6. Shri Janeshwar Mishra
7. Shri Satish Chandra Misra
- *8. Shri Sitaram Yechury
- **9. Shri Sanjay Raut
- \$10. Shri S. S. Ahluwalia

LOK SABHA

11. Shri L.K. Advani
12. Shri S.K. Bwiswmuthiary
13. Shri C.K. Chandrappan
14. Shri Biren Singh Engti
15. Shri Rahul Gandhi
16. Shri Tapir Gao
17. Shri T.K. Hamza
18. Shri Naveen Jindal
19. Shri Ajit Jogi
20. Prof. K.M. Kader Mohideen
21. Shri Tek Lal Mahato
22. Shri Sachin Pilot
23. Shri Ashok Kumar Pradhan
24. Prof. M. Ramadass
25. Shri G. Karunakara Reddy
26. Shri Bajju Ban Riyan
27. Dr. H.T. Sangliana
28. Choudhary Bijendra Singh
29. Shri Brij Bhushan Sharan Singh
30. Shri Braja Kishore Tripathy
31. Shri Beni Prasad Verma

Retired as Member of Rajya Sabha on 2nd April, 2006. Re-nominated as Member and re-appointed as Chairperson of the Committee *w.e.f.* 8th April, 2006 on her re-election to Rajya Sabha.

• Retired as Member of Rajya Sabha on 2nd April, 2006.

* Nominated *w.e.f.* 25th September, 2005 *vice* Shri A. Vijayaraghavan.

** Nominated *w.e.f.* 29th October, 2005.

\$ Ceased to be a Member of the Committee on retirement from the Rajya Sabha on 2nd April, 2006. Re-nominated to the Committee *w.e.f.* 8th May, 2006 on re-election to the Rajya Sabha.

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12. Dr. Rattan Singh Ajnala
13. Shri Ilyas Azmi
14. Km. Mamata Banerjee
15. Shrimati Sangeeta Kumari Singh Deo
16. Shri Biren Singh Engti
17. Shri Tapir Gao
18. Shri T.K. Hamza
19. Shri Raghunath Jha
20. Shri Naveen Jindal
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- *27. Shri M. Rajamohan Reddy
28. Shri Bajju Ban Riyan
29. Choudhary Bijendra Singh
30. Shri Brij Bhushan Sharan Singh
31. Shri Mohan Singh

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
Shri P.P.K. Ramacharyulu, Deputy Secretary
Shri Rohtas, Under Secretary
Shri Sanjeev Chandra, Committee Officer

* Nominated *w.e.f.* 10th October, 2006 *vice* Shri Rahul Gandhi who was nominated to Standing Committee on Human Resource Development.

PREFACE

I, the Chairperson of the Department-related Parliamentary Standing Committee on Home Affairs, having been authorized by the Committee to present the Report on its behalf, do hereby present this One Hundred and Twenty-second Report of the Committee on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005.*

2. The Chairman, Rajya Sabha referred,** the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 (**Annexure-I**), as introduced in the Rajya Sabha on 5th December, 2005 and pending therein, to the Committee for examination and report within three months from the date of reference.

3.0 The Committee considered the Bill in nineteen sittings. In the first meeting held on 9th January, 2006, the Committee heard the presentation of the Home Secretary on the Bill and held preliminary discussion thereon. The Home Secretary informed the Committee that the Ministry of Home Affairs had planned to hold one Central and five Regional Consultation Seminars at New Delhi, Mumbai, Kolkata, Lucknow, Bangalore and Chandigarh to get feed-back from the cross-section of society on the Bill. The Committee decided to wait for the outcome of the Seminars and directed the Home Secretary to apprise it of the suggestions and issues emerged therein.

3.1 However, after three Seminars held at New Delhi, Bangalore and Mumbai, the Home Secretary on 16th February, 2006 informed the Committee that the Ministry had decided not to hold Seminars at remaining places *i.e.*, Lucknow, Kolkata and Chandigarh in view of the Budget Session of Parliament and requested the Committee to proceed further with the consideration of the Bill. The Committee in its sitting held on 3rd March, 2006 considered the matter in the light of Home Secretary's letter and unanimously, with the consent of each Member present in that sitting, decided that in view of more pressing and urgent business *i.e.*, examination of Demands for Grants of the concerned Ministries in hand, it may seek extension of time for presentation of Report on the Bill from Hon'ble Chairman, Rajya Sabha till the last day of the first week of the 208th Session (Monsoon Session). On the authorisation of the Committee, I approached Hon'ble Chairman for grant of extension of time which was acceded to.

3.2 The Committee in its meetings held on 5th and the 6th June, 2006 considered the Bill further and felt that it was necessary to seek comments of State Governments and recognized Political Parties on the Bill, particularly Clause 55 thereof, which has a direct bearing on the federal structure of our polity and jurisdiction of States in the matter of "Public Order" and "Police". It also decided to hear legal/constitutional experts on the provisions of the Bill. As all these processes would take time and it might not be able to present the Report till the last day of the first week of the 208th Session, the Committee in its sitting held on 21st July, 2006 unanimously decided with the consent of each Member present, to seek further extension of time from the Hon'ble Chairman, Rajya Sabha till the last week of the 209th Session (Winter Session). As authorised by the Committee, I approached Hon'ble Chairman to grant further extension to it which was kindly granted by him.

3.3 Six sittings of the Committee were exclusively devoted to in-house discussions on the Bill, *i.e.* on 5th, 6th, 28th and 29th June, 2nd August and 5th September, 2006.

*Bill published in the Gazette of India Extraordinary, Part II, Section-2, dated 5 December, 2005.

** Rajya Sabha Parliamentary Bulletin Part II No. 42691 dated 7th December, 2005.

3.4 In its sittings held on 15th and 16th June, 21st July, 4th September and 6th October, 2006, the Committee heard five witnesses and two organizations (List of witnesses Annexure-II) on the various provisions of the Bill.

3.5 The Committee heard the views of the Home Secretary on the suggestions/points made/raised in different fora, on 28th and 29th September, 2006.

3.6 The Committee considered the Bill clause-by-clause on 18th and 30th October and 16th and 17th November, 2006.

3.7 The Committee relied on the following sources for finalising its report:

1. Background Note received from the Ministry of Home Affairs on the Bill;
2. Presentation and oral evidence of Home Secretary, Law Secretary and Legislative Secretary;
3. Oral evidence of other witnesses;
4. Written Memoranda received from various sources;
5. Comments received from State Governments and recognized Political Parties;
6. Relevant Acts and the Constitution of India.

3.8 The Committee in its sitting held on 7th December, 2006 took up for consideration the Draft Report. The amendments jointly proposed by the three members of the Committee namely S/Shri Prasanta Chatterjee, Bajju Ban Riyan and T.K. Hamza to certain paras of the Draft Report were also taken up for consideration. After some discussion the Committee did not agree to those amendments. At this stage the said Members observed that their comments/amendments may be treated as "Minute of Dissent" and appended to the report. The Committee agreed to the request of the Members. Thereafter, the Committee adopted the Draft Report.

4. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report. The observations and recommendations at a glance have also been given at the end of the Report.

NEW DELHI;
7 December, 2006

SUSHMA SWARAJ
Chairperson,
Department-related Parliamentary
Standing Committee on Home Affairs.

REPORT

INTRODUCTORY

India, a multi-religious, multi-lingual and multi-ethnic society, is aptly called a Nation of unity in diversity but communal violence has been a grave threat to its secular fabric, unity, integrity and internal security. To deal with communal violence and encourage each state to adopt the law to generate faith and confidence in minority communities, the Government of the day introduced a Bill titled “The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005”, in the Rajya Sabha, on 5th December, 2005.

2.0 The Bill empowers the State Governments and the Central Government to take measures to provide for prevention and control of communal violence, which threatens the secular fabric, unity and integrity and internal security of the Nation and rehabilitation of victims of such violence and for matters connected therewith or incidental thereto. The Bill has 62 clauses under Thirteen Chapters and a Schedule. The Schedule contains 111 Sections taken from the following Acts, offenses punishable under which would be considered Scheduled Offences for the purpose of the present legislation:—

- (i) Indian Penal Code 1860;
- (ii) Arms Act, 1959;
- (iii) Explosives Act, 1884;
- (iv) Prevention of Damage to Public Property Act, 1984;
- (v) Places of Worship (Special Provisions) Act, 1991; and
- (vi) Religious Institutions (Prevention of Misuse) Act, 1988.

2.1 The focus of the Bill is to ensure steps for prevention of communal violence and in the unfortunate event of its occurrence, its speedy control and immediate effective steps for relief, rehabilitation and compensation to the victims of communal violence and speedy investigation and trial of offences.

Salient features

2.2 The Bill, *inter alia*, seeks to—

- (i) provide for declaration of certain areas as communally disturbed areas by the State Governments;
- (ii) lay down measures for prevention of acts leading to communal violence;
- (iii) enhance punishments for offences relating to communal violence and for certain other offences;
- (iv) make provisions for speedy investigation and trial of offences through Special Courts;
- (v) make institutional arrangements for relief and rehabilitation measures for victims of communal violence;
- (vi) make provisions for compensation to the victims of communal violence and provide for special powers to the Central Government in certain cases;

- (vii) provide for constitution of a National Communal Disturbance Relief and Rehabilitation Council, State Communal Disturbance Relief and Rehabilitation Council and District Communal Disturbance Relief and Rehabilitation council; and
- (viii) prohibit any discrimination in providing compensation and relief to the victims of communal violence on grounds of sex, caste, community or religion.

Institutional Arrangements

2.3 The Bill provides for the constitution of the National Council, State Communal Disturbance Relief and Rehabilitation Council and District Relief and Rehabilitation Council. The National Council, which would have representatives from minorities and weaker sections, would advise on the assistance to be given to the State Government and may recommend guidelines for relief, rehabilitation and compensation for the victims of communal violence. The State Council, which *inter alia* would have not less than five persons representing all the important religious groups in the State, would advise the State Government in matters relating to relief and rehabilitation of victims of communal violence. The Bill also provides for establishment of District Councils, with not less than five representatives from the important religious groups in the District concerned, to act as the district level coordinating and implementing body for relief and rehabilitation.

DEPOSITION OF HOME SECRETARY

3.0 The Home Secretary in his presentation before the Committee on the Bill on 9 January, 2006 made the following submissions:—

- (i) Though communal violence as commonly understood was violence related to some kind of riots between two religious communities, but the Bill has expanded the definition of communal violence. Under the new definition, communal violence covers all violence based on caste, groups, races and so on;
- (ii) The Bill provides for awarding punishment, double the one provided in IPC, to the guilty involved in such violence. For speedy trial, a provision for constitution of Special Courts and day-to-day trials have been made in the Bill.
- (iii) Criminals, under the Bill, have been made liable to pay compensation for the crimes so committed by them against the community or individuals. Institutional mechanism for rehabilitation of the victims of communal violence is another feature incorporated in the Bill.
- (iv) As regards competence of Central Government to legislate on “law and order” and “police” (items of State List), the Bill draws its strength from Entries 1, 2 and 11 (a) of the Concurrent List.
- (v) In regard to the commencement Clause there were two alternatives before the Government. One was to enact a model law and circulate the same to the States to enact their legislation based on the model law and the second was to prepare a well thought out central legislation that the States would adopt. The Government have adopted the second option.
- (vi) Clauses 55 and 56 of the Bill have been discussed extensively with legal minds and have to be read in totality for their true implications. Under Article 355 of the Constitution of India a duty is cast on the Centre to protect the State against external aggression and internal disturbances and is not about issuing directions to the States. Article 355 is not a complete Article in itself as it is an enabling provision of Article 356. The present Bill has been intended to take care of situations such as group clashes and massive violence.

WRITTEN AND ORAL SUBMISSIONS BY OTHERS

4.0 The Home Secretary, during the course of his presentation, informed the Committee that six consultation Seminars were proposed to be held on the Bill wherein Chief Ministers of different States were also expected to participate to present their view points. However only three Seminars were held at New Delhi, Bangalore and Mumbai. The Committee, obtained the proceedings of the seminars and took note of the views expressed in those Seminars.

4.1 The Committee, taking note of the fact that the views of State Governments and recognized Political Parties, which are vital stakeholders of the Bill, had not been sought by the Government, decided to seek their comments as well. Accordingly, all the State Governments and recognised Political Parties were requested to send their comments on the provisions of the Bill, particularly clause 55. In response to Committee's request, comments from twelve State Governments and thirteen recognised Political Parties were received. A list of State Governments and recognised Political Parties that have been asked for comments and those which responded is at *Annexure-III*

4.2 The Committee also has had the benefit of the views of some experts on constitutional law on the provisions of the Bill particularly Clause 55 and experts on criminal law particularly on the necessity of the Bill. The Committee also heard the views of other experts on the Bill. The Committee received written memoranda from some organizations and individuals. A list of persons/organizations from whom written Memoranda were received is at *Annexure-IV*.

THE ISSUES

5.0.0 The Committee noted that during many deliberations and the rounds of oral evidence and in the written memoranda, several issues such as necessity of the Bill, commencement (Parts-II to VI of the Bill), ambit of communal violence, federal structure and Clause 55 of the Bill etc. were raised. All these viewpoints, memoranda/views/suggestions were put in a capsule form in a statement and was sent to the Ministry for its comments/reactions. The Ministry furnished written comments which were supplemented by Home Secretary, during the course of the oral evidence before the Committee on 28th and 29th September, 2006.

The suggestions made under each issue and the comments of the Ministry of Home Affairs and the subsequent oral submissions of Home Secretary thereon are explained as under:

5.1.0 Necessity of the Bill

5.1.1 Suggestions

- The Bill is not a comprehensive piece of legislation as was expected and does not address the root problem of communal violence.
- The Bill is not required as existing provisions under IPC, 1860 and Cr.PC, 1973, etc. are sufficient to deal with communal violence in any part of the country.
- Except for relief and rehabilitation part of the proposed legislation, other provisions are not required.
- The Bill is necessary to tackle the communal problems facing the country.
- The purpose of bringing this Bill is to empower the State Governments and the Central Government and to ensure that the occurrence of communal violence is prevented whenever it is likely to occur.

5.1.2 Comments of the Government

- The Bill is a very comprehensive piece of legislation which provides for preventive action, speedy investigation, trial of offences through special courts, enhanced

punishment for perpetrators of communal violence and also for rehabilitation and compensation to victims of communal violence.

- Though there are provisions in the IPC which address some of those problems, but as there is no separate piece of comprehensive legislation on the subject, the Bill would go a long way in maintaining the secular fabric, unity and integrity, internal security and, above all the democracy in the country.
- The Bill is necessary for dealing with problems specific to “mass violence specially communal riots and all related matters.
- The State Governments have been made accountable for maintaining communal harmony and if they failed to perform, they would have to be accountable for the losses so incurred and they should also compensate the victims.

5.2.0 Legislative Competence of Central Government

5.2.1 Suggestions

- Parliament is competent to enact provisions contained in Chapters II to IV of the Bill, because communal violence, which threatens the secular fabric, unity, integrity and internal security of the country, would be covered by the Residuary Entry in the Union List – Entry 97 of List I.
- It is a State Subject. Central Government has no competence to legislate on this.

5.2.2 Comments of the Government

- Law Secretary had stated that legislative competence of Parliament flowed from Concurrent List. Criminal Law and Criminal Procedure Code by and large were the subject matters which fell within the Concurrent List where the Parliament was competent to enact.

5.3.0 Notification of the Bill

5.3.1 Suggestions

- The Bill, when enacted, should be notified in the entire country, including the State of Jammu and Kashmir.
- There is no central legislation being brought into force by State Governments. Law enacted by Parliament must be brought into force by Central Government.
- There is no need for any change in the procedure provided for in the Bill. It should be notified as proposed in the-Bill.

5.3.2 Comments of the Government

- The Bill was proposed to be notified by the Centre in respect of Chapter I and Chapters VII to XIII for the entire country.
- Chapters II to VI were left to be notified by the States because under the said provisions, most of the actions were required to be taken by the State Governments; they had to form District Councils, infrastructure for trial and investigation and institutional mechanisms for compensation to victims, etc. The States need some time to attend to all these issues.

- The Ministry thought to leave it to the State Governments to bring the Bill into force in their respective States as and when they were ready to do so.
- The State of J&K was excluded from the provisions of the Bill as IPC and the Code of Criminal Procedure did not extend to that State.

5.4.0 **Ambit of Communal Violence**

5.4.1 **Suggestions**

- The Bill should confine itself to violence between two communities.
- The ambit of Communal Violence to include racial, caste, group, ethnic violence, etc. apart from the violence between two communities, as intended, should be reflected in the long title of the Bill.

5.4.2 **Comments of the Government**

- The title carried the word “Communal”, recognizing the importance of the violence between the religious communities and would be well understood by people of this country.
- But violence of big scale between people belonging to different religious communities, racial groups, castes, ethnicity, even groups in the same religious community would attract the legislation.
- In Section 3, the word “communal” covers the aforesaid large scale violence.

5.5.0 **Federal structure and Clause 55 of the Bill**

5.5.1 **Suggestions**

- Clause 55 of the Bill affects the federal features in the Constitution and therefore violates its basic structure.
- Though this clause impinges on the federal nature of the Constitution, but it does not violate the federal structure of the country.
- This is only a safeguard provision. It is not a violation of the State Government’s powers. It does not affect the federal structure.
- Provisions in the Bill are ambiguous and contradictory in nature. The contradiction becomes glaring when Clause 55 (3) gives authority to the Centre to notify any area within a State as a “communally disturbed area” and sub-clause immediately following it lays down that deployment of Armed Forces should be on the request of the State Government.
- The basic problem with the Bill is that if the Central Government decides to invoke the provisions of the statute and the State Government does not do so, the legislation will be rendered ineffective. Above all, there is no remedy in the Bill against the unwillingness of Central or State Government to declare an area as communally disturbed or in the event of a conflict between the Central and State Governments with regard to the declaration of an area as communally disturbed. It may be advisable to consider the possibility of providing an impartial agency such as the National Human Rights Commission with appropriate powers to act in situations that demand intervention of the Central Government and where the State Government is not intervening to protect the fundamental right to life of citizens.

- There must be safeguards in clause 55 to prevent its misuse

5.5.2 Comments of the Government

- The following safeguards are provided in Clause 55:
 1. The Bill required that in the opinion of the Central Government, the following events should precede action:
 - (a) scheduled offences should be committed within the area in question in a certain manner and on a certain scale involving use of criminal force or violence against members of any group, caste or community resulting in death or destruction of property;
 - (b) such use of criminal force or violence should be committed with a view to create disharmony or feelings of enmity or ill-will between different groups, castes or communities; and
 - (c) there should be an imminent threat to the secular fabric, unity, integrity or internal security, which required that immediate steps be taken by the State Government concerned.
 2. After the opinion was formed as above, the Central Government would:
 - (a) draw the attention of the State Government to the prevailing situation in the area; and
 - (b) direct the State to take all immediate measures to suppress such violence.
 3. After all the above-mentioned circumstances got established and the State Government was unable to control such violence the Central Government may:
 - (a) issue a notification declaring the area within the State as a communally disturbed area; and
 - (b) At the request of the State Government, deploy Armed Forces.
- Keeping in view the above mentioned safeguards made by the Centre, Clause 55 did not impinge upon the federal structure.

5.6.0 Depositing of Arms

5.6.1 Suggestions

- Clause 7 (1) of the Bill provides for depositing licensed and unlicensed arms and ammunition with the nearest police stations whereas possessing unlicensed arms and ammunition is a punishable offence. It is a draconian provision. Enormous powers have been given to State Governments and District Magistrates. Uniform standard should be adopted while instructing all communities for depositing arms. If some individual or class is exempted from doing so, the competent authority must give reasons in writing as to why it was done.
- This provision may be deleted.

5.6.2 **Comments of the Government**

- Home Secretary had agreed to:
 1. Remove the anomaly in the Bill by deleting the words “whether such person had a license to keep such arms, ammunition explosives corrosive substances or not;” in Clause 7(1) of the Bill.
 2. Examine at the stage of framing rules under the Statute, the manner in which the authority exempting an individual or a class of individuals be required to record reasons in writing.

5.7.0 **Punishment**

5.7.1 **Suggestions**

- Enhanced punishment for perpetrators of communal violence provided in the Bill is welcome. But there should be provision for minimum scale of punishment also to the perpetrators of communal violence.
- Enhanced punishment will not serve any purpose.
- Punitive fine should be imposed in the disturbed area.

5.7.2 **Comments of the Government**

- The enhanced punishment under the Bill becomes applicable for the scheduled offences committed within the definition of communal violence.
- Minimum punishment was provided under clause 19 (2) wherein a public servant commits communal violence.

5.8.0 **Definitions**

5.8.1 **Suggestions**

- ‘Communal procession’ and ‘communal organisation’ may be defined in the definition clause.
- Scheduled violence should be defined as an offence punishable under the IPC and other relevant laws, motivated by hatred and revenge.

5.8.2 **Comments of the Government**

- An organization is a legal entity under the law. To that extent any organization, including its management, would be answerable for committing acts that are prejudicial to communal harmony as indicated in the Bill. It is, therefore, not necessary to define ‘communal organization’ as the terms ‘communal’ and ‘procession’ had generally accepted connotations and needed no elaboration.

5.9.0 **Immunity to Public Servants**

5.9.1 **Suggestions**

- Protection is given to public servants by mentioning ‘wilfully’. Such protection should not be given.

- Granting immunities to the bureaucrats should be totally withdrawn. Punishment for Public servants acting in a *mala fide* manner is a welcome provision (Clause-17).
- It empowers the State Government and its officers but does not provide for their accountability.
- Sanction of State Government for taking cognizance of the offence should be presumed if not provided within 30 days under proviso to sub-section (2) of Section 17.

5.9.2 Comments of the Government

- Public servants are the instruments through which the State execute its policy. Clause 17 provided for punishment of two types for officers:
 - (a) Those who exercised their authority in a *mala fide* manner thereby causing harm or in a manner likely to cause harm or injury to person or property; and
 - (b) Those who wilfully omitted to exercise their lawful authority and thereby failed to prevent communal violence, breach of public order etc.
- The State would require time for examining if any of those officers had so violated the law as to attract penal provisions. In order to do so, Clause 17 required previous sanction of the State Government and time limit provided for such sanction is 30 days.
- Chapter XII protected action taken in good faith.

5.10.0 Communally Disturbed Area

5.10.1 Suggestions

- Communally disturbed area is notified when use of communal force results in death. It is very restrictive and limits the scope of the Act. It does not cover cases like rape or parading women naked which is more heinous.
- The manner and the scale of violence, which tends to create internal disturbance has to be certified by the Home Secretary of the concerned, State as words “on such a scale and in such manner” in clause 19 (1) appears to be vague and indeterminate.
- An area should be declared as a communally disturbed area before the commission of a scheduled offence on the basis of strong intelligence report as preventive measure

5.10.2 Comments of the Government

- The State Government and the Central Government, respectively should be “of the opinion” about the fitness of circumstances for declaring an area as communally disturbed. Such “opinion” would be based on strong intelligence and the knowledge of the manner and scale of violence.
- Further responding to Clause 3 (1) (a) “in such manner and such scale which involves the use of criminal force or violence against any group, caste or community, resulting in death or destruction of property” the Home Secretary noted the observation of the Committee that too much emphasis had been given on ‘violence resulting in death’ and said that the Ministry would look into it.

5.11.0 Relief and Rehabilitation Councils

5.11.1 Suggestions

- Relief and Rehabilitation Council from National level to District level be represented by leaders of minority communities/women/religious leaders and public representatives/officers of minority community.
- National and State Councils be presided over by the Home Minister and the Chief Minister, respectively.
- National Council is superfluous. District Council is competent to assess the damages and to provide relief and rehabilitation to the victims of communal violence.

5.11.2 Comments of the Government

- Clause 39 (h), Clause 42 (2) (f), Clause 45 (2) (iv), provided for representation to minorities in the Councils.
- The Home Secretary further responded that it wanted the National Council to function independently of the Ministry of Home Affairs having its own elbowroom and independent thought process within the overall control of the Ministry of Home Affairs.
- Similarly, the Chief Secretary has been recommended at the State level to preside over the State Council. He would be reporting to the Chief Minister. It was a kind of creating a tier between the political leadership and the people who actually do the work at the ground level.

5.12.0 Compensation

5.12.1 Suggestions

- Uniform Compensation to the victims of communal violence across the country and should be paid within a definite time frame.
- Compensation should be paid to the victims irrespective of conviction or acquittal.
- Compensation for loss of movable/immovable property should be paid at market rate.
- Compensation for loss of life, limb, honour and property be delinked from the progress of prosecution and accepted as a duty of the State.
- The share of contribution in State Rehabilitation Fund by State and Centre should be defined.
- Timely and adequate infrastructure for special courts should be provided.
- Monetary compensation by offender contemplated under section 53, is not practical as economic status of such offenders is generally low.
- All educational institutions and places of religious importance destroyed during riots should be restored to their original position by the 'State'.
- Public Prosecutor under section 29, should not belong to any political persuasion and should have the confidence of victims.

5.12.2 Comments of the Government

- The suggestion that there should be uniform compensation to the victims of violence across the country and it should be paid within a time-frame was well-accepted. The victim must be compensated.
- Compensation to the victim would be irrespective of conviction or acquittal of the accused.
- If an educational institution is State-owned it would be restored. If it is privately owned it would come under compensation clause wherein the party could claim compensation.
- Clause 29 prescribed the role and selection of public prosecutors and that should be respected.
- Other requirements pertaining to this chapter would form part of the rules.

5.13.0 New Ideas

5.13.1 Suggestions

- There should be a separate chapter dealing with women's cause in the draft Bill because women are the first and the worst victims of communal violence.
- Sexual violence in a communal situation should be equated to custodial rape as mob exercises complete control and is in a position of authority. Hence, the Bill should provide for enhanced punishment and also shift the burden of proof from the victim to the perpetrator.
- The concept of 'Reparations', which is broader than the concept of 'compensation' or relief should be incorporated in the draft Bill. Each category of crime within sexual violence should be treated as a single category of crime for the purpose of reparation.
- When all family members have been killed, the *ex gratia* amount should be paid to the voluntary organization engaged in large-scale relief and rehabilitation for their community or locality *e.g.* for construction of housing colonies and infrastructure like schools and for establishment of orphanage.
- The Bill is silent about the role of media in fomenting communal violence. The media should be restrained from biased and negative and also exaggerated reporting.
- 'Rape' should be redefined, and for the purpose of this Bill, the definition of 'rape' should be expanded.
- Central Government may depute a central observer (of JS rank) to the disturbed area to watch whether all the legal provisions or laws and so on are being implemented by the District Administration. He may submit a report to the Central Government.
- Persons convicted for communal violence should be disqualified to contest elections for a specified period.

5.13.2 Comments of the Government

- The Bill had based communal violence upon scheduled offences which were defined in the IPC and several other Acts. In order to implement these recommendations, the definitions of the scheduled offences in the original Statute would require review.

- Representation of women would be facilitated in all Councils so that their issues were addressed.
- The sexual offences against women are being addressed separately, in a greater detail.
- Responding, the Ministry stated that compensation covered the reparations aspect adequately.
- On the issue of restraining media from biased and negative and also exaggerated reporting fomenting communal violence, the Law Secretary stated that such a measure would be an infringement on the freedom of press.
- Adding to it the Ministry stated that a strong recommendation from this Committee in this regard would be quite welcome.
- States do not welcome deputing a Central observer in a communally disturbed area.
- On the issue of disqualifying convicted persons contesting election, the Ministry responded that Clause 62 of the draft Bill contained specific provisions in this regard

CLAUSE-BY-CLAUSE CONSIDERATION

5.14.0 The Committee received a large number of suggestions on various clauses from Members of the Committee, constitutional and legal experts, women's organisations, some individuals/organisations representing minority communities, State Governments and recognised Political Parties. The Committee also took note of the suggestions which emerged in the three seminars organised by the Ministry of Home Affairs on the Bill at Delhi, Mumbai and Bangalore. The Committee has duly considered all the suggestions made on various clauses of the Bill and deliberated extensively upon each clause. A gist of suggestions, deliberations and recommendations of the Committee on each clause is given as under:

5.14.1 Before taking up clause-by-clause consideration of the Bill, the Committee dwelt at length on the following basic issues:

- (i) Necessity of the Bill;
- (ii) Legislative competence of Parliament to enact the Bill;
- (iii) Long Title of the Bill.

Necessity of the Bill

5.14.2 Some of the witnesses who appeared before the Committee and some Members of the Committee were of the view that the existing legal provisions/laws if implemented effectively were sufficient to take care of the exigencies envisaged in the proposed Bill. After some discussion the Committee felt that violence on large scale, whether communal or social conflicts or even caste conflicts, which threatens the secular fabric, unity, integrity and internal security of the Nation, cannot be dealt with by the ordinary law. The Bill brought by the Government before Parliament is necessary to deal with such violence. The Committee, therefore, is unanimously of the view that there is a necessity of such a Bill being enacted into law.

Legislative competence

5.14.3 As regards legislative competence of Parliament, one of the views presented before the Committee was that the subject matter of the Bill was directly related to 'Law and Order' which was a State subject. Should Parliament decide to legislate on a matter in the State List, then there

should be a resolution of the Rajya Sabha passed by a two-thirds majority or a proclamation of Emergency should be in force or the legislatures of two or more States have passed resolutions empowering Parliament to legislate on a matter in List-II. However, in the present case none of the requirements of Articles 249, 250 and 252 have been met.

5.14.4 On this, the Home Secretary clarified that the Bill drew its strength from the relevant entries in the Concurrent List. According to him, it was not simply to address the issue of 'communal violence' of a minor scale. The Bill was addressing a scenario far beyond that. The Bill made its intention clear when its long title said "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." It meant 'communal violence' of such a scale and in such a manner that it had a bearing on those factors; and hence this kind of a Bill.

5.14.5 Clarifying this further, the Law Secretary also stated that even though 'Public Order' and 'Police' are on the State List, (Item No.1), 'Criminal Law', 'Criminal Procedure' and 'Administration of Justice' are on the Concurrent List. So, the Bill draws its strength from Entries 1, 2 and IIA of the Concurrent List. The Law Secretary, in support of the legislative competence of Parliament also stated as under:

"The provisions of the Bill deal mainly with enhanced punishment for offences committed in communally disturbed area. These offences are all Indian Penal Code offences and offences under the Acts which have been passed by the Parliament. So, Parliament has competence to amend any of these laws".

5.14.6 After considering the arguments both for and against, the Committee is convinced that the Bill is within the legislative competence of the Parliament.

LONG TITLE

5.14.7 The Committee agrees with the views of the Home Secretary that the Long Title articulates the intentions of the legislation and indicates the level of violence which threatens the secular fabric, unity, integrity and internal security of the country and feels that the same should be retained as such.

Clause 1

5.15.0 This clause provides for the short title of the proposed legislation, the area of its operation and its commencement.

Committee's observation/recommendation

5.15.1 **The Committee considered the alternative terms for "Communal Violence" like 'social violence' 'mass violence' and 'sectarian violence'.**

5.15.2 **The Committee feels that the words 'communal violence' are well understood by every one. For the purpose of this Bill, a violence may be called communal violence if it threatens unity, integrity, secular fabric and internal security of the country. The Bill takes care of mass violence, violence between ethnic groups, religious communities (both inter and intra) and different castes. The Committee, therefore, decided that the words 'communal violence' may be retained.**

5.15.3 **The clause is adopted without any change.**

Clause 2

5.16.0 The Clause contains definitions of certain words and expressions used in the Bill *viz.* “Communally Disturbed Area”, “Communal Violence”, “Competent Authority”, “Relief and Rehabilitation”, “Scheduled Offence”, “State Fund”, “Unified Command”, etc.

5.16.1 Suggestions

- (i) The word “communally” may be replaced by “socially”.
- (ii) The Bill should confine itself to violence between two communities. The term ‘communal violence’ may be defined without mixing it up with caste, ethnic and other problems. ‘Communal procession’ and ‘communal organization’ may be defined.
- (iii) The definition of ‘communal violence’ should be wider because caste violence, group violence, sectarian violence etc. would require consideration.
- (iv) Clause 2(c) should be amended as follows: “Communal violence” means any act ‘of omission or commission which threatens the secular fabric, integrity, unity or internal security of the Nation and which constitutes a scheduled offence, punishable under section 19”.
- (v) The special powers of the Central Government to deal with communal problem should be strictly directed against communal disturbances only and not other kinds of protests.
- (vi) Sexual violence may be covered under the Bill and ‘rape’ may be redefined. The crimes against women such as sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization may be included within the definition of communal violence. Genocide, a crime against humanity, may be included in the scope of the Bill.
- (vii) Rename the Councils as “Social Peace and Justice Councils”.
- (viii) Scheduled violence should be defined as an offence punishable under the IPC and other relevant laws, motivated by hatred and revenge.
- (ix) The offences under the Explosive Substances Act, 1908, the Information Technology Act, 2001 and the SC/ST (Prevention of Atrocities) Act, 1989 should also be included in the Schedule of Offences.
- (x) “Schedule Offence” may be defined as an offence punishable under the Sections specified in the Schedule.
- (xi) Special Courts will not serve the purpose.
- (xii) Robbery and dacoity should be included in the Schedule.

Government’s Views

5.16.2 It is not necessary to define all those expressions as they are generally accepted connotations and need no elaboration. The Home Secretary agreed to re-examine the reference to ‘sub-clause (i) of clause (c) of sub-section (1) of Section 3’ in clause 2(1)(b) which should read as “sub-section (1) of Section 3”. An official amendment was proposed by Home Secretary to clause 2(1) (1) to insert the words “punishable under the Sections” after the word “offences” which was technical in nature.

Committee's observation/recommendations

5.16.3 The Committee took note of the drafting error as pointed out by one of the witnesses in clause 2(1)(b) *viz.* that the reference to sub clause (i) of clause (c) of sub-section (1) of section 3 should read as 'sub-section (1) of Section 3'. The Committee recommends that in sub-clause (1) (b) of clause 2, the words "sub-clause (i) of clause (c) of" may be deleted.

5.16.4 The Committee takes note of the proposal made by the Home Secretary for amending Clause 2 (1) (1). The Committee agrees that the Schedule actually lists the sections which prescribe the punishment and not the offence. The Committee agrees that sub-clause (1) (1) of Clause 2 may read as under:

"Scheduled offence" means an offence punishable under the sections specified in the Schedule."

5.16.5 Subject to the above, the clause is adopted.

Clause 3

5.17.0 The clause deals with the powers of the State Government to declare an area to be a communally disturbed area in certain circumstances.

5.17.1 Suggestions

- (i) In Clause 3 (1) (a) Communally disturbed area is notified when use of communal force results in death. It is very restrictive and limits the scope of the Act. It does not cover cases like maiming, rape, parading women naked which are more heinous.
- (ii) Substitute the words 'danger' by 'threat', 'secular fabric' by 'social harmony' and 'may' by 'shall' in Clause 3 (1) (C). The words 'threatens the secular fabric' be replaced by 'for. establishing communal harmony' in the same clause.
- (iii) The words 'resulting in death' appearing in clause 3 (1) (a) may be substituted by the words 'it results in commission of any cognizable offence' or 'it results in the commissioning of any scheduled offence'.
- (iv) 'public peace and tranquility' is not a ground for notification, but is a ground for extending the notification for continuance of communally disturbed area in sub-clause 2.
- (v) Clause 3 should be amended to enable the State Government to declare an area as communally disturbed even before the commission of the scheduled offence.
- (vi) Whenever series of incidents of scheduled violence, numbering ten or more such incidents are brought to the notice of the State Government that area can be declared as communally disturbed area. In Clause 3 (1), the words "of the opinion" be replaced by "satisfied".
- (vii) The Bill provides for appointment of different competent authorities for different provisions of the Act. This may lead to conflicts and contradictions among different competent authorities exercising the provisions of this Act. Safeguards and precautions should be provided.
- (viii) Provisions should be included that all preventive measures should be taken in consultation with the District Council comprising of representatives of all communities including minority community and victim community.

- (ix) The words “violence against any group, caste or community” in clause 3 (1) (a) should be deleted.
- (x) In the first instance an area may be declared to be a communally disturbed area for a period of thirty days which may be extended upto a maximum period of six months. After that there should be a fresh notification.

Government’s Views

5.17.2 The Home Secretary agreed to the suggestion of the Committee that the words “death or destruction of property” in Clause 3(1)(a) be substituted by the words “grievous hurt, loss of life, extensive damage or destruction of property”. He also agreed for substitution of the word “danger” by “threat” in Clause 3 (1) (c). Further, an upper cap of six months for extending the period of notification was agreed to.

Committee’s observation/recommendations

5.17.3 **The Committee agrees with the view that making death and destruction of property *sine qua non* for notification would be very restrictive. There may be a situation where a single death might not have taken place but a large number of people are grievously hurt. Such a situation is not covered’ under this clause. The Committee, therefore, recommends that sub-clause (1) (a) of clause 3 may be amended as under:**

‘in such manner and on such a scale which involves the use of criminal force or violence against any group, caste or community, resulting in grievous hurt, loss of life, or extensive damage or destruction of property.’

5.17.4 **The Committee agrees to the suggestion that the word ‘danger’ be substituted by ‘threat’ and ‘may’ by ‘shall’ in clause 3 (1) (c), and recommends these amendments in the clause.**

5.17.5 **The Committee recommends that a provision may be made in the proviso to sub-clause (2) of clause 3 to the effect a notification issued under sub-clause (1) shall not in any case be extended beyond six months. If, however, the situation warrants declaration of an area to be communally disturbed, beyond that period, the State Government may issue a fresh notification by following the procedure prescribed in sub-clause (1).**

5.17.6 **Subject to the above, the clause is adopted.**

Clause 4

5.18.0 The clause lays down the measures to be taken by the State Government to prevent and control communal violence in a communally disturbed area. It may request the Central Government to deploy Armed forces of the Union to control communal violence.

5.18.1 Suggestions

- (i) It vests a very wide discretion in the State Government to take measures such as requesting the Central Government to deploy para-military forces and the army in aid of civil administration in an area declared as communally disturbed.
- (ii) Clause 4 (2) may be substituted by the following:

“If violence is not controlled within seven days, the State Government shall request the Central Government to deploy armed forces of the union to control the situation.”

Committee's observation/recommendation

5.18.2 The Clause is adopted without any change.

Clause 5

5.19.0 The clause lays down the powers of District Magistrate to take preventive measures in case of a situation which has arisen causing apprehension of breach of peace or creation of discord between members of different groups, castes or communities.

5.19.1 Suggestions

- (i) The words 'Commissioners' and 'Commissionarates' should also be included. The words 'or Commissioners of Police' should also be included after the words 'District Magistrate' in Clause 5. (1) and (2) wherever necessary.
- (ii) Maintaining a community *goonda* register or sheet may be a good preventive measure.
- (iii) These powers are already available with the administration under Sections 107 and 144 of IPC. This will infringe the rights of the citizens of that area available to them under Articles 19 and 21 of the Constitution. These powers may be misused by the authorities.
- (iv) The words "a Situation has arisen or he has received such an information that there is an apprehension" may be added after the words "in any area within his jurisdiction".
- (v) Contravention of the provisions of sub-clause (1) of clause' 5 should be punished with imprisonment which may extend to one year or with fine or with both.
- (vi) In sub-clause (3) of clause 32, punishment for contravention of direction of special court is imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees. Since sub-clause (3) of clause 5 deals with punishment for contravention of an order made by District Magistrate, it should be in consonance with sub-clause (3) of clause 32.

Government's Views

5.19.2 Responding to the suggestion regarding inserting the words "Commissioner of Police" alongwith District Magistrate, the Home Secretary stated that in police districts such powers are exercised by the Commissioners of Police under the Police Act, 1861. The Home Secretary agreed that the words "or an information has been received" may be inserted after the words, "has reason to believe" in line-2 of clause 5(1) to check misuse of discretion by District Magistrate. As to the suggestion for bringing the provision of sub-clause (3) of clause 5 in conformity with sub-clause (3) of clause 32, the Home Secretary agreed that the Committee may like to flag the issue for consideration by Government.

Committee's observation/recommendations

5.19.3 The Committee is of the view that there is a need to amend clause 5 (1) by adding the words "or he has received an information" after the words 'has reason to believe'. The Committee recommends that clause 5 (1) may be amended accordingly.

5.19.4 The Committee takes note of the suggestion that in sub-clause (3), the amount of fine should be mentioned. It apprehends that under the existing provision of sub-clause (3), an offender may get away with fine only. The Committee, therefore, recommends that the words "or with fine or with both" may be substituted by the words "and with fine"

5.19.5 Subject to the above, the clause is adopted.

Clause 6

5.20.0 The clause lays down the powers of the competent authority to take preventive measures in a notified communally disturbed area.

5.20.1 Suggestions

The following provisions should be introduced:

- (i) A provision for a minimum punishment of 3 years with fine for contravention of Section 6(1).
- (ii) Prohibition of funeral processions and similar punishment for violation.
- (iii) Closure of communal breeding grounds.
- (iv) Explicit provision for prevention of display of posters, banners etc. and closure of concerned printing presses.
- (v) Introduction of a mechanism to synchronize the system as there are multiple competent authorities.

Government's Views

5.20.2 The Home Secretary submitted before the Committee that a punitive clause for violation of orders mentioned under sub-clause (1) of clause 6 is missing. He suggested that the same may be inserted.

Committee's observation/recommendation

5.20.3 The Committee takes note of the omission pointed out by the Home Secretary and recommends addition of the following new sub-clause (3) in clause 6 as under:

“Whoever contravenes the provisions of an order made under this section, shall be punished with imprisonment for a term which may extend to three year and shall also be liable to fine”.

5.20.4 Subject to the above, the clause is adopted.

Clause 7

5.21.0 The clause provides for the power of the competent authority to order to deposit arms and ammunition in communally disturbed area.

5.21.1 Suggestions

- (i) It is a draconian provision. Enormous powers have been given to State Governments and District Magistrates. Clause 7 (1) of the Bill provides for depositing licensed and unlicensed arms and ammunition with the nearest police station whereas possessing unlicensed arms and ammunition is a punishable offence.
- (ii) Uniform standard should be adopted while instructing all communities for depositing arms. If some individual or class is exempted from doing so, the competent authority must give reasons in writing as to why it was done.

(iii) This clause may be deleted.

Committee's observation/recommendation

5.21.2 The Committee agrees with the suggestion of deleting the words 'whether such person has a licence to keep such arms, ammunition, explosives, corrosive substance, or not' in Clause 7(1), as this provision is likely to be misused and the citizens may be harassed. The Home Secretary endorsed the suggestion. The Committee, therefore, recommends that the words 'whether such person has a licence to keep such arms, ammunition, explosives, corrosive substance, or not' in sub-clause (1) of clause 7 may be deleted.

5.21.3 Subject to the above, the clause is adopted.

Clause 8

5.22.0 It gives powers to the officer in charge of police station to search, detect and seize arms and ammunition in the communally disturbed area.

Suggestions

5.22.1 (i) The power to search may be given to the officer not below the rank of Deputy Superintendent of Police instead of Sub-Inspector.

(ii) It should be at least an officer of the rank of Inspector.

Government's Views

5.22.2 The Home Secretary clarified that most of the police stations in the country were headed by Sub-Inspectors. It might entail some jurisdictional problems. However, he agreed to examine the suggestion.

Committee's observation/recommendation

5.22.3 The Committee feels that the suggestion of substituting the words 'Sub-Inspector' by the words 'Deputy Superintendent of Police' may not be practicable. The Committee, however, feels that the power to search, detain and seize arms etc. in communally disturbed area should be exercised by an officer not below the rank of Inspector of Police. The Committee, therefore, recommends that the word "Sub-Inspector" may be substituted by the word "Inspector".

5.22.4 Subject to the above, the clause is adopted.

Clause 9

5.23.0 The clause empowers the competent authority to prohibit certain acts in the communally disturbed area.

5.23.1 Suggestions

(i) The words 'Public cry' may be substituted with "incitement".

(ii) The words, "public utterance of cries" should be deleted.

(iii) The words "singing of songs, playing of music" should be deleted. Those may be substituted by the words "public utterances, singing of songs, playing of music which create incitement."

Committee's observation/recommendation

5.23.2 The Committee feels that the words 'public utterances of cries' in sub-clause (1) (e) are vague and inapt. 'Incitement' is an appropriate word. However, the Committee is of the view that incitement should be related to singing of songs and playing of music as well. The Committee, accordingly, recommends that sub-clause (1) (e) of clause 9 may be amended as under:

"the public utterances, singing of songs and playing of music which cause incitement".

5.23.3 Subject to the above, the clause is adopted.

Clauses 10 and 11

5.24.0 These clauses provide for power to the competent authority to make orders regarding conduct of persons in communally disturbed area and for punishment for loitering near prohibited places.

5.24.1 Suggestions

- (i) Provisions of Articles 19 and 21 of the Constitution should be kept in mind.
- (ii) In clause 11 (1), after the words "being ordered" add the word, "in writing" .
- (iii) The word "loitering" may be substituted by the words 'frequenting without just cause' or by the words 'hanging around without cause'.

Committee's observation/recommendation

5.24.2 The clauses are adopted without any change.

Clause 12

5.25.0 It provides for punishment for being in possession of arms without licenses in the communally disturbed area.

5.25.1 Suggestions

- (i) It may be misused by implicating an innocent person for keeping unlicensed arms.
- (ii) The situation envisaged is taken care of by Section 25 of the Arms Act.
- (iii) The words "without licence" may be substituted by the words "with *or* without any lawful authority".

Committee's observation/recommendation

5.25.2 The Committee held detailed discussion on the implication of this clause and its likely misuse in its present form. The Committee feels that the very purpose of deleting reference to unlicensed arms in clause 7(1) may be defeated if clause 12 is allowed to remain in its present form. In order to bring clause 12 in consonance with clause 7(1), as amended by the Committee, it recommends that the words 'is found to be in possession of or carrying' may substitute the words has in his possession' in clause 12.

5.25.3 Subject to the above, the clause is adopted.

Clause 13

5.26.0 It provides for punishment for assisting offenders.

5.26.1 Suggestions

- (i) Delete the words “on having reasonable cause to believe” to avoid misuse.
- (ii) The expression “any person who knowing *or* having reasonable cause to believe” is a loose formulation. This can be misused. The words “from the circumstances” may be added after the words “having reasonable cause to believe.”

Committee’s observation/recommendation

5.26.2 The Committee agrees with the view that the expression ‘any person who knowing or having reasonable cause to believe...’ is a loose formulation which can be misused. The Committee, therefore, recommends that after the words ‘having reasonable cause to believe’, the words ‘from the circumstances’ may be inserted.

5.26.3 Subject to the above, the clause is adopted.

Clauses 14-15

5.27.0 These clauses provide for punishment for giving financial assistance to the offenders and punishment to those who threaten witness.

Suggestion

5.27.1 Provisions should be incorporated for freezing of bank accounts; prohibition for raising funds for the welfare of the accused; prevention of flow of foreign funds; and confiscation of illegal funds.

Committee’s observation/recommendation

5.27.2 The clauses are adopted without any change.

Clause 16

5.28.0 The clause provides for punishment for the driver, owner or any person in charge of goods transport vehicle for carrying more persons than authorized.

Suggestion

5.28.1 The words ‘goods transport’ should be deleted and substituted by the words “any vehicle.”

Government’s View

5.28.2 The Home Secretary agreed to delete the word “goods” from the clause and marginal heading to the clause.

Committee’s observation/recommendation

5.28.3 The Committee agrees that the words ‘goods transport vehicle’ are very restrictive and do not include other vehicles. The Committee feels that there is a need to bring all the vehicles under the ambit of this clause. The Committee also takes note of the explanation of the Secretary, Legislative Department that in the Motor Vehicles Act, 1988 there is only the definition of ‘transport vehicle’ and not ‘vehicle’. Taking into consideration the

explanation given by the Legislative Secretary, the Committee recommends that the word 'goods' may be deleted from the clause and marginal heading thereto.

5.28.4 The Committee also takes note of the Home Secretary's submission that the Government propose to add the words 'or arms, explosives or corrosive substance' after the words 'rules made thereunder'. The Committee agrees with the suggestion and recommends that the amendment may be carried out.

5.28.5 Subject to the above, the clause is adopted.

Clause 17

5.29.0 This clause provides for punishment for public servants acting in *mala fide* manner and for failure to discharge their duties through wilful commissions or omissions.

5.29.1 Suggestions

- (i) Punishment for public servants acting in a *mala fide* manner is a welcome provision.
- (ii) Protection is sought to be given to public servants by using the expression 'wilfully' which is not called for. Therefore, the word 'wilfully' should be omitted.
- (iii) Immunities sought to be given to the bureaucrats should be completely withdrawn.
- (iv) It empowers the State Government and its officers but does not provide for their accountability.
- (v) Judicial enquiry to look into complaints against officials - payment by them of compensation if the complaints are found to be genuine.
- (vi) Sanction of State Government should be presumed if not provided within 30 days under proviso to sub-section (2) of Section 17.
- (vii) Accountability for non-declaring an area as a communally disturbed area will have to be suitably provided and fixed.
- (viii) If the State Government does not give prosecution sanction then what will happen? Who is going to punish the public servant? Whether Central Government will give direction to such a State?
- (ix) If by *mala fide* commission or omission of a public servant, something untoward happens, then what would be his liability and punishment?
- (x) Punishment should be "imprisonment for one year and with fine"

Committee's observation/recommendation

5.29.2 The Committee took note of the fact that the offences for which punishment is provided in clause 17 (1) become non-cognizable if the punishment is only one year imprisonment. The Committee feels that the offences need to be made cognizable and for this purpose, the punishment will have to be enhanced to three years imprisonment. By making the quantum of punishment to three years, there would be uniformity in clause 17 and clause 19. Further, if this amendment is not made in clause 17, then clause 19 becomes redundant. The Committee, therefore, recommends that the words "one year" may be substituted by the words "three years" in sub-clause (1) of clause 17.

5.29.3 Subject to the above, the clause is adopted.

Clause 18

5.30.0 The clause provides for the punishment for violation of orders under section 144 of the Code of Criminal Procedure, 1973 in a communally disturbed area.

Committee's observation/recommendation

5.30.1 **The clause is adopted without any change.**

Clause 19

5.31.0 This clause prescribes the criterion for communal offence and enhanced punishment for committing communal violence.

5.31.1 Suggestions

- (i) The manner and the scale of violence, which tends to create internal disturbance should be certified by the Home Secretary of the concerned State as the words "on such a scale, in such a manner" in clause 19 (1) appears to be vague and indeterminate.
- (ii) Enhanced punishment for perpetrators of communal violence provided in the Bill is welcome. But there should be provision for minimum scale of punishment also to the perpetrators.
- (iii) Punitive fine should be imposed in the disturbed area.
- (iv) collective fine will also be discretionary for the executive authorities so where discretion is concerned most probably it might go against minorities.
- (v) The Bill does not address the issue of political will. Mere enhancement of punishment in the absence of political will to enforce accountability and responsibility will not work. Speedy and fair trials are the most effective deterrent for prevention of violence.
- (vi) The proviso in this clause is discriminatory and violates Art. 14 of the Constitution.
- (vii) Person convicted under the Act should also be disqualified to contest the elections to Parliament, State Legislative Assemblies and local bodies and to hold elected posts.

Government's View

5.31.2 An official amendment was proposed by the Home Secretary to the effect that the minimum punishment for delinquent public servant should be three years instead of five years.

Committee's observation/recommendation

5.31.3 **The Committee considered the Government's proposal. It also took note of the fact that this is the only provision in the Bill which prescribes a minimum punishment.**

5.31.4 **The Committee feels that the minimum punishment of imprisonment as proposed to be reduced by the Government to three years is sufficient to work as a deterrent. The Committee, therefore, recommends that the word 'five' in the proviso to sub-clause (2) of clause 19 may be substituted by the word "three".**

5.31.5 **Subject to the above, the clause is adopted.**

Clause 20

5.32.0 The clause provides that the scheduled offences shall be cognizable offences for the purposes of the proposed legislation.

5.32.1 Suggestions

- (i) All offences under the Bill, except the one coming under clause 17, should be made cognizable and non-bailable.
- (ii) Minimum and maximum punishments should be three years and seven years of imprisonment, respectively.
- (iii) Bail provisions should be made stringent. Anticipatory bail should not be made applicable.
- (iv) Law enforcing agencies should be empowered to intercept telephonic/internet/wireless communications.
- (v) Remand period should be extended for 30 days.
- (vi) A mechanism should be devised to restrain the media from making biased and negative reporting.
- (vii) Confessions made before a Police Officer of and above the rank of Superintendent of Police (SP) should be made admissible evidence.
- (viii) The words 'or Executive Magistrate' should be deleted.

Government's Views

5.31.2 On the suggestion of deleting the words 'Executive Magistrate', the Home Secretary stated that the problem would be of logistics. He added that the impact of any new legislation or amendment would be huge on the judiciary. In spite of fast track courts and various steps taken, the pendency of cases was not getting reduced. As far as possible, cases would be referred to Judicial Magistrate. The Home Secretary explained that this provision had been made for referring cases to the Executive Magistrate wherever it would be found necessary.

Committee's observation/recommendation

5.32.3 The Committee feels that the Executive Magistrate will not have as much independence as the Judicial Magistrate. Moreover, Executive Magistrate is directly accountable to the Government. Therefore, the Committee recommends that the words 'or Executive Magistrate' in sub-clause (3) of clause 20 may be deleted.

5.32.4 **Subject to the above, the clause is adopted.**

Clause 21

5.33.0 The clause provides for declaring any post or place within a communally disturbed area as police station.

Suggestion

5.33.1 For declaring any post or place to be a police station, provision should be made in the clause for seeking prior approval of the Director General of Police (DGP) of the State.

Government's Views

5.33.2 Responding to the suggestion, the Home Secretary clarified that the competent authority to declare any post or place in the communally disturbed area was the State Government which was higher than the DGP.

Committee's observation/recommendation

5.33.3 **The clause is adopted without any change.**

Clause 22

5.34.0 The clause empowers the State Government to constitute a Review Committee headed by an officer of the level of Inspector General of Police (IGP) to review cases of scheduled offences where the trial ends in acquittal and to issue orders for filing of appeals, wherever required.

Suggestion

5.34.1 Review Committee is proposed to be headed by Inspector General of Police (IGP). Since review of acquittals and appeals are done by law officers, they should be associated with the Review Committee

Government's Views

5.34.2 The Home Secretary clarified that the clause was meant to take care of acquittals on procedural, technical and administrative grounds which can be ascertained from chargesheet and case diary and not on questions of law. A study of the chargesheet and a case diary by a person well versed in matters relating to investigation and preparation of chargesheet is more effective than perusal by a law officer.

Committee's observation/recommendation

5.34.3 **The Committee, however, feels that a Law officer also should be associated with the Review Committee. Therefore, the Committee recommends that Government may bring suitable amendment in sub-clause (1) of clause 22 for the purpose of associating a law officer of the State, with the Review Committee.**

5.34.4 **Subject to the above, the clause is adopted.**

Clause 23

5.35.0 The clause provides for the constitution of one or more Special Investigation Teams (SIT) by the State Government in case the State Government comes to the conclusion that the investigation of offences committed in a communally disturbed area 'Nere not carried out properly in a fair and impartial manner.

5.35.1 Suggestions

- (i) No power other than what is vested with the State Government under the Cr.P C. should be given as there is every possibility that this proposed provision can be misused.
- (ii) Special Investigation Team (SIT) should be constituted by the State Government, in consultation with the State Council, wherever more than ten deaths occur or more than ten scheduled offences are committed within the jurisdiction of any police station. The SIT shall conduct investigation under the supervision of the State Government.

- (iii) Provisions may be introduced to fix a time limit for disposal of cases to the effect that if the case is not finalized within the statutory period the Judge shall send a report explaining the reasons to the High Court. In the case of non-compliance, the High Court may take such action as may be necessary to ensure speedy disposal.
- (iv) Statutory limits by themselves do not work. The Chief Justice should be under an obligation to take effective measures to see that disposal is done in time.
- (v) Clause 23 is not required as the power of constituting SIT is already available with the State Governments.

Government's Views

5.35.2 The Home Secretary stated that setting up of SIT by the State Government for communal violence cases was in conformity with the provisions of Cr. P C. On the suggestion of constituting SIT in consultation with the State Council, the Home Secretary was of the view that the Council was meant for dealing with compensation, relief and rehabilitation and therefore, it should be left to focus on the assigned functions.

Committee's observation/recommendation

5.35.3 The Committee is of the view that a provision already exists in Cr. P.C. empowering State Governments to constitute SIT. The Committee, therefore, recommends that clause 23 may be deleted.

Clause 24

5.36.0 The clause provides that the State Government shall, by notification in the Official Gazette, establish one or more Special Courts for the trial of scheduled offence, committed during the period of disturbance.

5.36.1 Suggestions

- (i) In order to ensure efficiency a mandatory provision be made under this statute that Special Judges should be imparted training before they are posted as such judges.
- (ii) Timely and adequate infrastructure for Special Courts should be provided.
- (iii) "Shall" should be substituted by "may".
- (iv) The power to transfer any case from the jurisdiction of one High Court to another vests in Supreme Court under section 406 of Cr.P.C. Thus, the Central Government can not establish Additional Special Court outside a particular State without obtaining the approval of the judiciary. Therefore, the words "with the permission or in consultation with the Supreme Court of India" may be added at the end of clause 24(2).

Government's Views

5.36.2 The Home Secretary stated that under the General Clauses Act, 1897 "may" includes "shall". On the issue of transferring cases outside the jurisdiction of the State, the Home Secretary stated that based on strong public opinion the State may send the case to the Central Government which may collect information about it and after following the due process of law, may provide for trial of such case to take place outside the jurisdiction of the State. The Home Secretary added that such a decision can be taken only with the concurrence of the Supreme Court.

Committee's observation/recommendation

5.36.3 The Committee discussed at length the implications of this clause. At present Central Government or a State Government does not have the power to transfer a case from one High Court to another High Court. This is the power given to the Judiciary. Section 406 of Cr.P.C. provides that the Supreme Court can transfer a case from one High Court to another High Court. Giving this power to the Central Government is illegal and takes away the powers of Judiciary. Clause 24 is repugnant to the provisions of Section 406 of Cr.P.C. The Committee is, therefore, of the strong view that such a power should remain with the judiciary only. The exigencies visualized in this clause whereunder a State Government may request the Central Government to establish an additional Special Court outside the State for trial of scheduled offences, are impracticable and highly improbable as no State Government would indulge in self indictment stating that justice cannot be dispensed within that State. The Committee, therefore, recommends that clause 24 may be re-looked in the light of Section 406 of Cr.P.C.

5.36.4 Subject to the above, the clause is adopted.

Clause 25

5.37.0 The Clause provides for composition and appointment of Judges of Special Courts

5.37.1 Suggestions

- (i) In order to ensure efficiency a mandatory provision be made under this statute that Special Judges should be imparted training before they are posted as such judges.
- (ii) Timely and adequate infrastructure for special courts should be provided.

Government's Views

5.37.2 On the issue of making provisions for timely and adequate infrastructure for Special Courts, the Home Secretary stated that it could not form part of the Act. At best, it could be provided in the rules and to facilitate the same a request could be placed with the State Governments and the High Courts.

Committee's observation/recommendation

5.37.3 The Committee recommends that while framing the rules, endeavour should be made for providing timely and adequate infrastructure for the Special Courts.

5.37.4 Subject to the above, the clause is adopted.

Clause 26

5.38.0 The Clause provides for the place of sitting of a Special Court

5.38.1 Suggestion

The proviso to the clause should be deleted in view of the fact that the Court should decide the place of sitting instead of depending upon the certificate of Public Prosecutor.

Government's Views

5.38.2 In regard to the certificate of the Public Prosecutor for holding of trial at any other place other than the usual place of sitting, the Home Secretary stated that the decision for the trial to

take place at any other place was left with the court. The initial application would be from the Public Prosecutor. Then the court would hear the accused and then the court records its reasons in writing as to why it should take place at any other place. He agreed for rewording it.

Law Secretary stated that the Public Prosecutor's certificate becomes binding on the court and if the court differs, it has to give reasons. He was, however, of the opinion that the proviso can be deleted.

Committee's observation/recommendation

5.38.3 The Committee recommends that the proviso to the clause may be deleted.

5.38.4 Subject to the above, the clause is adopted.

Clause 27

5.39.0 The Clause provides for jurisdiction of Special Courts.

Committee's observation/recommendation

5.39.1 The clause is adopted without any change.

Clause 28

5.40.0 The clause provides for powers of Special Courts with respect to other offences.

Committee's observation/recommendation

5.40.1 The clause is adopted without any change.

Clause 29

5.41.0 The Clause provides for the appointment of Public Prosecutors. Under the clause, eligibility for appointment of Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor is (i) practice as an Advocate for not less than seven years or (ii) one has held any post in the State or Centre for not less than seven years requiring special knowledge of law.

5.41.1 Suggestions:

- (i) The clause does not have any provision to Public Prosecutors being responsive to the victims and survivors.
- (ii) The victim should have the right to appoint a Special Prosecutor.
- (iii) Public Prosecutor, under Section 29, should not belong to any political persuasion and should have the confidence of victims.
- (iv) The word "qualified" may be inserted before the word "person" in sub-clause (1), and the words "in accordance with law and with the consent of the victims" be added before the proviso to sub-clause (1) of the clause.
- (v) The Public Prosecutor should be appointed on the recommendation of the State Council and should work under the supervision of the State Council.
- (vi) As soon as an area is declared communally disturbed, a Committee should be formed to appoint prosecutors on case to case basis. The Committee should include the Home Secretary, the DGP and the Law Secretary of the State as *ex-officio* members which

would eliminate the possibility of subversion in the process of appointment of Public Prosecutors.

Government's views

5.41.2 The Home Secretary stated that the clause had been deliberated upon and retained due to the fact that the legal community was very busy in a large number of cases.

Committee's observation/recommendation

5.41.3 **The Committee is of the view that a person holding a post in the State or the Central Government for not less than seven years having special knowledge of law may not prove himself to be effective prosecutor in cases of communal violence. Special knowledge is different from practical knowledge. Practical knowledge and experience are very important for dealing with legal cases. The Committee, therefore, feels that the eligibility for appointment as a Public Prosecutor should be confined to practice in law for not less than seven years. The Committee also does not agree with the explanation of the Home Secretary that the provision for appointment of officers of the Union or a State having special knowledge of law as public prosecutors has been made to ease burden on the already over burdened legal practitioners. The Committee, accordingly, recommends that the word 'or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law' may be deleted in sub-clause (2) of clause 29.**

5.41.4 **Subject to the above, the clause is adopted.**

Clause 30

5.42.0 The clause provides for procedure and powers of Special Courts.

5.42.1 Suggestions:

- (i) Definite time-frame for commencement and completion of the trial should be provided. Stay/adjournment/postponement of proceedings is not allowed under the Prevention of Corruption Act, 1998 and enquiries are conducted in the absence of the accused or his counsel. Similar provisions should be inserted in the clause.
- (ii) Assigning powers of summary trial to the Special Court is against the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution.
- (iii) The words 'without the accused being committed to it for trial' appearing in sub-clause (1) should be deleted.
- (iv) Under Section 262 (2) of the Code of Criminal Procedure sentence of imprisonment beyond three months cannot be given under a summary trial. Punishment in second proviso to sub-clause (3) should be six months instead of two years for summary trial of communal violence cases.
- (v) There will be plethora of cases on flimsy grounds if complaints are allowed to be filed without police report in Special Courts.
- (vi) Sub-clause (3) should be deleted.

Government's views

5.42.2 In regard to the requirement of a police report for taking cognizance of a scheduled offence, the Home Secretary stated that it should be incumbent on the Court to take cognizance

of offences on the basis of police reports. In regard to summary trial of cases, as provided in sub-clause (3), the Home Secretary stated that the said provision had been deliberately kept with the objective of dealing with cases of communal violence speedily. However, in view of the apprehensions expressed by the Members of the Committee, he agreed to have a re-look at sub-clauses (1), (3) and (4).

Committee's observations/recommendations

5.42.3 The Committee has held extensive discussion on the clause. The Committee considered the implications of the clause whereunder a Special Court may take cognizance of any scheduled offence without the accused being committed to it for trial and its effect on the right to life and personal liberty guaranteed under Article 21 of the Constitution. The Committee apprehends that the receipt of complaints by Special Courts without any police report may lead to a plethora of flimsy complaints in those Courts. The Committee also takes note of the fact that summary trial is well defined in Chapter XXI of the Code of Criminal Procedure. The Committee is, therefore, of the view that the provision of summary trial should be deleted from the clause.

5.42.4 In the light of the reservations of the Committee on the maintainability of the clause *vis-a-vis* Article 21 of the Constitution guaranteeing protection of life and personal liberty of a person and Chapters XV and XXI of the Cr.P.C., the Committee recommends that the Government may have a re-look at clause 30 to bring it in harmony with the above mentioned constitutional and statutory provisions.

5.42.5 Subject to the above, the clause is adopted.

Clause 31

5.43.0 The Clause provides for power of Supreme Court to transfer cases.

5.43.1 Suggestions

- (i) Clause 31 does not specify on what basis the Supreme Court may pass such order for transfer of a case.
- (ii) The Supreme Court enjoys this power under the Constitution. Besides, such provisions also exist in Sections 406 and 407 of the Cr.P.C. Therefore, this clause should be deleted.
- (iii) Since similar provisions of transferring cases from one High Court or any Subordinate Court thereto, to another High Court or Subordinate Court thereto, by the Supreme Court is already there in Section 406 of the Cr.P.C. The clause is superfluous.
- (iv) This clause is unnecessary and not well thought of as Special Courts are constituted after taking into account all relevant aspects including fair trial. Visualizing a situation for transfer of cases from one Special Court to another puts a question mark on the very purpose of constituting Special Courts.

Government's views:

5.43.2 The Secretary, Legislative Department, Ministry of Law and Justice, clarified that clause 31 is different from other existing provisions of the Cr.P.C. Section 406 of Cr.P.C. deals with cases where the Supreme Court can transfer a case from one High Court to another High Court. Section

407 deals with the power of the High Court to transfer a case from one court to another court. However, the power given under this clause to the Supreme Court is to transfer a case from one Special Court to another Special Court. This is slightly different. He also stated that it was proposed to send a message that the Supreme Court in certain cases could transfer a case from one Special Court to another Special Court in the interest of justice.

Committee's observation/recommendation

5.43.3 The clause is adopted without any change.

Clause 32

5.44.0 The clause provides for protection of witnesses.

5.44.1 Suggestion

The provision in the clause for protection of witnesses is not adequate and therefore a specific provision should be made. They should have the right to get police protection the moment the witness and 'victims feel threatened.

Committee's observation/recommendation

5.44.2 The Committee, after some discussion, felt that the clause is necessary for protection of witnesses and victims.

5.44.3 The clause is adopted without any change.

Clause 33

5.45.0 The clause provides for power of transfer of cases to regular courts.

Committee's observation/recommendation

5.45.1 The clause is adopted without any change.

Clause 34

5.46.0 The clause provides for removal of a person likely to commit scheduled offence.

5.46.1 Suggestions

- (i) Power to extern should be with the District Magistrate/Commissioner of Police and not Special Court.
- (ii) Special Court has been given the powers of District Magistrate. It should be re-looked.

Government's View

5.46.2 The Home Secretary responded to the suggestions. Appreciating the view point of the Committee, the Home Secretary acceded that the Special Court should not be given the powers of District Magistrate, and this clause may be re-looked. He also agreed for deletion of the words '*suo motu or*' in sub-clause (1).

Committee's observation/recommendation

5.46.3 The Committee feels that the powers, functions, responsibilities of the three organs

of the State, *i.e.*, Legislature, Executive and Judiciary are well demarcated in the Constitution and under Clause 34. There seems to be an attempt to transfer the power of maintenance of law and order from Executive to the Judiciary. The Committee, therefore, recommends that the words '*suo motu or*' may be deleted in sub-clause (1) of clause 34. The Committee also recommends that the entire clause may be re-looked.

5.46.4 **Subject to the above, the clause is adopted.**

Clause 35

5.47.0 The clause provides for procedure to be followed in case of failure of a person to remove himself from a communally disturbed area and attempt to return to that area after removal.

5.47.1 Suggestion

This clause may also be amended in the light of suggestions made in respect of Clause 34.

Government's View

5.47.2 Keeping in view the suggestion of the Committee, the Home Secretary assured the Committee to have a re-look at Clause 35 along with Clause 34 as both are inter-connected.

Committee's observation/recommendation

5.47.3 **The Committee feels that Clause 35 which is connected with Clause 34 is also required to be re-looked.**

5.47.4 **Subject to the above, the clause is adopted.**

Clause 36

5.48.0 The clause provides for appeal.

Committee's observation/recommendation

5.48.1 **The clause is adopted without any change.**

Clause 37

5.49.0 This clause provides for abolition of certain Special Courts

Committee's observation/recommendation

5.49.1 **The Clause is adopted without any change.**

Clause 38

5.50.0 The clause provides for State Communal Disturbance Relief and Rehabilitation Council.

5.50.1 Suggestions

- (i) When there is no communal violence in a State, then there is no need to establish such a Council. A State Government should establish it if the Central Government advises on a perception of the conditions in that State.

- (ii) Rehabilitation does not mean simply keeping them in camps for a while and then shifting them somewhere else under ghetto. They should be allowed to go back and resume control of their property.

Committee's observation/recommendation

5.50.2 The clause is adopted without any change.

Clause 39

5.51.0 The clause provides for constitution of State Council.

5.51.1 Suggestions

- (i) Relief and Rehabilitation Council from national level to district level be represented by leaders of minority communities/women/religious leaders and public representatives/officers of minority community.
- (ii) National and State Council be presided over by the Home Minister and the Chief Minister, respectively.
- (iii) National Council is superfluous. District Council is competent to assess the damages and to provide relief and rehabilitation to the victims of communal violence.
- (iv) The word "Chief Secretary" may be substituted by "Chief Minister".
- (v) The Home Minister of the State Government should be the Chairperson of the State Council. Women should be given adequate representation in the State and District Councils.
- (vi) The State Government be given the power to appoint the Chairmen and Members of these Councils.
- (vii) The State Government should be empowered to fix the tenure of non-Government representatives.
- (viii) Representatives of Reserve Bank of India and Insurance Sector should also be represented in the State Council.
- (ix) Local Member of Legislative Assembly and Member of Parliament should also be made Members in the State Council.
- (x) The entire chapters VII and VIII are absolutely bureaucratic in tone and content. Provision be made so that the Chief Minister presides over the State Council.

Government's View

5.51.2 Responding to the suggestions, the Home Secretary stated that the proposed composition of the State Council is a conscious decision of the Government because in many cases allegations were made that riots and such other things would have political backing and, therefore, the Council as proposed would act as a safeguard. He further stated that the Chief Secretary had been made the Chairperson ex-officio to keep the functioning of the Council away from political control so that it can give independent views and recommendations. However, the final decision on the recommendations of the Council would be taken by the Chief Minister as the head of the Government. On the issue of giving adequate representation to women in the Council, the Home Secretary stated that under clause 39 (g)&(h) the State Governments are expected to nominate

women representatives but it should be specifically mentioned therein. On the issue of nominating representatives of RBI and Insurance Sector, he responded that the representatives of the Ministry of Finance (Banking and Insurance Divisions) could be co-opted in the Council meetings as 'special invitees'.

Committee's observations/recommendations

5.51.3 The Committee recommends that the State Council should be presided over by the Home Minister of the concerned State. The application of mind at the political level can take place at that stage itself rather than the proposal being sent by the Council, for consideration of the Chief Minister.

5.51.4 The Committee feels that adequate representation needs to be provided for women in the State Council with at least one woman representative each under sub-clauses (g) and (h), in view of the fact that women are the first and the worst victims of communal violence.

5.51.5 The Committee is of the view that the composition of the Council does not provide for any representative from Banking and Insurance Sector which play a key role in relief and rehabilitation of victims of communal violence. The Committee therefore, recommends that representative from the Union Ministry of Finance (Department of Economic Affairs, Banking and Insurance Divisions) may be associated as 'Special Invitee' in all the meetings of the State Council.

5.51.6 Subject to the above, the clause is adopted.

Clause 40

5.52.0 The clause provides for functions of State Council.

5.52.1 Suggestions

- (i) Empowering the State Council will lead to difficulties in the case of differences between the State Government and State Council. Besides, assessment of compensation and fixing 20% of the full rates of compensation is very difficult during riots.
- (ii) Other functions of the Council are acceptable except restoration of damaged places of worship.
- (iii) A time limit should be fixed for payment of immediate or interim relief.
- (iv) Law and Order should be monitored by the State Council.
- (v) The name of the officer appointed as Competent Authority by the State Government shall be placed before the State Council for its approval.
- (vi) All educational institutions and places of religious importance destroyed during riots should be restored to their original position by the 'State'.
- (vii) The State Government be given the power to decide the composition of the Council.
- (viii) District Council should be consulted by the State Council for taking preventive measures.

Committee's observation/recommendation

5.52.2 The clause is adopted without any change.

Clause 41

5.53.0 The clause provides for the State Plan for promotion of communal harmony and prevention of communal violence.

5.53.1 Suggestions

- (i) Impact of District Peace Committee is limited. Area/Mohalla Peace Committees should be constituted for promotion of communal harmony.
- (ii) Drawing up and implementation of schemes are administrative matters and hence need not be laid on the Table of the State Legislature. This provision may be deleted.
- (iii) This provision will absolve the Central Government of any financial liability such as grants from PM's Relief Fund. This provision may be deleted.
- (iv) In the proposed legislation, four chapters have been provided only for rehabilitation of victims but no chapter to promote communal harmony has been provided in the Bill. For promoting communal harmony for prevention and control of communal violence at least two chapters may be added in the Bill.
- (v) A provision for "Communal Harmony Scheme" to prevent and control communal violence in all the States may be made in the Bill. All the State Governments may be directed to make adequate funds available to implement the communal harmony scheme to prevent communal violence as done in the State of Maharashtra.
- (vi) Permission to obtain donations may be given to the commissioners of Police and Superintendent of Police to implement the "Communal Harmony Scheme" in all the States.
- (vii) A provision to constitute "Communal Harmony Committees" may be provided.

Committee's observation/recommendation

5.53.2 **The Clause is adopted without any change.**

Clause 42

5.54.0 The clause provides for the constitution of the District Council.

5.54.1 Suggestions

- (i) The State Government may be given the power to decide who would be the Chairman and members of the District Council.
- (ii) Women should be given adequate representation in District Council.

Government's View

5.54.2 Responding to the suggestions, the Home Secretary agreed that women representatives should be there in the District Council.

Committee's observation/recommendation

5.54.3 **The Committee recommends that women should be given adequate representation in the District Council with atleast one woman representative each under sub clauses (e) and (f).**

5.54.4 **Subject to the above, the clause is adopted.**

Clause 43

5.55.0 The clause provides for meetings of District Council.

Committee's observation/recommendation

5.55.1 **The clause is adopted without any change.**

Clause 44

5.56.0 The clause provides for functions of District Council.

Suggestion

5.56.1 Provision should be included that all preventive measures must be in consultation of the District Council comprising of representatives of all communities including minority community and victim community.

Committee's observation/recommendation

5.56.2 **The clause is adopted without any change.**

Clause 45

5.57.0 The clause provides for constitution of National Communal Disturbance Relief and Rehabilitation Council.

5.57 Suggestions

- (i) Union Home Minister should be made the Chairperson of National Council. Adequate representation may be given to women in the Council.
- (ii) DM should report communal disturbance to the National Council.
- (iii) The National Council will impair the powers of the State Government. It is superfluous and not required.

Government's Views

5.57.2 In regard to making the Union Home Minister the Chairperson of the National Council, the representative of the Ministry of Home Affairs stated that the composition of the Council had been proposed to insulate it from political influence and to make it function independently. He, however, assured the Committee that it would be re-looked in the light of the suggestions of the Committee. On the issue of women's representation in the Council, he agreed that it would be taken care of.

Committee's observation/recommendation

5.57.3 **The Committee deliberated on the clause. It recommends that the National Council should be presided over by the Union Home Minister so that application of mind at the political level can take place at that stage itself. The Committee also recommends that women may be given adequate representation in the National Council with at least one woman representative each under sub-clauses (iv) and (v).**

5.57.4 **Subject to the above, the clause is adopted.**

Clause 46

5.58.0 The clause provides for terms and conditions of office of Members of National Council.

Committee's observation/recommendation

5.58.1 **The clause is adopted without any change.**

Clause 47

5.59.0 The clause provides for powers and functions of National Council.

5.59.1 Suggestions

- (i) There should be policy of uniform compensation to the victims of Communal Violence throughout the country.
- (ii) There should be uniformity in paying compensation for loss of life. There has to be some uniformity because in some communal riots only Rs. 20,000 was paid, and in some cases Rs. 50,000 was paid and yet in other cases Rs. 2 lakh was paid.
- (iii) Uniform Compensation to the victims of communal violence across the country to be paid within a definite time-frame.

Committee's observation/recommendation

5.59.2 The Committee takes note of the fact that there is no uniformity in the payment of compensation to the victims which is discriminatory and causes discontentment amongst them. The Committee, therefore, recommends that the Government should come out with a policy of paying uniform compensation.

5.59.3 **Subject to the above, the clause is adopted.**

Clause 48

5.60.0 The clause provides for report of National Council.

Suggestion

5.60.1 The National Councils should also submit reports to the State Government and the State Council.

Committee's observation/recommendation

5.60.2 **The clause is adopted without any change.**

Clause 49

5.61.0 The clause provides for State Fund.

5.61.1 Suggestions

- (i) A State where there is no communal violence need not establish this Fund.
- (ii) Constitution of State Fund is not a practicable suggestion.
- (iii) The share of contribution in State Rehabilitation Fund by State and Centre should be quantified.

Committee's observation/recommendation

5.61.2 **The Clause is adopted without any change.**

Clause 50

5.62.0 The clause provides for scheme for grant of relief.

Committee's observation/recommendation

5.62.1 **The clause is adopted without any change.**

Clause 51

5.63.0 The clause provides for District Fund.

Committee's observation/recommendation

5.63.1 **The clause is adopted without any change.**

Clause 52

5.64.0 The clause provides for District Council to function under State Council.

Committee's observation/recommendation

5.64.1 **The clause is adopted without any change.**

Clauses 53 and 54

5.65.0 Clause 53 provides for compensation to victims by offenders.

5.65.1 Clause 54 provides for immediate compensation to victims by District Council.

5.65.2 **Suggestions**

- (i) In communal violence or caste violence or group violence, it is the lumpen elements who are used for creating violence. They have no capacity to pay any compensation. Monetary compensation by offender being contemplated is not practical as economic status of such offenders is generally low.
- (ii) The State should give compensation to the Victims.
- (iii) 'Victimology Insurance', was being considered and was being seriously looked into. Every State could obtain an insurance policy, pay premium for it just like in the motor accident third party cases and from that the compensation could be paid so that liability rests with the State.
- (iv) The concept of "reparation" which is broader than compensation may be incorporated.
- (v) A policy of uniform and time bound compensation to the victims should be adopted.
- (vi) Clauses 53 and 54 should be swapped.
- (vii) There are instances where entire buildings were demolished and rupees five hundred was paid as compensation. It should be based on market rate.
- (viii) Compensation should be paid to the victims irrespective of conviction or acquittal.

- (ix) Compensation for loss of movable/immovable property should be paid at market rate.
- (x) Compensation for loss of life, limb, honour and property be delinked from the progress of prosecution and accepted as a duty of the State.

Government's Views

5.65.3 The Home Secretary stated that whereas clause 54 deals with immediate compensation clause 53 deals with compensation after conviction. Therefore, appropriately clause 54 should come before clause 53 and suggested that both these clauses may be swapped.

5.65.4 On the issue of awarding compensation to a person whose family Members have succumbed to communal violence and the person surviving has also been implicated by the Police, the Home Secretary Stated that, in such a situation, chances are that the person may be acquitted. However, if a person is given compensation and is later on convicted it would lead to a different kind of controversy. Keeping in view the concern expressed by the Members of the Committee that a victim who is not actually involved in communal violence and who gets acquitted, may not get any compensation right at the beginning because of his being implicated by the police, he assured the Committee that the Government would come out with some solution to deal with such a situation.

Committee's observation/recommendations

5.65.5 **The Committee held detailed discussion on both the clauses. The Committee agrees with the suggestion of the Home Secretary that clauses 53 and 54 may be swapped and recommends accordingly.**

5.65.6 **The Committee expresses its concern on the likely consequences of sub clause (1) of clause 53 whereunder a Special Court may order payment of compensation by the offender to the victims. Although the victims will receive compensation from the offender yet this may lead to further enmity between the individuals and groups and cause more social tension.**

5.65.7 **The Committee also flagged the points enumerated in proviso to sub clause (1) of clause 53 and sub clause (4) of clause 54 whereunder assistance/compensation shall not be paid to a person who is involved in a scheduled offence. The Committee appreciates the intention behind these provisions that compensation should not be paid to the perpetrators of communal violence. However, the Committee expresses its concern over the implications of these provisions. Sometimes, a victim of communal violence may be deliberately implicated in a case just to deprive him of the immediate compensation. Though ultimately the victim may be acquitted and compensation awarded to him, but it would be too late and its very purpose may get defeated, as he may not receive the same when it is most needed.**

5.65.8 **The Committee, therefore, recommends that Government should address the above issues appropriately and bring suitable amendments in the clauses before the Bill is brought for consideration in Parliament.**

5.65.9 **Subject to the above, the clauses are adopted.**

Clause 55

5.66.0 The clause provides for power of Central Government to give directions to State Governments and issue notifications etc.

5.66.1 Suggestions

- (i) There is the duty of the State under Article 256 of the Constitution to secure compliance with Central laws. If the State fails to perform this duty under Article 256 then Government of that State is not being carried on in accordance with the Constitution. It must be made clear that every State which defaults in this primary obligation will run the risk of its Government being dismissed and President's Rule imposed. This is not an interference with State autonomy. This is a Constitutional mandate. It is also the Centre's duty towards every person living in that State to ensure that internal disturbance does not take place. This Bill not only refuses to recognize that obligation but it also negates that obligation. To perform that duty of preventing internal disturbance in that State, it is the Central Government's duty to send forces into that State. If this performance of duty is made dependent upon a request from the recalcitrant State, the Centre would be abandoning, jettisoning its duty. Therefore, sub-clause (3) (b) makes the Central Government totally ineffective.
- (ii) The basic problem with the Bill is that if the Central Government decides to invoke the provisions of the statute and the State Government does not cooperate, the legislation will be rendered ineffective. Above all, there is no remedy in the Bill against the unwillingness of Central or State Government to declare an area as communally disturbed or in the event of a conflict between the Central and State Governments with regard thereto. It may be advisable to consider the possibility of providing an impartial agency such as the National Human Rights Commission with appropriate powers to act in situations that demand intervention of the Central Government and where the State Government is not intervening to protect the fundamental right of life of citizens.
- (iii) In such clause (b) of the clause instead of the word "direct", the word "request" be substituted. In sub-clause (3) of the Clause the word 'directions' be substituted by the word 'request'.
- (iv) It is bypassing the entire constitutional scheme as provided in Articles 352 to 356 and creating a new legislative scheme without a safeguard where on a trigger of a caste tension or a religious tension, the Centre acquires powers which are otherwise constitutionally perhaps not with the Centre.
- (v) In a federal structure like ours, the law and order is a State subject and Centre will be interfering with their activities under Clauses 55 and 56.
- (vi) The clause has a direct bearing on the federal structure of the polity. It encroaches upon the jurisdiction of the States and is against the spirit of the Constitution.
- (vii) Federal nature of the relationship between Centre and States would require amendment of the clause.
- (viii) The clause may be modified. Role of Central Government should be advisory and not mandatory.
- (ix) Direct intervention by the Central Government should be avoided. Instead of the word 'direct' the word 'request' may be used in the clause.
- (x) The clause almost runs parallel to emergency provisions and may be deleted.
- (xi) The Bill seeks to declare an "Emergency" in a State without resorting to the provisions of the Constitution which will encourage unitary tendency in our polity.

- (xii) There must be safeguards in Clause 55 to prevent its misuse.
- (xiii) Clause 55 appears to be colourable exercise of legislation. It can be used as a spring board by the Central Government to invoke Article 356 of the Constitution to dismiss a popularly elected government in a State and take over its administration.
- (xiv) Provisions in the Bill are ambiguous and contradictory in nature. The contradiction becomes glaring when Clause 55 (3) gives authority to the Centre to notify any area within a State as a “communally disturbed area” and the sub-clause immediately following it lays down that deployment of Armed Forces should be on the request of the State Government.
- (xv) This clause is required to deal with such State Governments which may deliberately indulge in fomenting trouble for political reasons.
- (xvi) Unified Command should work under a senior officer of the State Government. Unified Command requires clear definition. Unified Command should be the creation of the State Government.
- (xvii) Though this Clause impinges on the federal nature of the Constitution, but it does not violate the federal structure of the country.
- (xviii) The Central Government should be given the power to deploy armed forces in communally disturbed area or in the district where more than 50 deaths have taken place, whether or not there is a request for the same by the State Government.
- (xix) This provision is only a safeguard provision. It is not a violation of the State Government’s powers. It does not affect the federal structure.
- (xx) Basis for action under Clause 55 should be decision of the Union Cabinet. Notification should be signed by Home Secretary of the Central Government. All notifications shall be laid in Parliament which shall discuss and approve them.
- (xxi) In the event of State Government remaining inactive or unresponsive, the Central Government shall have the power to take all immediate measures to suppress and control the situation to prevent/stop violence.
- (xxii) Articles 256 and 257 (1) of the Constitution make sub-clause (1) (b) of the clause redundant.

Government’s View

5.66.2 The Ministry of Home Affairs in their written comments on the suggestions, has stated as under:

The safeguards provided in clause 55 are as follows:

The Bill requires that, in the opinion of the Central Government, the following events should precede action:

- (a) Scheduled offences should be committed within the area in question in a certain manner and on a certain scale involving use of criminal force or violence against members of any group, caste or community resulting in death or destruction of property;
- (b) Such use of criminal force or violence should be committed with a view to create disharmony or feelings of enmity or ill-will between different groups, castes or communities; and

- (c) There should be an imminent threat to the secular fabric, unity, integrity or internal security, which requires that immediate steps be taken by the State Government concerned.

After the opinion is formed as above, the Central Government shall:

- (a) Draw the attention of the State Government to the prevailing situation in that area; and
- (b) Direct the State to take all immediate measures to suppress such violence.

After all the above-mentioned circumstances get established and the State Government is unable to control such violence the Central Government may:

- (a) Issue a notification declaring the area within the State as a communally disturbed area; and
- (b) At the request of the State Government, deploy Armed Forces.

Committee's observations/recommendations

5.66.3 This has been one of the most debated clause in the deliberations of the Committee. A large number of suggestions/comments have been received on the clause. The Committee has had detailed discussion on the impact of the clause on States' autonomy and the federal structure of our polity. In the successive rounds of in-house discussion, each member of the Committee present in those sittings expressed views on the clause and a majority of them articulated reservations thereon. In view of this the Committee thought it appropriate to ascertain the views of all the State Governments and recognized Political Parties on the Bill with particular reference to this clause.

5.66.4 It has been noted that out of thirteen National level and State level Political Parties which responded to the request of the Committee, ten opposed the clause, two supported it and one party while supporting the Bill in principle, did not offer any specific comment on the clauses of the Bill.

5.66.5 As for the State Governments, out of twelve States which responded, eight opposed the clause, one supported it while another extended in principle support. Two States did not offer any comment.

5.66.6 The Committee also had the benefit of the views of some legal/constitutional experts and social/political scientists on the provisions of the Bill particularly this clause.

5.66.7 Towards the concluding stage of discussions on the clause, the view emerged in the Committee was that the apprehension of impingement of the clause on the States' autonomy and federal structure, enshrined in the Constitution, has been adequately addressed and necessary safeguards already provided in the clause to prevent its misuse by the Central Government.

5.66.8 The Committee feels that the clause in its present form may be retained keeping in view the paramountcy of maintaining the secular fabric, unity, integrity and internal security of the Nation.

5.66.9 The Committee has recommended substitution of the words 'death or' by the words 'grievous hurt, loss of life or extensive damage' in sub-clause 1 (a) of clause 3, pertaining to one of the grounds for declaring an area as communally disturbed area by the State Government. Since sub-clause (1) of Clause 55 enumerates the grounds on which Central Government can give directions to the State Government and issue notification etc. to deal

with communal violence, there is a necessity for carrying out consequential amendment in the said sub-clause in line with the amendment recommended in clause 3(1)(a).

5.66.10 Subject to the above, the clause is adopted.

Clause 56

5.67.0 The clause provides for power of Central Government to extend or modify notifications issued under Section 55.

Committee's observation/recommendation

5.67.1 The clause is adopted without any change.

Clause 57

5.68.0 The clause provides for protection of action taken in good faith.

Suggestion

5.68.1 A new sub-clause should be added for instituting judicial inquiry to look into complaints of excesses committed by the officials. If excesses are proved in such enquiry, the judicial enquiry can give punishment to them and order payment of compensation to victims.

Government's views

5.68.2 In support of Clause 57, the Home Secretary stated that there should be some protection for the action taken in good faith.

Committee's observation/recommendation

5.68.3 The clause is adopted without any change.

Clause 58

5.69.0 The clause provides for prohibition against discrimination.

Committee's observation/recommendation

5.69.1 The clause is adopted without any change.

Clause 59

5.70.0 The clause provides that the application of other laws is not barred.

Committee's observation/recommendation

5.70.1 The clause is adopted without any change.

Clause 60

5.71.0 The clause provides for power of Central Government to make rules.

Committee's observation/recommendation

5.71.1 The clause is adopted without any change.

Clause 61

5.72.0 The clause provides for power of State Government to make rules.

Committee's observation/recommendation

5.72.1 **The clause is adopted without any change.**

Clause 62

5.73.0 The clause provides for insertion of a new sub-clause (ca), in sub-section (2) of Section 8 of the Representation of People Act, 1951.

Committee's observation/recommendation

5.73.1 The clause is adopted without any change.

The Schedule

5.74.0 The schedule provides for various sections of the IPC and other enactments under which offences are punishable under the Bill.

5.74.1 Suggestions

(i) In the Schedule the following may be added:

Para 1 Add '395, 397' after '392'

Para 3 Delete 'Sections 6 (3), 8 (2)'

Para 5 Read 'Sections 3 and 6' for 'Section 6'

Para 6 Read 'Sections 3,4,5,6 and 7' For 'Section 7'

– Add the following as para 7
"7. offences under The Explosive Substances Act — 1908:- Sections 3, 4,5 and 6."

Government's View

5.74.2 Responding to the suggestions the Home Secretary agreed to include the offences in the schedule and to delete the Sections as suggested.

Committee's observation/recommendation

5.74.3 **The Committee recommends that the amendments proposed in the Schedule may be carried out before the Bill is brought in Parliament for consideration.**

5.74.4 **Subject to the above, the schedule is adopted.**

RECOMMENDATIONS/OBSERVATIONS — AT A GLANCE

The Committee considered the alternative terms for “Communal Violence” like ‘social violence’ ‘mass violence’ and ‘sectarian violence’. (Para 5.15.1)

The Committee feels that the words ‘communal violence’ are well understood by every one. For the purpose of this Bill, a violence may be called communal violence if it threatens unity, integrity, secular fabric and internal security of the country. The Bill takes care of mass violence, violence between ethnic groups, religious communities (both inter and intra) and different castes. The Committee, therefore, decided that the words ‘communal violence’ may be retained. (Para 5.15.2)

The Committee took note of the drafting error as pointed out by one of the witnesses in clause 2(1)(b) viz. that the reference to sub-clause (i) of clause (c) of sub-section (1) of section 3 should read as ‘sub-section (1) of Section 3’. The Committee recommends that in sub-clause (1) (b) of clause 2, the words “sub-clause (i) of clause (c) or’ may be deleted. (Para 5.15.3)

The Committee takes note of the proposal made by the Home Secretary for amending Clause 2 (1) (I). The Committee agrees that the Schedule actually lists the sections which prescribe the punishment and not the offence. The Committee agrees that sub-clause (1) (I) of Clause 2 may read as under:

“Scheduled offence” means an offence punishable under the sections specified in the Schedule.”

(Para 5.16.4)

The Committee agrees with the view that making death and destruction of property *sine qua non* for notification would be very restrictive. There may be a situation where a single death might not have taken place but a large number of people are grievously hurt. Such a situation is not covered under this clause. The Committee, therefore, recommends that sub-clause (1) (a) of clause 3 may be amended as under:

‘in such manner and on such a scale which involves the use of criminal force or violence against any group, caste or community, resulting in grievous hurt, loss of life, or extensive damage or destruction of property.’

(Para 5.17.3)

The Committee agrees to the suggestion that the word ‘danger’ be substituted by ‘threat’ and ‘may’ by ‘shall’ in clause 3 (1) (c), and recommends these amendments in the clause. (Para 5.17.4)

The Committee recommends that a provision may be made in the proviso to sub-clause (2) of clause 3 to the effect a notification issued under sub-clause (1) shall not in any case be extended beyond six months. If, however, the situation warrants declaration of an area to be communally disturbed. beyond that period, the State Government may issue a fresh notification by following the procedure prescribed in sub-clause (1). (Para 5.17.5)

The Committee is of the view that there is a need to amend clause 5 (1) by adding the words “or he has received an information” after the words ‘has reason to believe’. The Committee recommends that clause 5 (1) may be amended accordingly. (Para 5.19.3)

The Committee takes note of the suggestion that in sub-clause (3), the amount of fine should be mentioned. It apprehends that under the existing provision of sub-clause (3), an offender may get away with fine only. The Committee, therefore, recommends that the words “or with fine or with both” may be substituted by the words “and with fine”
(Para 5.19.4)

The Committee takes note of the omission pointed out by the Home Secretary and recommends addition of the following new sub-clause (3) in clause 6 as under:

“Whoever contravenes the provisions of an order made under this section, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine”.

(Para 5.20.3)

The Committee agrees with the suggestion of deleting the words ‘whether such person has a licence to keep such arms, ammunition, explosives, corrosive substance, or not’ in Clause 7(1), as this provision is likely to be misused and the citizens may be harassed. The Home Secretary endorsed the suggestion. The Committee, therefore, recommends that the words ‘whether such person has a licence to keep such arms, ammunition, explosives, corrosive substance, or not’ in sub-clause (1) of clause 7 may be deleted.
(Para 5.21.2)

The Committee feels that the suggestion of substituting the words ‘Sub-Inspector’ by the words ‘Deputy Superintendent of Police’ may not be practicable. The Committee, however, feels that the power to search, detain and seize arms etc. in communally disturbed area should be exercised by an officer not below the rank of Inspector of Police. The Committee, therefore, recommends that the word “Sub-Inspector” may be substituted by the word “Inspector”.
(Para 5.22.3)

The Committee feels that the words ‘public utterances of cries’ in sub-clause (1) (e) are vague and inapt. ‘Incitement’ is an appropriate word. However, the Committee is of the view that incitement should be related to singing of songs and playing of music as well the Committee, accordingly, recommends that sub-clause (1) (e) of clause 9 may be amended as under:

“the public utterances, singing of songs and playing of music which cause incitement”.

(Para 5.23.2)

The Committee held detailed discussion on the implication of this clause and its likely misuse in its present form. The Committee feels that the very purpose of deleting reference to unlicensed arms in clause 7(1) may be defeated if clause 12 is allowed to remain in its present form. In order to bring clause 12 in consonance with clause 7(1), as amended by the Committee, it recommends that the words ‘is found to be in possession of or carrying’ may substitute the words ‘has in his possession’ in clause 12. (Para 5.25.2)

The Committee agrees with the view that the expression ‘any person who knowing or having reasonable cause to believe...’ is a loose formulation which can be misused. The Committee, therefore, recommends that after the words ‘having reasonable cause to believe’, the words ‘from the circumstances’ may be inserted. (Para 5.26.2)

The Committee agrees that the words ‘goods transport vehicle’ are very restrictive and do not include other vehicles. The Committee feels that there is a need to bring all the vehicles under the ambit of this clause. The Committee also takes note of the explanation

of the Secretary, Legislative Department that in the Motor Vehicles Act, 1988 there is only the definition of 'transport vehicle' and not 'vehicle'. Taking into consideration the explanation given by the Legislative Secretary, the Committee recommends that the word 'goods' may be deleted from the clause and marginal heading thereto. (Para 5.28.3)

The Committee also takes note of the Home Secretary's submission that the Government propose to add the words 'or arms, explosives or corrosive substance' after the words 'rules made thereunder'. The Committee agrees with the suggestion and recommends that the amendment may be carried out. (Para 5.28.4)

The Committee took note of the fact that the offences for which punishment is provided in clause 17 (1) become non-cognizable if the punishment is only one year imprisonment. The Committee feels that the offences need to be made cognizable and for this purpose, the punishment will have to be enhanced to three years imprisonment. By making the quantum of punishment to three years, there would be uniformity in clause 17 and clause 19. Further, if this amendment is not made in clause 17, then clause 19 becomes redundant. The Committee, therefore, recommends that the words "one year" may be substituted by the words "three years" in sub-clause (1) of clause 17. (Para 5.29.2)

The Committee considered the Government's proposal. It also took note of the fact that this is the only provision in the Bill which prescribes a minimum punishment. (Para 5.31.3)

The Committee feels that the minimum punishment of imprisonment as proposed to be reduced by the Government to three years is sufficient to work as a deterrent. The Committee, therefore, recommends that the word 'five' in the proviso to sub-clause (2) of clause 19 may be substituted by the word "three". (Para 5.31.4)

The Committee feels that the Executive Magistrate will not have as much independence as the Judicial Magistrate. Moreover, Executive Magistrate is directly accountable to the Government. Therefore, the Committee recommends that the words 'or Executive Magistrate' in sub-clause (3) of clause 20 may be deleted. (Para 5.32.3)

The Committee, however, feels that a Law officer also should be associated with the Review Committee. Therefore, the Committee recommends that Government may bring suitable amendment in sub-clause (1) of clause 22 for the purpose of associating a law officer of the State, with the Review Committee. (Para 5.34.3)

The Committee is of the view that a provision already exists in Cr. P.C. empowering State Governments to constitute SIT. The Committee, therefore, recommends that clause 23 may be deleted. (Para 5.35.3)

The Committee discussed at length the implications of this clause. At present Central Government or a State Government does not have the power to transfer a case from one High Court to another High Court. This is the power given to the Judiciary. Section 406 of Cr.P.C. provided that the Supreme Court can transfer a case from one High Court to another High Court. Giving this power to the Central Government is illegal and takes away the powers of Judiciary. Clause 24 is repugnant to the provisions of Section 406 of Cr.P.C. The Committee is, therefore, of the strong view that such a power should remain with the judiciary only. The exigencies visualized in this clause whereunder a State Government may request the Central Government to establish an additional Special Court outside the State for trial of scheduled offences, are impracticable and highly improbable as no State Government would indulge in self indictment stating that justice cannot be dispensed within that State. The Committee, therefore, recommends that clause 24 may be re-looked in the light of Section 406 of Cr.P.C. (Para 5.36.3)

The Committee recommends that while framing the rules, endeavour should be made for providing timely and adequate infrastructure for the Special Courts. (Para 5.37.3)

The Committee recommends that the proviso to the clause may be deleted. (Para 5.38.3)

The Committee is of the view that a person holding a post in the State or the Central Government for not less than seven years having special knowledge of law may not prove himself to be effective. prosecutor in cases of communal violence. Special knowledge is different from practical knowledge. Practical knowledge and experience are very important for dealing with legal cases. The Committee, therefore, feels that the eligibility for appointment as a Public Prosecutor should be confined to practice in law for not less than seven years. The Committee also does not agree with the explanation of the Home Secretary that the provision for appointment of officers of the Union or a State having special knowledge of law as public prosecutors has been made to ease burden on the already over burdened legal practitioners. The Committee, accordingly, recommends that the word 'or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law' may be deleted in sub-clause (2) of clause 29. (Para 5.41. 3)

The Committee has held extensive discussion on the clause. The Committee considered the implications of the clause whereunder a Special Court may take cognizance of any scheduled offence without the accused being committed to it for trial and its effect on the right to life and personal liberty guaranteed under Article 21 of the Constitution. The Committee apprehends that the receipt of complaints by Special Courts without any police report may lead to a plethora of flimsy complaints in, those Courts. The Committee also takes note of the fact that summary trial is well defined in Chapter XXI of the Code of Criminal Procedure. The Committee is, therefore, of the view that the provision of summary trial should be deleted from the clause. (Para 5.42.3)

In the light of the reservations of the Committee on the maintainability of the clause *vis-a-vis* Article 21 of the Constitution guaranteeing protection of life and personal liberty of a person and Chapters XV and XXI of the Cr.P.C., the Committee recommends that the Government may have a re-look at clause 30 to bring it in harmony with the above mentioned constitutional and statutory provisions. (Para 5.42.4)

The Committee, after some discussion, felt that the clause is necessary for protection of witnesses and victims. (Para 5.44.2)

The Committee feels that the powers, functions, responsibilities of the three organs of the State, *i.e.*, Legislature, Executive and Judiciary are well demarcated in the Constitution and under Clause 34. There seems to be an attempt to transfer the power of maintenance of law and order from Executive to the Judiciary. The Committee, therefore, recommends that the words '*suo motu or*' may be deleted in sub-clause (1) of clause 34. The Committee also recommends that the entire clause may be re-looked. (Para 5.46.3)

The Committee feels that Clause 35 which is connected with Clause 34 is also required to be re-looked. (Para 5.47.3)

The Committee recommends that the State Council should be presided over by the Home Minister of the concerned State. The application of mind at the political level can take place at that stage itself rather than the proposal being sent by the Council, for consideration of the Chief Minister. (Para 5.51.3)

The Committee feels that adequate representation needs to be provided for women in the State Council with at least one woman representative each under sub-clauses (g) and (h), in view of the fact that women are the first and the worst victims of communal violence. (Para 5.51.4)

The Committee is of the view that the composition of the Council does not provide for any representative from Banking and Insurance Sector which plays a key role in relief and rehabilitation of victims of communal violence. The Committee, therefore, recommends that representative from the Union Ministry of Finance (Department of Economic Affairs, Banking and Insurance Divisions) may be associated as 'Special Invitee' in all the meetings of the State Council. (Para 5.51.5)

The Committee recommends that women should be given adequate representation in the District Council with at least one woman representative each under sub-clauses (e) and (f). (Para 5.54.3)

The Committee deliberated on the clause. It recommends that the National Council should be presided over by the Union Home Minister so that application of mind at the political level can take place at that stage itself. The Committee also recommends that women may be given adequate representation in the National Council with at least one woman representative each under sub-clauses (iv) and (v). (Para 5.57.3)

The Committee takes note of the fact that there is no uniformity in the payment of compensation to the victims which is discriminatory and causes discontentment amongst them. The Committee, therefore, recommends that the Government should come out with a policy of paying uniform compensation. (Para 5.59.2)

The Committee held detailed discussion on both the clauses. The Committee agrees with the suggestion of the Home Secretary that clauses 53 and 54 may be swapped and recommends accordingly. (Para 5.65.5)

The Committee expresses its concern on the likely consequences of sub-clause (1) of clause 53 whereunder a Special Court may order payment of compensation by the offender to the victims. Although the victims will receive compensation from the offender yet this may lead to further enmity between the individuals and groups and cause more social tension. (Para 5.65.6)

The Committee also flagged the points enumerated in proviso to sub-clause (1) of clause 53 and sub-clause (4) of clause 54 whereunder assistance/compensation shall not be paid to a person who is involved in a scheduled offence. The Committee appreciates the intention behind these provisions that compensation should not be paid to the perpetrators of communal violence. However, the Committee expresses its concern over the implications of these provisions. Sometimes, a victim of communal violence may be deliberately implicated in a case just to deprive him of the immediate compensation. Though ultimately the victim may be acquitted and compensation awarded to him, but it would be too late and its very purpose may get defeated, as he may not receive the same when it is most needed. (Para 5.65.7)

The Committee, therefore, recommends that Government should address the above issues appropriately and bring suitable amendments in the clauses before the Bill is brought for consideration in Parliament. (Para 5.65.8)

This has been one of the most debated clause in the deliberations of the Committee. A large number of suggestions/comments have been received on the clause. The Committee has had detailed discussion on the impact of the clause on States' autonomy and the federal

structure of our polity. In the successive rounds of in-house discussion, each member of the Committee present in those sittings expressed views on the clause and a majority of them articulated reservations thereon. In view of this the Committee thought it appropriate to ascertain the views of all the State Governments and recognized Political Parties on the Bill with particular reference to this clause. (Para 5.66.3)

It has been noted that out of thirteen National level and State level Political Parties which responded to the request of the Committee, ten opposed the clause, two supported it and one party while supporting the Bill in principle, did not offer any specific comment on the clauses of the Bill. (Para 5.66.4)

As for the State Governments, out of twelve States which responded, eight opposed the clause, one supported it while another extended in principle support. Two States did not offer any comment. (Para 5.66.5)

The Committee also had the benefit of the views of some legal/constitutional experts and social/political scientists on the provisions of the Bill particularly this clause. (Para 5.66.6)

Towards the concluding stage of discussions on the clause, the view emerged in the Committee was that the apprehension of impingement of the clause on the States' autonomy and federal structure, enshrined in the Constitution, has been adequately addressed and necessary safeguards already provided in the clause to prevent its misuse by the Central Government. (Para 5.66.7)

The Committee feels that the clause in its present form may be retained keeping in view the paramountcy of maintaining the secular fabric, unity, integrity and internal security of the Nation. (Para 5.66.8)

The Committee has recommended substitution of the words 'death or' by the words 'grievous hurt, loss of life or extensive damage' in sub-clause 1 (a) of clause 3, pertaining to one of the grounds for declaring an area as communally disturbed area by the State Government. Since sub-clause (1) of Clause 55 enumerates the grounds on which Central Government can give directions to the State Government and issue notification etc. to deal with communal violence, there is a necessity for carrying out consequential amendment in the said sub-clause in line with the amendment recommended in clause 3(1)(a). (Para 5.66.9)

The Committee recommends that the amendments proposed in the Schedule may be carried out before the Bill is brought in Parliament for consideration. (Para 5.74.3)

Minute of Dissent

7th December, 2006

To
Chairperson
Parliamentary Standing Committee
Ministry of Home Affairs

Respected Madam,

Subsequent to our presentations in the meeting of the standing Committee on the following Clauses, we further submit our views on the Clauses as appeared in the Draft Report on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005. This may be treated as our dissent.

We disagree with the views of the Committee on the following Paras and propose the following amendments to the respective paragraphs.

1. **Para 5.14.7:** We disagree with the views of the Committee that the long title “which threatens the secular fabric, unity, integrity and internal security of the nation” should be retained. These words should be deleted, as these are wide and loose expressions and will be problematic in assessing an incident of communal violence. The Bill should be confined only to communal violence and all other violence between different groups, castes or ethnic groups should be excluded from the purview of the Bill.
2. **Para 5.15.5:** Communal Violence is not adequately and appropriately defined. All minor offences in the different provisions of many Acts should be excluded from the purview of the legislation.
3. **Para 5.16.6:** Different competent authorities will be constituted for implementing different provisions of this legislation. This may lead to conflicts and contradictions among different competent authorities. Necessary safeguards and precautions should be provided. Only communal violence should come under the purview of the Bill. The words “danger to the secular fabric, integrity, unity or internal security to India” should be deleted as they are wide and loose expressions which are difficult to assess. The Bill should be confined only to communal violence and all other violence between different groups, castes or ethnic groups should be excluded from the purview of the Bill.
4. **Para 5.30.3, 5.30.4, 5.30.5:** The reference “threatens the secular fabric, unity, integrity or internal security of the nation” should be deleted. The five years punishment need not be reduced any person convicted for an offence should be disqualified from contesting any elections as a candidate from the date of his conviction and for a period of six years from the date of his release.
5. **Para 5.40.4:** A victim, or a near relation of a victim should be given the right to appoint a Special Prosecutor.
6. **Para 5.64.9:** Ever though the Bill is called the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005, the Bill does not provide any prompt

and adequate financial assistance for the rehabilitation of the victims. Adequate and appropriate measures should be provided for rehabilitation. It is the obligation of the State to protect the life and liberty of citizens and if that obligation is not discharged,, adequate compensation should be paid to the victims irrespective of conviction or acquittal. The State should ensure payment of compensation of victims.

7. **Para 5.65.10:** The unified command should work under a senior officer of the State Government. The forces deployed under this section shall act under the control and as per the directions of the unified command.
8. **Para 5.67.3:** If it is found that the State Government, Central Government or any officer or authority of such Government or any other person or any member of the State Council, National Council or District Council acted with *malafide* intention, they should be made answerable for dereliction of the constitutional and statutory duties. No protection need be given to them under Clause 57. The words “intended to be done” in Clause 57 Sub-Clause 1 should be deleted.
9. **Para 5.73.3:** All minor offences proposed in the schedule should be omitted.

Thanking you,

Yours sincerely,

Sd./-
(Prasanta Chatterjee)

Sd./-
(Baju Ban Riyan)

Sd./-
(T.K. Hamza)

MINUTES

VII SEVENTH MEETING

The Committee met at 3.00 P.M. on Monday, 9 January, 2006 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri R.K. Dhawan
3. Shri N. Jothi
4. Shri Sitaram Yechury
5. Shri Sanjay Raut

LOK SABHA

6. Shri S.K. Bwiswmuthiary
7. Shri Biren Singh Engti
8. Shri Tapir Gao
9. Shri T.K. Hamza
10. Shri Naveen Jindal
11. Shri Ajit Jogi
12. Prof. K.M. Kader Mohideen
13. Shri Tek Lal Mahato
14. Prof. M. Ramadass
15. Shri G. Karunakara Reddy
16. Dr. H.T. Sangliana
17. Shri Braja Kishore Tripathy

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
Shri N.S. Walia, Deputy Secretary
Shri Rohtas, Under Secretary
Shri Ashok Kumar Sahoo, Committee Officer

WITNESSES

Representatives of Ministry of Home Affairs

1. Shri V.K. Duggal, Home Secretary
2. Shri P.V. Bhide, Additional Secretary
3. Shri B.A. Coutinho, Joint Secretary
4. Shri S.K. Chattopadhyay, Joint Secretary

5. Shri Vikram Dev Dutt, Director
6. Shri U.K. Kalra, Director
7. Shri Jag Ram, Director

Representatives of Ministry of Law and Justice

1. Shri K.D. Singh, Additional Secretary, Department of Legal Affairs
2. Shri N.K. Nampoothiry, Joint Secretary and Legislative Counsel, Legislative Department

2. The Chairperson wished the Members a Happy New Year and informed them of the reference of two new Bills to the Committee, namely, the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 and the Protection of Human rights (Amendment) Bill, 2005 with a direction of the Hon'ble Chairman, Rajya Sabha to present the Committee's Reports on the Bills within three months. The Committee then deliberated on the need for issuing a press release on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 for inviting public opinion thereon. The Chairperson informed the Committee that it was learnt that the Ministry of Home Affairs was organizing regional seminars on the Bill to obtain feedbacks from different sections of the society. In view thereof, the Chairperson felt that it may not be necessary to issue a Press Release. The Committee endorsed the views of the Chairperson.

2.1 The Chairperson then welcomed the Home Secretary and his colleagues and also wished them Happy New Year on behalf of the Committee and invited them to make a presentation on the Communal Violence (prevention, Control and Rehabilitation of Victims) Bill, 2005. She requested the Home Secretary to supply to the Secretariat of the Committee the salient points of the deliberations of the regional seminars which were planned to be organized by the Ministry on the Bill.

3.0 The Home Secretary briefly mentioned the four important features in the Bill *viz.* expanded definition of communal violence, provision of strong preventive measure, provision of special courts and day-to-day trial, introduction of the concept of compensation and the institutional mechanism for rehabilitation of affected persons. He also informed that to give wide publicity, the Bill had been put on the website and suggestions invited. He further informed that six regional seminars had been scheduled on the Bill inviting members from all walks of life and the key players in promoting communal harmony and one seminar in that series had already been held in Delhi. The Home Secretary mentioned the crux of the points which emerged in the seminar held at New Delhi *viz.* need to maintain the federal structure of the country; law should not be left to the State Governments to be adopted; it should be binding on all the States; Union forces should be sent to the States in order to curb communal violence when it is required with or without the request from the State Governments, etc.

3.1 The Joint Secretary in the Ministry of Home Affairs then made a powerpoint presentation on the various provisions of the Bill dealing mainly with declaration of certain areas as communally disturbed areas, prevention of acts leading to communal violence, enhanced punishment for communal violence, investigation, special courts, institutional arrangements for relief and rehabilitation, establishment of Communal Disturbance Relief and Rehabilitation Council at National/State/District levels and formation of Communal Disturbance Relief and Rehabilitation funds for relief and rehabilitation, compensation to victims, special powers of the Central Government to deal with communal violence in certain cases, powers, duties and immunities of the officers, etc.

4.0 The Chairperson and Members sought clarifications on the options available with the Centre if the State Government does not notify a part of the State where communal violence took place in mega scale as communally disturbed area.

4.1 Some Members also raised queries and apprehensions regarding scope for misuse of some of the provisions of the proposed legislation; difficulty in giving relief and rehabilitation directly by the Central Government, need for enacting the legislation with caution and without disturbing the federal structure of the country in view of the power of the Central Government to give directions to the State Governments under clause 55 of the Bill. Regarding adoption of the law by the States, some Members were of the view that Centre might enact a model law and leave it to the States to enact State legislations; alternatively Centre may make law for whole of India instead of asking the States to adopt the law after enactment by the Centre.

5. The Home Secretary and Joint Secretary in the Ministry responded to the queries of Chairperson and Members and assured the Committee that the gist of seminars would be provided to it.

6. A verbatim record of the proceedings was kept.

7. The Committee adjourned at 4.25 P.M.

XVI
SIXTEENTH MEETING

The Committee met at 3.00 P.M. on Monday, 5 June, 2006 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri V. Narayanasamy
3. Shri N. Jothi
4. Shri S.S. Ahluwalia

LOK SABHA

5. Shri C.K. Chandrappan
6. Shri Tapir Gao
7. Shri Tek Lal Mahato
8. Prof. M. Ramadass
9. Shri Bajju Ban Riyan
10. Dr. H.T. Sangliana
11. Shri Brij Bhushan Sharan Singh
12. Shri Braja Kishore Tripathy

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
Shri P.P.K. Ramacharyulu, Deputy Secretary
Shri Rohtas, Under Secretary
Shri Ashok Kumar Sahoo, Committee Officer

The Chairperson, in the first instance, welcomed the Members to the meeting.

2. The Committee then took up the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 for consideration. The Chairperson recapitulated the progress made by the Committee on the said Bill till then. She further informed the Committee that Hon'ble Chairman, Rajya Sabha had granted extension of time to the Committee for presentation of its Report on the Bill till the last day of the first week of the Monsoon Session. She invited suggestions/comments of the Members of the Committee on the Bill.

3. One Member questioned the rationale behind the use of the words "communal violence" in the long title of the Bill and opposed the word "communal" in the Bill. He was of the view that the term was last used in a government document namely, the Communal Award of 1932. In that context he pointed out that the word 'communal' had been used in a wide sense to include any kind of tension. Furthermore, in the Bill there was no provision to tackle communal violence engineered by Inter Services Intelligence (ISI) of Pakistan and naxalite activities. He expressed the

view that there was no need for a separate law on communal violence as the extant provisions in Indian Penal Code 1860 and Cr. P.C. 1973 which take care of situations envisaged in the Bill. He also demanded that information must be sought from the Ministry relating to the functioning of Communal Harmony Committees (“Quami Ekta Committees”). He desired that the Ministry might be requested to organise remaining consultation Seminars so that views of State Governments of Bihar and Uttar Pradesh, where maximum number of communal violence had taken place in the past, could be made available to the Committee for its consideration.

3.1 Apprehension was expressed by some Members that the Unified Command as envisaged in the Bill might be used by the Central Government to interfere in the affairs of the State Governments. Those members were of the strong view that clause 55 of the Bill was a legal subterfuge to help the Central Government to take over the reins of the State Administration without resorting to Art. 356 of the Constitution. They contended that clause 55 was colourable invocation of jurisdiction available to the Central Government under Art. 355 and that clause 55 was intended to be a precursor to possible invocation of Art. 356 against a State Government. That Section of Members also felt that Clause 55 had disquieting features to disturb the Federal structure of our Polity.

3.2 Some Members were of the view that the Unified Command, being a combination of the forces of Central Government and State Governments for the prevention of communal violence, could only be constituted after the receipt of request from the State Government, and this would not be tantamount to interference of the Central Government in the affairs of the State Governments. Furthermore, clause 55 would not dilute the co-operative federalism of Indian Polity. Since communal violence was a reality the Bill was the need of the hour. An alternative nomenclature *i.e.* Communal Harmony Bill was also suggested.

3.3 One Member felt that maintenance of community goonda register/sheet might be good preventive measure to check communal violence. In that context he desired that solitary confinement might be prescribed for the perpetrators of communal violence. A time-frame for disbursement of *ex-gratia* payment to the victims of communal violence should be prescribed in the Bill. Another Member raised the issue of ethnic clashes between different States and emphasized the need to contain them.

4.0 Some Members then expressed the view that in view of divergent views having been expressed in the Committee it was necessary to illicit the comments of the State Governments and political parties. The Committee, after some discussion, decided that the States and recognized political parties be requested to send their views on the provisions of the Bill, particularly clauses 55 and 56. The Committee also decided to hear the views of some constitutional experts on clauses 55 and 56 and legal experts on the necessity of the Bill.

5. A verbatim record of proceedings was kept.

6. The meeting then adjourned at 5.12 P.M. to meet at 11.00 A.M. on 6 June, 2006.

XVII
SEVENTEENTH MEETING

The Committee met at 11.00 A.M. on Tuesday, 6 June, 2006 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri Satish Chandra Misra
3. Shri Sanjay Raut
4. Shri S.S. Ahluwalia

LOK SABHA

5. Shri C.K. Chandrappan
6. Shri Tapir Gao
7. Prof. K.M. Kader Mohideen
8. Shri Bajju Ban Riyani
9. Dr. H.T. Sangliana
10. Shri Brij Bhushan Sharan Singh
11. Shri Braja Kishore Tripathy

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
Shri P.P.K. Ramacharyulu, Deputy Secretary
Shri Rohtas, Under Secretary
Shri Ashok Kumar Sahoo, Committee Officer

2. The Committee resumed further consideration of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005. The Chairperson briefly recapitulated the discussions held in the Committee on the Bill on the previous day. Thereafter, she invited the Members who were not present in the previous day's meeting to express their views on the Bill.

3. Some Members expressed certain reservations about the need of the Bill and made comments on its implications on the Federal structure of Indian polity but agreed to the proposal of obtaining views of the State Governments and recognized political parties and also for taking evidence of legal/constitutional experts on the Bill.

4. The Committee then took up for consideration the draft One Hundred Twenty First Report on "Administration of Union Territories" (Pondicherry, Andaman and Nicobar Islands and Chandigarh) and adopted the same with minor amendments.

5. The Committee authorized its Chairperson to decide date of presentation/ of laying of Report to Parliament during the Monsoon Session. The Committee also authorized its Chairperson to nominate one Member of Rajya Sabha and two Members of Lok Sabha to present/lay the Report to/in Rajya Sabha/Lok Sabha.

6. The meeting then adjourned at 11.45 A.M.

**XVIII
EIGHTEENTH MEETING**

The Committee met at 3.00 P.M. on Tuesday, 15 June, 2006 in Committee Room 'E', Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri V. Narayanasamy
3. Shri Rishang Keishing
4. Shri N. Jothi
5. Shri Sitaram Yechury
6. Shri Sanjay Raut
7. Shri S.S. Ahluwalia

LOK SABHA

8. Shri C.K. Chandrappan
9. Shri Biren Singh Engti
10. Shri Rahul Gandhi
11. Shri Tapir Gao
12. Shri T.K. Hamza
13. Prof. K.M. Kader Mohideen
14. Shri Bajju Ban Riyan
15. Dr. H.T. Sangliana
16. Shri Brij Bhushan Sharan Singh
17. Shri Braja Kishore Tripathy

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary

Shri Rohtas, Under Secretary

Shri Ashok Kumar Sahoo, Committee Officer

WITNESSES

1. Shri Jaspal Singh (Retd. Judge), Delhi High Court
2. Prof. M.P. Singh, University of Delhi

Representatives of Ministry of Home Affairs

Shri B.A. Coutinho, Joint Secretary (HR)

2. The Chairperson in the first instance welcomed the Members to the meeting of the Committee. Recapitulating the discussions held in the preceding meetings on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 she viewed that two important points were flagged which needed further consideration (i) necessity of the present legislation in view of the extant provisions in Indian Penal Code, 1860 (IPC) and Code of Criminal Procedure, 1973 (CrPC) to tackle communal violence; and (ii) effect of Clause 55 on the federal structure of Indian Polity. She informed the Committee that two experts, namely, Justice Jaspal Singh (former Judge of Delhi High Court) and Prof. M.P. Singh (Delhi University) had been invited to give their expert opinion on the provisions of the Bill and particularly on clause 55. Thereafter, the Chairperson welcomed Justice Jaspal Singh (Retd.) to the sitting of the Committee and requested him to express his considered views on the Bill with specific emphasis on the issue-whether the existing provisions in IPC, CrPC and other laws were sufficient to deal with communal violence in any part of the country.

3.0 Initiating his submissions Justice Jaspal Singh pointed out some drafting errors in Clause 2 (1) (b) in regard to the reference made to sub-section (1) of Section 3. He was of the opinion that the said reference may be in Sections 21 and 27 of the Bill. He expressed his concern about the use of words “resulting in death” in Section 3 (1) of the Bill. He was of the view that these words were limiting the Bill because in a situation of violence wherein there were rapes or women were paraded naked, though had grave consequences, but would not be covered by the said provision. He stated that the words “resulting in death” should be replaced by ‘scheduled offences’. He also pointed incongruity in the use of certain words in Sections 3 (1) (c) and 55 (1). He was of the opinion that both the provisions should be redrafted so that those were in harmony with each other.

3.1 Justice Singh’s next submission was about sub-section (2) of Section 3 whereunder notification can be extended beyond 30 days if in the opinion of Government ‘public peace and tranquillity’ continued to be disturbed. He was of the view that the ‘public peace and tranquillity’ did not get well with the conditions enumerated for declaring an area as communally disturbed. Therefore, the words ‘public peace and tranquillity’ should be replaced by ‘communally disturbed’. He also found sub-section (1) of Section 7 discriminatory inasmuch as that it empowered competent authority to exempt any individual or class of individuals from the operation of its order of depositing arms. The competent authority in such cases may be perceived to be protecting one class and the other class which was being to deposit arms, may be left to defend themselves.

3.2 Thereafter, Justice Singh compared Section 5, 6 and 9 of the Bill with Sections 107, 108, 109, 129 to 131, 144, 149, 150 and 151 of the Code of Criminal Procedure. He also expressed his reservation about the effectiveness of Section 17 particularly after the use of the term “willful”. The said term diluted any chance of taking action against negligent officers as had been proved by various judgments of the Supreme Court and High Courts in that connection.

3.3 Summing up his evidence, Justice Singh stated that the contingencies which were sought to be met by the proposed law could be taken care of under the provisions of the existing laws.

(The witness then withdrew)

4.0 The Chairperson welcomed Prof. M.P. Singh and invited him to share his views with regard to clause 55 and its effect on federal structure of Indian Polity.

4.1 Prof. M.P. Singh submitted before the Committee that the presence of Articles 256 and 257 (1) in the Constitution made Clause 55 (b) in the draft Bill redundant. He further submitted that clause 55 encroached upon the exclusive jurisdiction of States without proclaiming failure of constitutional machinery under Article 356 of the Constitution. Clause 55 (b) amounted to a

constitutional amendment touching upon the federal structure of the Constitution as it altered the division of powers in the Seventh Schedule of the Constitution. He further submitted that the draft Bill was unrealistic and unequal in its understanding and definition of the words “communal violence”.

5. A verbatim record of proceedings was kept.
6. The Committee then adjourned at 4.25 P.M. to meet at 11.00 A.M. on 16th June, 2006

**XIX
NINETEENTH MEETING**

The Committee met at 11.00 A.M. on Friday, 16 June, 2006 in Committee Room 'E', Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri V. Narayanasamy
3. Shri N. Jothi
4. Shri Satish Chandra Misra
5. Shri Sitaram Yechury
6. Shri Sanjay Raut
7. Shri S.S. Ahluwalia

LOK SABHA

8. Shri S.K. Bwiswmuthiary
9. Shri Biren Singh Engti
10. Shri Rahul Gandhi
11. Shri Tapir Gao
12. Shri T.K. Hamza
13. Prof. K.M. Kader Mohideen
14. Prof. M. Ramadass
15. Shri Bajju Ban Riyan
16. Dr. H.T. Sangliana
17. Shri Brij Bhushan Sharan Singh
20. Shri Braja Kishore Tripathy

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary

Shri Rohtas, Under Secretary

Shri Ashok Kumar Sahoo, Committee Officer

WITNESSES

1. Shri Fali S. Nariman, Ex-MP (Rajya Sabha)
2. Prof. Zoya Hasan, Jawaharlal Nehru University

Representatives of Ministry of Home Affairs

Shri B.A. Coutinho, Joint Secretary (HR)

2. The Chairperson welcomed the Members and the witness Shri Fali S. Nariman, Ex. MP (RS) and Sr. Advocate, Supreme Court to the sitting of the Committee. While making mention of the agenda of the meeting she apprised that the Committee was gathered to hear the view of Shri Nariman on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005. Thereafter, She invited the witness to share his considered views on the Bill with the Committee.

3. First of all, the witness supported Chapters VII, VIII, IX and X of the Bill making special provisions for compensation relief and Rehabilitation of victims of communal violence. He termed these provisions as the most progressive part of the proposed legislation. At the same time he pointed out an anomaly in clause 1 (4) of the Bill and the clause bringing into force of chapters II to VI. He viewed that it was not proper to bring control legislation into force by State Governments. Law enacted by Parliament must be brought into force by the Central Government and not by any State Government. He further viewed that Parliament was competent to enact the provisions contained in chapters II to VI because they contained provisions not only for mere prevention and control of communal violence which threatened the secular fabric unity, integrity and internal security of the nation. He suggested that clause 1 (4) of the Bill should be recast and should provide that the provisions of this Act shall come into force in India on such date as the Central Government by notification in the official Gazette may appoint and different dates may be appointed for bringing into force different provisions of the Act in different States. He also suggested that the definition in clause 2 (c) of "Communal Violence" should be amended as "Communal Violence" means any act of omission or commission which threatens the secular fabric, unity, integrity and internal security of the nation and which constitutes as scheduled offence, punishable under clause 19". This will reinforce the main thrust of the proposed legislation. He submitted that clause 19 (1) of the Bill (Punishment for committing communal violence) is vague and indeterminate because the higher punishment imposed in clauses 19 (2) and 9 (3) are reserved only for persons who commit any act of omission or commission which constitutes a "scheduled offence" on such a scale and in such manner which tends to create internal disturbance within any party of the State and threatens the secular fabric, unity, integrity and internal security of the nation". The scales and manner of aggravation and not specified and this would lead to unnecessary impediments to the execution of this law when enacted.

4. He further suggested that the Home Secretary of the State concerned should certify the provision given in clause 19 (1) – "on such a scale or in such manner which tends to create internal disturbances etc." With regard to clause 55 of the Bill, he submitted that the clause did not impinge on the federal nature of the Constitution. He viewed that Article 355 of our Constitution imposed a duty on the Union to protect every State not only against external aggression but also "internal disturbances". This itself was sufficient constitutional justification for the proposed clause 55. Therefore, the special powers of the Central Government mentioned in clause 55 of the Bill to deal with communal violence in any area within a State would be valid and constitutional—but only if the communal violence was such as amounted to an imminent threat to the secular fabric unity, integrity or internal security of India as stated in last part of clause 55. His suggestions with regard to clause 55 were as follows:

5. To prevent any possible misuse of the provisions of clause 55 and so as not to unduly impinge upon the powers of the State Government to look after the interests of law and order within the State, it would be appropriate if clause 55 was re-worded as follows:

"Whenever the following circumstances exist in a State Viz., (i) that one or more scheduled offences one being committed in any area within that State by any person or group of persons in such manner and on such a scale which involves the use of criminal force or violence against the members of any group, caste, or community resulting in death or destruction of property and (ii) that such use of criminal force or violence is committed with a view to creating disharmony

or feelings of hatred or ill-will between different groups, castes or communities, (iii) that there is an imminent threat to the secular fabric of unity, integrity or internal security of India which requires that immediate steps shall be taken by the State Government concerned the Central Government may make a declaration in writing to that effect and shall draw the attention of the State Government to the prevailing situation in that State; and (b) direct the State Government to take all immediate measures to suppress such violence or the use of criminal force within such time as may be specified in the direction". Besides, a new clause—clause 55 (1) (A) should be added to provide that the formation of opinion and the declaration by the Central Government under clause (1) should be made by the Home Secretary of the Government of India. If clause 55 is amended as suggested above the rest of the clause 55 and clause 50 would fall into place in our constitutional scheme.

6. Responding to the query of the Chairperson about giving alternative formulation for clause 1, sub-clause 4, the witness suggested it as follows: "The provisions of this Act shall come into force in India on such date as the Central Government by notification in the Official Gazette may appoint and different dates may be appointed for bringing into force different provisions of this Act in different States in India". He viewed that States cannot be directed to bring a Central Act into force. It was the business of the Central Government to bring it into force since it affected the sanctity of the very Republic, the integrity of the nation and so on. Keeping in view the statement of the Home Secretary about expanding the ambit of the definition of communal violence by including 'any violence based on race, caste or community' in a Seminar on the Bill, the Chairperson suggested that the same should be incorporated in the Bill and the title of the Bill should be changed.

7. One Member raised the issue of enforcing this Act in various States. He viewed that learning the enforcement of chapters II to VI of the proposed legislation to the States defeated the very purpose of the Bill. Thus, it would not be binding upon the States to implement the Act in their territories. Responding to it the witness submitted that they were enabling provisions.

8. One Member pointed out that 'communalism' and 'Secularism' have not been defined anywhere. Responding to it the witness submitted that the word 'Secular fabric' was hortatory and asserted that the words 'unity', 'Integrity' and 'internal security' were the most vital words. The Members further pointed out that the provisions in chapter II to VI of the Bill already cherished in Cr. PC and IPC and they were not being implemented that amounted to lack of will. He furthermore viewed that if the law and order machinery in States did not function in accordance with the provisions of the Constitution, the centre issued instructions under Article 355 and if the States did not respond then Article 356 was involved but clause 55 of the Bill seemed to hijack these constitutional provisions and empowered the centre to do the same in a much simple manner. Responding to it the witness suggested that safeguards should be made in this regard. The Home Secretary must put his signature there and that would be far better than the proclamation of emergency.

9. One Member questioned the need of such a Bill. Another Member suggested that the president should be brought in the picture for he is more concerned about the integrity of the country. Responding to it the witness submitted that there was nothing wrong if the council of Ministers had a say in the matter. He further submitted that since it was the Home Minister's Bill, he should be requested to explain all these queries. One Member wanted to know whether the definition of communal violence given in clause 2 (1) (c) was enough? The witness responded it by saying that naxalite movement and how to deal with this serious problem is not mentioned in the definition. The Member further wanted to know whether the interest of the State Governments have been fully protected under clause 55 of the Bill to which the witness responded in affirmative. Responding to a member's query of whether the Bill contained anything other than those provided

in the Indian Penal code, the witness made it clear that unless was some malafide intention, there was nothing wrong with the Bill.

10. The witness suggested that the Home Secretary should issue a certificate in case of declaring an area as communally disturbed by the Central Government. One Member wanted to know whether the definition of communal violence should be expanded.

11. One Member was of the view that clause 19 of the Bill providing for enhanced punishment impinged the Indian Penal Code itself. Responding to it the witness submitted that the clause 19 in its present vague form could not be used for punishing any body found guilty of committing an offence so long as this was no authority to declare the scale of violence.

11.2 Another witness, Prof. Zoya Hasan of JNU was invited by the Chairperson to share her views with the Committee on the Bill.

11.3 The witness submitted that the Governments have failed in containing communal violence in the country over the past many decades which was a cause of concern. She appreciated the intent of the Bill and termed it as a significant move in the direction of tackling this problem. She also submitted that the State tackled caste violence in a comparatively better way than communal violence. The State must be held responsible for any such failure. She further submitted that the question of post-violence justice must be paid adequate attention. She viewed that punishing the guilty was expressly important to stop future violence.

11.4 The witness found the definition 'Communal Violence' inadequate. She submitted that the fundamental flaw in the Bill was the exceptionalization of communal violence which again contrasted with the Dalit Atrocities Act.

11.5 While responding to clause 55 of the Bill, the witness submitted that some independent authority say NHRC or some of use machanism should be brought into picture in order to ensure accountability while declaring an area in a State as communally disturbed by the Centre. She further submitted that the major reason for the abysmal record in dealing with the cases of communal violence was the lack of political will and punishment of the perpetrators. The Bill does not try to correct the political will. She also submitted that these may be a chain of command and responsibility which goes upto the top political leadership. It could be the Chief Minister, the Home Minister, the bureaucracy, the police force and so on. The focus just cannot be on the Police officials alone. Clearly, the Police officials do not act on their own. They act on the orders of somebody. This concept should be introduced. She further submitted that there was communal bias that existed within the institutions and this institutional problem needed to be addressed because there were communal biases and prejudices towards the minorities that we needed to take on.

11.6 The Chairperson wanted an alternative formulation to deal with the deficiency in the definition of communal violence to which the witness assumed to furnish to the Committee also later stage secondly, the Chairperosrn wanted the witness to substantiate his view on communal *versus* caste violence. Responding to it the witness submitted that she only made a compassion.

11.7 One Member wanted to know that as to what would happen when neither Centre nor State Government responded in case of a communal violence as both were governed by the same party. As the Nanavati Commission has come not about anti-Sikh riot of 1984 and termed it as an organized crime what would this Bill do? Another Member showed the concern of the witness and wanted to know whether this Bill addressed these concerns? Responding to it the witness submitted that chain of command and responsibility addressed these concerns if incorporated in the Bill. The witness also submitted that adequate representation of minorities in administration specially in Police force should be alone.

12. Responding to the query of a member, the witness submitted that to deal with this serious problem race relations committees may be established such as those in Britain which actually monitor racism. Because after all, the issue was not the act of violence *per se* but also the build up to violence, communal mobilization mate speeches and thing like that.

13. One Member wanted to know the shortcomings in the Bill and requested the witness to give suggestions both from the legal and policy point of view to deal with this problem. Responding to it the witness submitted that the difficulty was in assigning responsibility or capability that has been one of the legal problems in dealing with this problem and it was because communal Violence was a mob Violence. The witness viewed that she was not some whether the Bill took case of that aspect.

(The witness then withdrew)

A verbatim record of proceedings was kept.

14. The Committee then adjourned at 1.20 P.M. to meet at 3.00 P.M. on 28 June, 2006.

XX
TWENTIETH MEETING

The Committee met at 3.00 P.M. on Wednesday, 28 June, 2006 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri V. Narayanasamy
3. Shri N. Jothi
4. Shri Sitaram Yechury
5. Shri Sanjay Raut
6. Shri S.S. Ahluwalia

LOK SABHA

7. Shri C.K. Chandrappan
8. Shri Biren Singh Engti
9. Shri Tapir Gao
10. Prof. K.M. Kader Mohideen
11. Shri Tek Lal Mahato
12. Shri Sachin Pilot
13. Shri G. Karunakara Reddy
14. Shri Bajju Ban Riyan
15. Shri Brij Bhushan Sharan Singh
16. Shri Braja Kishore Tripathy

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
Shri P.P.K. Ramacharyulu, Deputy Secretary
Shri Rohtas, Under Secretary
Shri Ashok Kumar Sahoo, Committee Officer

2. The Chairperson welcomed the Members to the sitting of the Committee and recapitulated the deliberations that had already taken place on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 and offered the floor to the Members to express their views on the Bill.

3. The Members of the Committee expressed the following views on the Bill:

- (i) It is not necessary to adopt the Bill because all the provisions incorporated in the proposed legislation already exist in the Indian Penal Code and the Criminal Procedure Code, and it would be better to return the Bill to the Ministry for their re-consideration;

- (ii) There is a need of the Bill for bringing about communal harmony in the country;
- (iii) 'Communal Harmony Bill' or 'Harmony India Bill' would be more suitable title for the Bill
- (iv) The views of the people affected by communal violence should be given due importance and in addition to that District and Ward Councils, Panchayat Council should be given importance;
- (v) People's participation is more important for preventing communal violence;
- (vi) Religious leaders, and philosophers should impart training in the Police Training Academies to train the Police officials to contain communal violence;
- (vii) The definition of 'communal violence' should restrict itself to communal violence only because for other types of violence, there are already provisions in the Indian Penal Code and the Criminal procedure Code;
- (viii) In regard to clause 55, enough safeguard should be provided to avoid misuse of power by the Centre in the pretext of intervention in case of any problem in any State;
- (ix) Accountability and punishment should be fixed for the erring officials;
- (x) The federal structure of our polity should be given top priority and it should be ensured that the same is not disturbed in any case;
- (xi) Some political authority should be made responsible for taking the decision of declaring any area communally disturbed;
- (xii) The root cause of communal violence should be analysed so as to develop a greater insight in dealing with such situations;
- (xiii) The political parties which are in power should not resort to the policy of appeasement of minority community because when such violence erupts, people of both communities suffer;
- (xiv) In Clause 3 (b), the word 'religion', is missing;
- (xv) The rank and profile of the competent authority should be made clear;
- (xvi) Clause 5 is objectionable;
- (xvii) The expression 'public utterances of cries' in Clause 9 needs to be amended;
- (xviii) Clause 8 is not required as City Police Act and District Police Act are already in place;
- (xix) In regard to Clause 55, some agency should be made accountable;
- (xx) In regard to rehabilitation, there is no place for participation of politicians and all has been left to officers. There should be effective participation of politicians so that the rehabilitation is quick and available to the needy people;
- (xxi) Merely by enacting draconian laws, conflicts and crimes cannot be removed from the society; and
- (xxii) People need to practice tolerance and high values.

4. One Member informed the Committee that he had requested the Ministry to furnish details about communal harmony guidelines and to know about the effective functioning of Quami Ekta Samities constituted for the first time in '70s and thereafter, from time to time, to restore communal harmony in the country but the Ministry's response was not satisfactory.

5. Thereupon, the Chairperson instructed the representatives of the Ministry of Home Affairs to furnish the requisite information to the Member. The Chairperson also sought to know about the functioning of Quami Ekta Samities and whether they could achieve in establishing communal harmony.

6. The representatives of the Ministry of home Affairs assured to send replies to all the queries made by the Members at the earliest.

A verbatim record of proceedings was kept.

7. The Committee then adjourned at 4.40 P.M.

XXI
TWENTY FIRST MEETING

The Committee met at 11.00 A.M. on Thursday, 29 June, 2006 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri V. Narayanasamy
3. Shri R.K. Dhawan
4. Shri N. Jothi
5. Shri Sitaram Yechury
6. Shri Sanjay Raut
7. Shri S.S. Ahluwalia

LOK SABHA

8. Shri C.K. Chandrappan
9. Shri Biren Singh Engti
10. Shri Tapir Gao
11. Prof. K.M. Kader Mohideen
12. Shri Bajju Ban Riyan
13. Shri Braja Kishore Tripathy

SECRETARIAT

Shri P.P.K. Ramacharyulu, Deputy Secretary

Shri Rohtas, Under Secretary

Shri Ashok Kumar Sahoo, Committee Officer

2. The Chairperson welcomed the Members to the sitting of the Committee and mentioned the agenda of the meeting *i.e.* in-house discussion on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005.

3. One Member stated that it was a dangerous Bill. It gave wide powers to police officers which was prone to be misused. Thereafter, the Chairperson recapitulated the observation made by one Member about clause 7(2) of the Bill in the previous meeting. This clause deals with depositing arms licensed or otherwise to the nearest police station in case a particular area is declared communally disturbed. Another Member submitted that it would be quite pertinent to consider the views of the States before going ahead on the Bill.

3.1 One Member submitted that clause 9 (f) of the Bill infringed several provisions of the Constitution specially Article 19, which confer freedom of speech, expression, movement, joining

together and conducting a public meeting. He also pointed out that after declaring a particular area as communally disturbed, there was no appellate authority or any other forum to review the decision.

4. The Chairperson then informed the Members that after getting the views/suggestions of the State Governments and recognized political parties, the Committee would discuss them in the next meeting.

A verbatim record of proceedings was kept.

5.0 The Committee then adjourned at 11.28 A.M.

**XXIII
TWENTY THIRD MEETING**

The Committee met at 3.45 p.m. on Friday, 21 July, 2006 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri R.K. Dhawan
3. Shri N. Jothi
4. Shri Sitaram Yechury
5. Shri Sanjay Raut
6. Shri S.S. Ahluwalia

LOK SABHA

7. Shri C.K. Chandrappan
8. Shri Biren Singh Engti
9. Shri T.K. Hamza
10. Shri Naveen Jindal
11. Shri Tek Lal Mahato
12. Shri Bajju Ban Riyan
13. Dr. H.T. Sangliana
14. Shri Brij Bhushan Sharan Singh
15. Shri Braja Kishore Tripathy

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
Shri P.P.K. Ramacharyulu, Deputy Secretary
Shri Rohtas, Under Secretary
Shri Ashok Kumar Sahoo, Committee Officer

WITNESSES

Representatives of Women's Group

1. Ms. Farah Naqvi
2. Ms. Uma Chakravarty
3. Ms. Madhu Mehra
4. Ms. Malini Ghose
5. Ms. N.B Sarojini
6. Ms. Brinda Grover

Representatives of Ministry of Home Affairs

1. Shri B.A. Coutinho, Joint Secretary (HR)
2. Shri Jag Ram, Director (NI)

2. The Chairperson welcomed the Members to the sitting of the Committee. She recalled that the Committee has so far heard some experts and has done detailed in-house discussion on the Communal Violence (Amendment) Bill, 2006 and as suggested by the Member of the Committee the views of State Governments and recognized Political Parties have been solicited and so far eleven Political Parties and six State Governments have expressed their views/suggestions on the Bill. In the meantime, a Women's Group which has assessed the Bill from gender point of view wished to depose before the Committee and since this appeared to be a new dimension, they were being given an opportunity that day to share their views with the Committee. She further reminded them that the extension of time sought by the Committee to present the report on the Bill to Parliament was due to end on 31 July, 2006 and as it would not be possible to prepare the report by then, it should seek further extension of time till the last week of the Winter Session for giving report on the Bill to which all the members agreed. A Member expressed concern regarding the Statement of the Hon'ble Home Minister on the mandate of the Standing Committee. The Chairperson was of the view that the Committee would comment upon it in its report on the Bill where it would also write that understandably and co-incidentally he was the same Home Minister who in his capacity as the Speaker of Lok Sabha had got these Committees constituted. Hence, giving such statements that relegated the sanctity of the Standing Committee it did not suit his stature and dignity as the Home Minister.

3.0 Thereafter, the Chairperson invited the witnesses who were eminent personalities working for women's cause and briefly introduced them to the Committee. She then asked Ms. Farah Naqvi to make a presentation on the gender aspects of the Bill and asked others to supplement her without repetition.

3.1 The first witness submitted that gender based Violence was central to Sectarian and Communal strife not just in this country. This was seen during partition, 1984 anti-sikh riots in Delhi, Gujarat and North East. Therefore, gender concern became centre stage. She viewed that women had been the worst victims of Communal Violence and there had been lack of sensitivity to the survivors. She called upon the Committee to enact laws that recognized sexual violence as part of the mass crime. She submitted that the Bill lacked provisions in this regard. The current laws did not provide for prosecuting sexual Violence. She suggested that women should be given adequate representation in National, State and District councils. She further submitted that the notion of compensation was extremely problematic in the context of mass crime. She emphasized to treat sexual violence as a new offence. She also submitted that State accountability should be ensured.

3.2 Another witness submitted that all over the world gender based sexual violence had been extremely neglected, it had been a concept of methodology, a concept of testimonies but never part of the Justice delivery system. She submitted for inclusion of command and superior responsibility to place accountability for mass crimes. The third witness submitted that women victims of such violence did not get justice for many years. The Bill needed to address this very serious issue. She submitted that such violence took place due to the failure of the State machinery.

(The witnesses then withdrew)

4.0 Thereafter, the Chairperson fixed the next meeting of the Committee on 2 August, 2006. She also nominated Shri R.K. Dhawan in Rajya Sabha and Shri B.K. Tripathi and Shri T.K. Hamza in Lok Sabha for laying the UT Report in Parliament on 2 August, 2006.

5.0 The meeting then adjourned at 3.45 P.M.

6.0 The Verbatim record of proceedings was kept.

**XXIV
TWENTY FOURTH MEETING**

The Committee met at 5.00 P.M. on Wednesday, 2 August, 2006 in Room No. 63, Parliament House, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri V. Narayanasamy
3. Shri Rishang Keishing
4. Shri N. Jothi
5. Shri Sitaram Yechury
6. Shri Sanjay Raut
7. Shri S.S. Ahluwalia

LOK SABHA

8. Shri C.K. Chandrappan
9. Shri Tapir Gao
10. Shri T.K. Hamza
11. Prof. K.M. Kader Mohideen
12. Shri Sachin Pilot
13. Prof. M. Ramadass
14. Shri Bajju Ban Riyan
15. Dr. H.T. Sangliana
16. Shri Braja Kishore Tripathy

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary

Shri P.P.K. Ramacharyulu, Deputy Secretary

Shri Rohtas, Under Secretary

Shri Ashok Kumar Sahoo, Committee Officer

2.0 The Chairperson welcomed the Members to the sitting of the Committee. The Committee then reviewed the work done by it during the last one year. The Chairperson giving a brief account of the business transacted by the Committee since its reconstitution on 5 August, 2005 informed that it held twenty four meetings; presented seven Reports to Parliament and also undertook two study visits during the said period.

2.1 She also informed the Committee that Hon'ble Chairman, Rajya Sabha had granted further extension of time to it upto the last week of the Winter Session of Rajya Sabha for presenting its Report on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005. A brief account of other business pending before the Committee was also given.

2.2 She thanked all the members for their valuable contribution and cooperation in transacting the business of the Committee.

2.3 She, on behalf of the Committee, appreciated the Committee Secretariat for their dedicated secretarial assistance rendered to the Committee as was reflected in Reports of the Committee and other inputs made available to it. Some other Members, while agreeing with the observations of the Chairperson, shared their experiences during their association with the Committee.

2.4 The chairperson then mentioned about the illness of Shri Tek Lal Mahato, a Member of the Committee, and wished him speedy recovery.

3. The Committee adjourned at 5.20 P.M.

I
FIRST MEETING

The Committee met at 3.00 P.M. on Monday, 4 September, 2006 in Committee Room 'A', Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri V. Narayanasamy
3. Shri Rishang Keishing
4. Shri R.K. Dhawan
5. Shri Prasanta Chatterjee
6. Shri N. Jothi
7. Shri Satish Chandra Misra
8. Shri Sanjay Raut

LOK SABHA

9. Dr. Rattan Singh Ajnala
10. Shri Ilyas Azmi
11. Kumari Mamata Banerjee
12. Shrimati Sangeeta Kumari Singh Deo
13. Shri Tapir Gao
14. Shri T.K. Hamza
15. Shri Raghunath Jha
16. Shri Naveen Jindal
17. Shri G. Karunakara Reddy
18. Shri Bajju Ban Riyan
19. Shri Brij Bhushan Sharan Singh
20. Shri Mohan Singh

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
Shri P.P.K. Ramacharyulu, Deputy Secretary
Shri Rohtas, Under Secretary
Shri Ashok Kumar Sahoo, Committee Officer

WITNESSES

1. Shri Syed Shahabuddin, Ex-MP and President of All India Muslim Majlis-e-Mushawarat
2. Dr. Zafrul Islam Khan, General Secretary, All India Muslim Majlis-e-Mushawarat
3. Dr. Moosa Raza, (IAS Retd.), Member, National Executive, All India Muslim Majlis-e-Mushawarat

REPRESENTATIVES OF MINISTRY OF HOME AFFAIRS

1. Shri B.A. Coutinho, Joint Secretary (HR)
2. Shri Jag Ram, Director (NI)

The Chairperson welcomed the new as well as re-nominated Members to the first sitting of the reconstituted Committee. She thanked the re-nominated Members for their valuable contribution in its deliberations and hoped that similar contribution and co-operation would be forthcoming in the present tenure of the Committee from them and the newly nominated members. Thereafter, she gave a brief account of work pending with Committee, namely the three Bills *i.e.*, the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005, Sashashtra Seema Bal Bill, 2006 and the Code of Criminal Procedure (Amendment) Bill, 2006. She also apprised Members that subjects like Administration of UTs and Internal Security and Economic and Infrastructural Development of North-Eastern Region, were also pending at various stages of consideration. For Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 extension had been sought twice, the latest being granted by Hon'ble Chairman till the last day of the forthcoming Winter Session.

2. The Chairperson then invited a newly nominated Member of the Committee to express her views on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 since she would not be present in the next meeting. The Member felt that rather than bringing a Bill, it would be better to amend the Constitution. She was of the view that the provisions of the Bill were prone to be misused by the Centre which might deteriorate Centre-State relations. She suggested that the views of State Governments and Political Parties should be solicited on the Bill. She opined that the Bill should not violate the federal structure of the Polity. She called for provisions for safeguarding the interests of minorities. She further suggested that the views of various Commissions like Commission on women SC/ST and OBC might be solicited on the Bill. She pleaded for consensus on the Bill. Responding to the observations made by the Member, the Chairperson informed that the views of State Governments and Political Parties had been called and some of them had already responded.

3. Thereafter, the Chairperson invited the witnesses to express their views and that of their organization on the Bill. The witness made the following suggestions/submission:—

- (i) The most important thing to be incorporated in the Bill would be to make the State Governments and the District Administrations more accountable than what they were today.
- (ii) Existing laws are sufficient to deal with Communal Violence but what was lacking was political will to solve the problem. There is no provision in the Bill to curb the biased and prejudiced attitude of the State Government and the administrative machinery. The need of the hour is to make a comprehensive law to control social group violence. The proposed Bill would not serve any purpose. Therefore, the Bill should be reframed.
- (iii) Chapters II to VI of the Bill should be uniformly implemented throughout the country by a single notification of the Central Government.
- (iv) Criminal offence, which was committed with communal bias or prejudice or an expression of hatred or revenge should be called 'communal violence'.
- (v) In clause 3 (1), the word 'opinion' should be substituted by the word 'satisfied'. DMs and SPs should be removed if they fail to restore normalcy in their areas within three days.

- (vi) The Bill was silent about the sanction of the State Government against officers acting in *mala fide* manner. Clear cut provision should be made in this regard.
- (vii) If the State Government did not accord sanction within 30 days, its sanction should be presumed for taking action against delinquent officers.
- (viii) While appointing public prosecutor enough safeguards should be provided. The National Council should be headed by the Home Minister and the Home Secretary should function as its Secretary. The State Council should be headed by the Chief Minister and the Chief Secretary should function as its Secretary.
- (ix) Clause 53 is atrocious.
- (x) It is binding upon the State to protect the life, honour and property of a citizen and if it failed to do so, it is duty bound to compensate the person concerned.
- (xi) There should be a provision providing for appointment of a Claims Commissioner by the State Government after each incident to whom the affected people could submit a claim for compensation. Compensation should be uniform throughout the country. Norms in that regard should be formulated by the National Council and the same should be sent out as guidelines to all the State Governments. The Central Government should provide funds for the purpose, if necessary.
- (xii) In clause 55 (1) (b) a reference to Article 355 should be made.
- (xiii) The officers acting in *mala fide* manner should not enjoy any immunity.
- (xiv) The competent authority should have the power to control provocative publication and to prosecute those who publish motivated press reports which lead to further inflaming of the emotions of the people.
- (xv) The provision for time limit for convening the meetings of National and State Councils have not been provided in the Bill which should be done to avoid any loophole.

(The witnesses, then withdrew)

A Verbatim record of the proceeding was kept.

4. The Committee then decided that the next series of meetings may be fixed for 20, 21 and 22 September to hear the views of Home Secretary on clause-by-clause consideration of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 and have his presentation on Criminal Law and Sashashtra Seema Bal Bills.

The Committee then adjourned at 4.48 P.M.

**IV
FOURTH MEETING**

The Committee met at 11.00 A.M. on Thursday, 28 September, 2006 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri Rishang Keishing
3. Shri R.K. Dhawan
4. Shri S.S. Ahluwalia
5. Shri Prasanta Chatterjee
6. Shri Sanjay Raut

LOK SABHA

7. Shri Ilyas Azmi
8. Shri Tapir Gao
9. Shri T.K. Hamza
10. Shri Raghunath Jha
11. Shri Naveen Jindal
12. Prof. K.M. Kader Mohideen
13. Shri Ram Chandra Paswan
14. Shri Sachin Pilot
15. Shri G. Karunakara Reddy
16. Shri Baju Ban Riyan
17. Choudhary Bijendra Singh
18. Shri Brij Bhushan Sharan Singh
19. Shri Mohan Singh

SECRETARIAT

Shri P.P.K. Ramacharyulu, Deputy Secretary
Shri Rohtas, Under Secretary

WITNESSES

Representatives of Ministry of Home Affairs

1. Shri V.K. Duggal, Home Secretary
2. Shri P.V. Bhide, Additional Secretary
3. Shri R.S. Sirohi, Additional Secretary
4. Shri Yashwant Raj, Joint Secretary
5. Shri B.A. Coutinho, Joint Secretary (HR)

6. Shri Jag Ram, Director (NI)
7. Shri S. K. Bhatnagar, Deputy Secretary

Representatives of Department of Legal Affairs, Ministry of Law and Justice

1. Shri T.K. Viswanathan, Law Secretary
2. Shri K.D. Singh, Additional Secretary

Representatives of Legislative Department, Ministry of Law and Justice

1. Dr. K.N. Chaturvedi, Secretary
2. Shri R. Sreenivas, Assistant Legislative Counsel

2. The Chairperson welcomed the Members to the sitting of the Committee convened to hear oral evidence of the Home Secretary on the views which had emerged out of the discussions held on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005. The Chairperson invited the attention of the Committee to an article published in the "Dainik Bhaskar", a Hindi Daily, written by Shri A. G. Noorani wherein he had observed that the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 was not being passed due to the disagreement of BJP with it. The Committee after some discussion directed the Secretariat to examine all aspects of the matter.

3. One Member requested that executive summary of recommendations of Inquiry Commissions constituted on communal riots in the country since 1950, and the status of such recommendations should be obtained from the Ministry of Home Affairs and circulated amongst members of the Committee.

4. The Chairperson then invited the Home Secretary for his oral submissions on the suggestions made on the Communal Violence (Prevention, Control and Rehabilitation) Bill, 2005. At same time, she also raised the issues relating to the State Emblem of India Bill, 2005 in which, despite unequivocal recommendations on certain issues as flagged in 116th Report of the Committee, those had not been addressed by the Ministry of Home Affairs.

5. Responding to the query of the Chairperson, the Joint Secretary concerned of the Ministry stated that under the OM of 1949 the States were given the freedom to adopt the State Emblem of India or to adopt the same with such change as they wished incorporating the State Emblem of India into their emblem. On the issue of State Emblem of Mizorm in which the sign of a 'cross' had been depicted which was allegedly against the secular features of the country, the Joint Secretary concerned informed the Committee that the issue was discussed at length with the representatives of the State. According to him the State Government was of the opinion that the goal behind the 'cross' was not to propagate any religion nor was it symbolic of any religion. On the contrary, it represented a scarecrow that farmers plant in their fields and, it was adopted under the freedom given to the State. He further stated that in the State Emblem of Tamil Nadu a temple was depicted and the motto 'Satyamev Jayate' had been translated into English and Tamil. The matter was discussed with the representatives of the State at length and the State Government of Tamil Nadu was of the view that Tamil Nadu had a rich cultural and architectural heritage and a number of magnificent temples were there in the State and was known as the Land of Temples. In order to highlight that rich heritage, the temple was depicted in the Emblem, and it had nothing to do with the propagation of any religion. So far as the translation of "Satyamev Jayate" was concerned, the meaning of the translated version also postulated 'Satyamev Jayate'. The concerned Joint Secretary observed that both the issues mentioned above were very emotive ones and any administrative intervention might lead to disturbances and the situation might go out of control.

6. Thereafter, the Chairperson took up the Communal Violence (prevention, Control and Rehabilitation of Victims) Bill, 2005. On the basic issue of the necessity of the Bill diversant views were expressed. Responding to those, the Home Secretary stated that the Bill was a comprehensive piece of legislation and was needed as the proposed provisions did not exist in the present law. He termed the Bill as a forward looking legislation.

7. Referring to a Private Members' Bill of exactly the same name, a Member wanted to know the source from which the concept of the Bill was taken. He also felt that the proposed punitive tax would create disharmony instead of creating harmony. Responding to the query the Home Secretary stated that the two Bills were different and the official Bill the outcome of exhaustive deliberations, and the provisions incorporated therein did not exist in the Indian Jurisprudence.

8. On the issue of extent of the Bill, the Law Secretary responded that as far as the State of J&K was concerned it would be difficult to extend this Act to J&K, in its present form as all the sections of Indian Penal Code and the Code of Criminal Procedure did not extend to the State. However, the structure of the proposed Bill was broadly relatable to IPC and Cr. PC. The Home Secretary then stated that under the Act, most of the actions were required to be taken by the State Governments. Therefore, it had been decided to leave the implementation to them. As and when they were ready, they could bring it into force in their respective States.

9. On the issue of definition of Communal Violence and to the Statement made by him in at the Delhi Seminar wherein he had stated that the ambit of communal violence would include racial, group and ethnic violence. The Home Secretary stated that other than religious communities, people belonging to different castes, racial groups and ethnicity had been indulging in large-scale violence. Therefore, the title of the Bill should be retained so that the major thrust was well understood by the people of the country. Responding to the issue of nomenclature of an area to be declared disturbed, the Home Secretary stated that irrespective of the nature of violence, it would be declared as 'communally disturbed area'.

10. On the view of the State Governments and the Members of the Committee that the Bill encroached upon the federal structure of the polity, the Home Secretary submitted that the Bill did not impinge upon the federal structure and in fact, respected it. He, however, agreed to the suggestion that Clause 55(3) (b) could have been worded differently.

11. In regard to the deposition of arms in a communally disturbed area under Section 7 (1), the Home Secretary agreed to the suggestions of the Committee that the words "whether such person has a licence to keep such arms, ammunition, explosive, corrosive, substance, or not" appearing in the Clause should be deleted.

12. On the legislative competence of the Central Government for enacting the law, the Law Secretary stated that legislative competence for the Bill flowed from Concurrent List: "Criminal Law and Criminal Procedure" where the Parliament is competent to enact, though most of the provisions are sought to be enforced by the State. He further submitted that the Attorney General of India had opined that even without the request of the State Government, the Centre can send in Amend Forces when unity and integrity of India was threatened.

13. Responding to the issue of immunity to public servants, the Home Secretary stated that negligent public servant would attract action under this law for failing to perform the lawful duty which he/she was supposed to do. On the issue of presumption of sanction of State Government if not provided within 30 days under proviso to sub-section (2) of Section 17, the Home Secretary stated that this was a wholesome kind of provision which made it incumbent upon the State Government to act fast and give the sanction for prosecution.

14. The Chairperson expressed reservations on the provision of notifying an area as communally disturbed when communal violence resulted in death, stating that it was restrictive and limited the scope of the Act and did not cover cases like rape or parading women naked which were more heinous. The Home Secretary agreed to this observation and assured to look into it. Responding to the suggestion of the Committee that the scale and manner of violence should be certified by the Home Secretary of the State, the Home Secretary stated that it would be seen as to how the Home Secretary of the State can be involved in it.
15. A verbatim record of the proceedings was kept.
16. The Committee adjourned at 1.15 P.M.

V
FIFTH MEETING

The Committee met at 11.00 A.M. on Friday, 29 September, 2006 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri Rishang Keishing
3. Shri S.S. Ahluwalia
4. Shri Prasanta Chatterjee
5. Shri N. Jothi
6. Shri Sanjay Raut

LOK SABHA

7. Shri Ilyas Azmi
8. Km. Mamata Banerjee
9. Shrimati Sangeeta Kumari Singh Deo
10. Shri Tapir Gao
11. Shri T.K. Hamza
12. Shri Raghunath Jha
13. Shri Naveen Jindal
14. Prof. K.M. Kader Mohideen
15. Shri G. Karunakara Reddy
16. Shri Bajju Ban Riyan
17. Shri Brij Bhushan Sharan Singh
18. Shri Mohan Singh

SECRETARIAT

Shri P.P.K. Ramacharyulu, Deputy Secretary
Shri Rohtas, Under Secretary

WITNESSES

Representatives of Ministry of Home Affairs

1. Shri V.K. Duggal, Home Secretary
2. Shri P.V. Bhide, Additional Secretary
3. Shri B.A. Coutinho, Joint Secretary (HR)
4. Shri Jag Ram, Director (NI)

Representatives of Department of Legal Affairs, Ministry of Law and Justice

5. Shri T.K. Viswanathan, Law Secretary
6. Shri R. Sreenivas, Assistant Legislative Council

Representatives of Legislative Department, Ministry of Law and Justice

7. Dr. K.N. Chaturvedi, Secretary
8. Shri R. Sreenivas, Assistant Legislative Counsel

2. At the onset the Chairperson welcomed the Members to the meeting of the Committee and stated that the Home Secretary would give his views on the remaining twenty points/suggestions made by individuals/organisations. She also informed the members that, the next meetings of the Committee on the Communal Violence (prevention, Control and Rehabilitation) Bill, 2005 may take place on 5th and 6th October, 2006 to hear Shri H.S. Phoolka, Senior Advocate and Counsel for the Minorities in the 1984 Sikh Riots and the Home Secretary on the communally sensitive districts of India.

3. One Member mentioned that a sub-committee of the National Integration Council has been constituted to review all the riots which have taken place in the country till date and requested the Home Secretary to provide to the Committee copies of documents supplied to the sub-committee of NIC.

4. The Chairperson then recalled the deliberations held in the previous meeting of the Committee on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 and requested the Home Secretary to give his views on the suggestions on issues like the Relief and Rehabilitation Councils, sexual violence, reparation, role of media, deputing central observer in the communally disturbed area, disqualification of persons convicted for communal violence from contesting elections, etc.

5. The Home Secretary elaborated his comments on the various suggestions and clarified the stand of the Ministry. About the representation of minorities in the relief and rehabilitation councils at all the levels, the Home Secretary stated that clauses 39 (b), 42 (f) and 45 (2) (iv) provide for representation of minorities in the councils. Regarding representation of women, he stated that their representation was ensured in every Committees. With regard to religious leaders, he felt that their inclusion was not required. As regards the representation of the Union Home Minister and Chief Ministers in the National and State Councils, he stated that the Ministry was of the view that the National Council should function independent of the Ministry and it should report to the Home Minister. Similarly the Chief Secretary should report to the Chief Minister.

6. As regards compensation, the Home Secretary was of the view that the aspect could be addressed while making rules and that the court would play their role. The Home Secretary accepted in principle the suggestion that there should be uniform compensation to the victims of violence across the country and that it should be paid within a timeframe. He further added that full rate of compensation would be provided under clause 54 (3) of the Bill, and it would be decided for each category by taking cue from the Workmen's Compensation Act 1923, Motor Vehicles Act, 1988, Land Acquisition Act, 1894, etc. He also stated that the intention of the Ministry was that the victim must be compensated irrespective of the fact whether the offender was capable of paying or not. Moreover, persons would be charged for such abetments, who would have financial capability to compensate. However, he clarified that the pecuniary fine received from the offenders would be placed in the Consolidated Fund of India and the victims would be compensated without being affected by factors like acquittal or conviction of offenders.

6.1 While expressing his views on the new ideas received by the Committee during its examination of the Bill, the Home Secretary stated that the issue of sexual offences against women

were being addressed separately and a clearer and modified definition of rape and other sexual offences against women was already in the pipeline. Further, it is proposed to double the punishment prescribed in the IPC for the commission of any such offence during a communal violence.

6.2 As regards reparation, the Home Secretary stated that the provision on compensation adequately covers that aspect. The Home Secretary desired to be benefited by the views of the Committee with regard to the point raised relating to the role of media in fomenting violence. On the issue of ignition of violence inside a place of worship, he felt that the existing provision under section 7 of Religious Institution (Prevention of Misuse) Act, 1988 was sufficient. With regard to deputing a central observer of the rank of Joint Secretary, the Home Secretary did not feel it desirable. However, on disqualifying a person convicted for communal violence from contesting elections, he mentioned that clause 62 dealt specifically with it.

7. The Chairperson and Members raised several queries relating on the Issues discussed above which were also responded to by the Home Secretary.

(The witnesses then withdrew)

8. A verbatim record of the proceedings was kept.

9. The Committee adjourned at 12.42 P.M.

VI
SIXTH MEETING

The Committee met at 3.00 P.M. on Friday, 6 October, 2006 in Committee Room 'E', Basement, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri V. Narayanasamy
3. Shri R.K. Dhawan
4. Shri S.S. Ahluwalia
5. Shri Prasanta Chatterjee
6. Shri N. Jothi
7. Shri Sanjay Raut

LOK SABHA

8. Shri Ilyas Azmi
9. Shrimati Sangeeta Kumari Singh Deo
10. Shri Biren Singh Engti
11. Shri T.K. Hamza
12. Shri Naveen Jindal
13. Shri Ram Chandra Paswan
14. Shri Sachin Pilot
15. Shri Bajju Ban Riyan
16. Shri Mohan Singh

SECRETARIAT

Shri Rohtas, Under Secretary

WITNESSES

Shri H.S. Phoolka, Senior Advocate, Delhi High Court

Representatives of Ministry of Home Affairs

1. Shri V.K. Duggal, Home Secretary
2. Shri P.V. Bhide, Additional Secretary
3. Shri B.A. Coutinho, Joint Secretary (HR)
4. Shri Jag Ram, Director (NI)
5. Shri K. Ram, Joint Director (IB)

Representative of Department of Legal Affairs, Ministry of Law and Justice

6. Shri K.D. Singh, Additional Secretary

Representatives of Legislative Department, Ministry of Law and Justice

7. Dr. K.N. Chaturvedi, Secretary
 8. Shri N.K. Nampoothiry, JS & LC
2. The Chairperson welcomed Shri H.S. Pholka, Sr. Advocate to the meeting of the Committee and invited him to present his views and suggestions on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005.
 3. The witness made the following suggestions:
 - (i) The provisions of the Bill are not adequate and too much discretion has been left to the State and Central Governments.
 - (ii) In clause 3 (1) before the words “whenever the State Government is of the opinion” the words “if there is a killing of more than ten persons then it becomes mandatory” should be added.
 - (iii) In clause 3 instead of the words “it may by notification” the words “it shall by notification” be substituted, thus making it mandatory for the Government.
 - (iv) In an emergent situation when an area is declared as a communally disturbed area, then the legislation should spell out that the Government has to take steps such as deployment of paramilitary forces, calling of the army in aid of civil administration, direct monitoring of law and order situation by the State Council, etc.
 - (v) Investigation should mandatorily be conducted whenever an area is declared as a communally disturbed by a Special Investigation Team, outside the local police and it should be constituted by the State Council comprising of Home Secretary, DGP and some eminent citizens.
 - (vi) If 50 or more deaths take place in a district, then investigation should be mandatorily conducted by CBI.
 - (vii) Public Prosecutor should work under the supervision of State Council.
 - (viii) Uniform compensation should be provided to the victims of communal riots in all the States and that one person of the family should be provided with a Government job and all these exercises should be completed in a definite timeframe.
 - (ix) Clause 55, should be amended in such a way that if 50 deaths have taken place, the Central Government should mandatorily send paramilitary forces and army.
 - (x) The nomenclature of the Bill should be ‘Mass Violence Bill’ so that even the dalits would feel protected.
 4. The Chairperson and Members put several queries to the witness, which were responded to by him.

(A Verbatim record of the proceedings was kept)

(The witness then withdrew)
 5. The Chairperson then welcomed the Home Secretary alongwith his colleagues to the meeting of the Committee and requested him to make a presentation on the communally sensitive districts of India.
 6. The Home Secretary made a powerpoint presentation on the subject.
 7. The Chairperson and Members put several queries to which the Home Secretary responded.

(The witnesses then withdrew)
 8. The Committee, then, adjourned at 4.45 P.M.

**IX
NINTH MEETING**

The Committee met at 12.00 Noon on Wednesday, 18 October, 2006 in Committee Room G 074, Ground Floor, 'K' Block, Parliament Library Building, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri V. Narayanasamy
3. Shri S.S. Ahluwalia
4. Shri Prasanta Chatterjee
5. Shri Sanjay Raut

LOK SABHA

6. Dr. Rattan Singh Ajnala
7. Shri T.K. Hamza
8. Shri Ajit Jogi
9. Prof. K.M. Kader Mohideen
10. Shri G. Karunakara Reddy
11. Shri M. Rajamohan Reddy
12. Shri Bajju Ban Riyan

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
Shri P.P.K. Ramacharyulu, Deputy Secretary
Shri Rohtas, Under Secretary
Shri Ashok Kumar Sahoo, Committee Officer

WITNESSES

Representatives of Ministry of Home Affairs

1. Shri V.K. Duggal, Home Secretary
2. Shri P.V. Bhide, Additional Secretary
3. Shri B.A. Coutinho, Joint Secretary (HR)
4. Shri Jag Ram, Director (NI)

Representative of Department of Legal Affairs, Ministry of Law and Justice

5. Shri T.K. Viswanathan, Law Secretary

Representatives of Legislative Department, Ministry of Law and Justice

6. Dr. K.N. Chaturvedi, Legislative Secretary
7. Shri N.K. Nampoothiry, Joint Secretary and Legislative Counsel

2. The Chairperson welcomed the Members to the sitting of the Committee and apprised them of the agenda for the day *i.e.*, clause-by-clause consideration of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005.

3. While recapitulating the deliberation held on the Bill, the Chairperson stated that the existing laws already contained provisions which were sufficient to deal with situations of communal violence and its aftermath, if implemented effectively. In view of that she wanted to know the views of the Members on the necessity of the Bill before proceeding towards the clause-by-clause consideration thereof.

3.1 All the Members present, including the Chairperson, felt that violence on large scale, whether communal or social conflicts or even caste conflicts, which threatened the secular fabric, unity, integrity and internal security of the Nation, could not be dealt with by the ordinary law of the land and unanimously was of the view that there was indeed a necessity of such a Bill being enacted into law.

3.2 The Chairperson thereafter welcomed the representatives of Ministries of Home Affairs and Law and Justice and took up the Bill for clause-by-clause consideration.

4. The Committee then considered the Long Title of the Bill. At this stage a Member raised the issue of legislative competence of Parliament to enact such a legislation. He stated that 'Public Order' was an entry in the State List and was not within the domain of Parliament to enact such a law except as per procedure prescribed in the Constitution.

4.1 While replying to the issue, the Home Secretary stated that 'Criminal Law', 'Criminal Procedure' and 'Administration of Justice' were on the Concurrent List and therefore the Bill drew its strength from Entries 1, 2 and 11A of that list. He further added that the Long Title itself indicated the intention of the Bill as it empowered the Central Government to enact the law only when Communal Violence erupted on such scale and in such manner which threatened the secular fabric, unity, integrity and internal security of the Nation.

5.0 The Committee thereafter proceeded with clause-by-clause consideration of the Bill.

Clause 1

5.1.0 This clause provides for the short title of the proposed legislation, the extent of its operation and its commencement.

5.1.1 The Committee felt that the words 'communal violence' were well understood by everyone. For the purpose of this Bill, violence may be called communal violence if it threatened unity, integrity, secular fabric and internal security of the country. The Bill took care of mass violence, violence between ethnic groups, religious communities (both inter and intra) and castes. The Committee, therefore, decided in favour of retention of the words 'communal violence'.

5.1.2 The clause was adopted without any change.

Clause 2

5.2.0 The Clause contains definitions of certain words and expressions used in the Bill.

5.2.1 The Committee noted the drafting error as pointed out by one of the witnesses in clause 2(1)(b) *viz.* that the reference to sub clause (i) of clause (c) of sub-section (1) of section 3 should read as 'sub-section (1) of Section 3'. The Committee, therefore, recommended that clause 2(1)(b) may have reference to sub-section (1) of Section 3.

5.2.2 The Committee found that the Schedule actually lists the sections, which prescribe the punishment and not the offence. The Committee noted the proposal made by the Home Secretary for amending Clause 2 (1) (1). The Committee agreed that sub-clause (1) (1) of Clause 2 may read as: “*Scheduled offence*” means an offence punishable under the sections specified in the Schedule.”

5.2.3 The clause was adopted as amended.

Clause 3

5.3.0 The clause provides for the powers of the State Government to declare an area to be a communally disturbed area in certain circumstances.

5.3.1 The Committee agreed with the view that making death and destruction of property *sine qua non* for notification would be very restrictive. There may be a situation where a single death might not have taken place but a large number of people were grievously hurt. Such a situation is not covered under this clause. The Committee, therefore, recommended that sub-clause (1) (a) of clause 3 may read as ‘*in such manner and on such a scale which involves the use of criminal force or violence against any group, caste or community, resulting in grievous hurt, loss of life, or extensive damage or destruction of property.*’

5.3.2 The Committee also agreed to the suggestion that the word ‘danger’ be substituted by ‘threat’ and ‘may’ by ‘shall’ in clause 3 (1) (c), and recommended these amendments in the clause.

5.3.3 The Committee further recommended a cap of six months for extending notification, in the proviso to sub-clause (2) of clause 3. It also recommended that after the expiry of six months there should be a fresh notification by following the prescribed procedure.

5.3.4 The clause was adopted as amended.

Clause 4

5.4.0 The clause seeks to provide for the measures to be taken by the State Government to prevent and control communal violence in a communally disturbed area. It may request the Central Government to deploy Armed Forces of the Union to control communal violence.

5.4.1 The clause was adopted without any change.

Clause 5

5.5.0 The clause lays down the powers of District Magistrate to take preventive measures in case of a situation which has arisen causing apprehension of breach of peace or creation of discord between members of different groups, castes or communities.

5.5.1 The Committee recommended that the words “or he has received an information” may be added after the words ‘has reason to believe’ in clause 5 (1).

5.5.2 On the suggestion that in sub-clause (3), the amount of fine should be mentioned, the Committee recommended that the words “or with fine or with both” may be substituted by the words “and with fine”.

5.5.3 The clause was adopted as amended.

Clause 6

5.6.0 The clause lays down the powers of the competent authority to take preventive measures in a notified communally disturbed area.

5.6.1 The Committee noted the omission pointed out by the Home Secretary and recommended addition of the following new sub-clause (3) in clause 6 as under:

“Whoever contravenes the provisions of an order made under this section, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine”.

5.6.2 The clause was adopted as amended.

Clause 7

5.7.0 The clause provides for the power of the competent authority to order to deposit arms and ammunition in communally disturbed area.

5.7.1 The Committee agreed with the suggestion of deleting the words ‘whether such person has a licence to keep such arms, ammunition, explosives, corrosive substance, or not’ in Clause 7(1), as this provision was likely to be misused and the citizens may be harassed. The Home Secretary also agreed with the suggestion. The Committee, therefore, recommended that the above-mentioned words in sub-clause (1) of clause 7 may be deleted.

5.7.2 The clause was adopted as amended.

Clause 8

5.8.0 The clause provides for powers to the officer in charge of police station to search, detect and seize arms and ammunition in the communally disturbed area.

5.8.1 The Committee felt that the suggestion of substituting ‘Sub-Inspector’ by ‘Deputy Superintendent of Police’ may not be practicable. The Committee, however, agreed that the power to search, detain and seize arms etc. in communally disturbed area may be exercised by an officer not below the rank of Inspector of Police. The Committee, therefore, recommended that the word “Sub-Inspector” may be substituted by the word “Inspector”.

5.8.2 The clause was adopted as amended.

Clause 9

5.9.0 The clause empowered the competent authority to prohibit certain acts in the communally disturbed area.

5.9.1 The Committee felt that the words ‘public utterances of cries’ in sub-clause (1) (e) were vague and inapt. ‘Incitement’ was an appropriate word. However, the Committee was of the view that incitement should be related to singing of songs and playing of music as well. The Committee, accordingly, recommended that for the words ‘Public Utterances of Cries’ the following may be substituted:

“the public utterances, singing of songs and playing of music which cause incitement”.

5.9.2 The clause was adopted as amended.

Clauses 10 and 11

5.10.0 These clauses empower the competent authority to make orders regarding conduct of persons in communally disturbed area and for punishment for loitering near prohibited places.

5.10.1 These clauses were adopted without any change.

Clause 12

5.11.0 This clause provides for punishment for being in possession of arms without license in the communally disturbed area.

5.11.1 The Committee held detailed discussion on the implication of this clause and its likely misuse in its present form. The Committee felt that the very purpose of inviting reference to unlicensed arms in clause 7(1) may be defeated if clause 12 was allowed to remain. In order to bring clause 12 in consonance with clause 7(1), as amended by the Committee, it recommended that the words 'if found to be in possession of or carrying' may be substituted by the words 'has in his possession' in clause 12.

5.11.2 The clause was adopted as amended.

Clause 13

5.12.0 This clause provides for punishment for assisting offenders.

5.12.1 The Committee recommended that after the words 'having reasonable cause to believe', the words 'from the circumstances' may be inserted as it was a loose formulation and can be misused.

5.12.2 The clause was adopted as amended.

Clauses 14 and 15

5.13.0 These clauses provide for punishment for giving financial assistance to the offenders and punishment to those who threaten witness.

5.13.1 The Clauses were adopted without any change.

Clause 16

5.14.0 The clause provides for the punishment for the driver, owner or any person in-charge of goods transport vehicle for carrying more persons than authorized.

5.14.1 The Committee felt that the words 'goods transport vehicle' were very restrictive and did not include any other vehicle, and there was a need to bring all the vehicles under the ambit of this clause. The Committee also noted the explanation of the Secretary, Legislative Department that in the Motor Vehicles Act, 1988 there was only the definition of 'transport vehicle' and not 'vehicle'. Taking into consideration the explanation given by the Legislative Secretary, the Committee recommended that the word 'goods' may be deleted from clause 16 and marginal heading thereto.

5.14.2 The Committee also noted the Home Secretary's submission that the Government propose to add the words 'or arms, explosives or corrosive substance' after the words 'rules made thereunder'. The Committee agreed with the suggestion and recommended that the amendment may be carried out.

5.14.3 The clause was adopted as amended.

Clause 17

5.15.0 This clause provides for punishment for public servants acting in *mala fide* manner and for failure to discharge their duties through wilful commissions or omissions.

5.15.1 The Committee noted the fact that the offences for which punishment was provided in clause 17 (1) become non-cognizable if the punishment was only one year imprisonment. The Committee felt that the offences need to be made cognizable and for this purpose, the punishment would have to be enhanced to three years imprisonment. By making the quantum of punishment to three years, there would be uniformity in clauses 17 and 19. Further, if this amendment was not made in clause 17, then clause 19 would become redundant. The Committee, therefore, recommended that the words “one year” may be substituted by the words “three years” in sub-clause (1) of clause 17.

5.15.2 The clause was adopted as amended.

Clause 18

5.16.0 The clause provides for the punishment for violation of orders under section 144 of the Code of Criminal Procedure, 1973 in a communally disturbed area.

5.16.1 The clause was adopted without any change.

Clause 19

5.17.0 This clause provides for the criterion for communal offence and enhanced punishment for committing communal violence.

5.17.1 The Committee felt that the Government’s proposal to reduce the minimum punishment of imprisonment from five to three years was sufficient to work as a deterrent. The Committee, therefore, recommended that the word ‘five’ in the proviso to sub-clause (2) of clause 19 may be substituted by the word “three”.

5.17.2 The clause was adopted as amended.

A verbatim record of the proceedings was kept.

6. The Committee then adjourned at 5.00 P.M. to meet at 11.00 A.M. on 30 October, 2006 to continue the clause-by-clause consideration of the Bill.

**IX
NINTH MEETING**

The Committee met at 11.00 A.M. on Monday, 30 October, 2006 in Committee Room G 074, Ground Floor, 'K' Block, Parliament Library Building, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri V. Narayanasamy
3. Shri S.S. Ahluwalia
4. Shri Prasanta Chatterjee
5. Shri N. Jothi
6. Shri Sanjay Raut

LOK SABHA

7. Shri Ilyas Azmi
8. Shri Biren Singh Engti
9. Shri Tapir Gao
10. Shri Naveen Jindal
11. Shri Ram Chandra Paswan
12. Shri M. Rajamohan Reddy
13. Shri Bajju Ban Riyan
14. Shri Brij Bhushan Sharan Singh
15. Shri Mohan Singh

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
Shri P.P.K. Ramacharyulu, Deputy Secretary
Shri Rohtas, Under Secretary

WITNESSES

Representatives of Ministry of Home Affairs

1. Shri V.K. Duggal, Home Secretary
2. Shri P.V. Bhide, Additional Secretary
3. Shri B.A. Coutinho, Joint Secretary (HR)
4. Shri Jag Ram, Director (NI)

Representatives of Department of Legal Affairs, Ministry of Law and Justice

5. Shri T.K. Viswanathan, Law Secretary
6. Shri K.D. Singh, Additional Secretary

Representatives of Legislative Department, Ministry of Law and Justice

7. Dr. K.N. Chaturvedi, Secretary
8. Shri N.K. Nampoothiry, Joint Secretary and Legislative Counsel

2. At the outset the Chairperson welcomed the Members to the meeting of the Committee and extended her greetings for Deepawali and Id to them. She then mentioned about the agenda for the day *i.e.*, further clause-by-clause consideration of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005.

3. She recapitulated on the discussion held in the last meeting and informed the Committee that clause 1 to 19 alongwith the long title of the said Bill had been adopted by the Committee in its last meeting. She, thereafter, welcomed the representatives of Ministries of Home Affairs and Law and Justice for further clause-by-clause consideration of the Bill.

4. The Committee first took up clause 20 of the Bill.

Clause 20

4.1.0 The clause provides that the scheduled offences shall be cognizable offences for the purposes of the proposed legislation.

4.1.1 The Committee suggested for deleting the words 'Executive Magistrate' and felt that the Executive Magistrate will not have as much independence as the Judicial Magistrate. Moreover, Executive Magistrate is directly accountable to the Government. Therefore, the Committee recommends that the words 'or Executive Magistrate' in sub-clause (3) of clause 20 may be deleted.

4.1.2 Subject to the above, the clause was adopted.

Clause 21

4.2.0 The clause provide for declaring any post or place within a communally disturbed area as police station.

4.2.1 The clause was adopted without any change.

Clause 22

4.3.0 The clause empowered the State Government to constitute a Review Committee headed by an officer of the level of Inspector General of Police (IGP) to review cases of scheduled offences where the trial ends in acquittal and to issue orders for filing of appeals, wherever required.

4.3.1 The Committee felt that a Law Officer should be associated with the Review Committee. The Committee recommends that Government may bring suitable amendment in sub-clause (1) of clause 22 for the purpose of associating a law officer of the State, with the Review Committee.

4.3.2 Subject to the above, the clause was adopted.

Clause 23

4.4.0 The clause provide for the constitution of one or more Special Investigation Teams (SIT) by the State Government in case it come to the conclusion that the investigation of offences committed in a communally disturbed area were not carried out properly in a fair and impartial manner.

4.4.1 The Committee was of the view that a provision already exists in Cr. P.C. empowering State Governments to constitute SIT. The Committee, therefore, recommends that clause 23 may be deleted.

Clause 24

4.5.0 The clause provide that the State Government shall, by notification in the Official Gazette, establish one or more Special Courts for the trial of scheduled offence committed during the period of disturbance.

4.5.1 The Committee discussed at length the implications of this clause. At present Central Government or State Government does not have the power to transfer a case from one High Court to another High Court. This is the power given to the judiciary. Section 406 of Cr. P.C. provides that the Supreme Court can transfer a case from one High Court to another High Court. Giving this power to the Central Government is illegal and takes away the powers of Judiciary. Clause 24 is repugnant to the provisions of Section 406 of Cr. P.C. The Committee was, therefore, of the strong view that such a power should remain with the judiciary only. The exigencies visualized in this clause whereunder a State Government may request the Central Government to establish an additional Special Court outside the State for trial of schedule offences, are impracticable and highly improbable as no State Government would indulge in self indictment stating that justice cannot be dispensed within that State. The Committee, therefore, recommended that clause 24 may be re-looked in the light of Section 406 of Cr. P.C.

4.5.2 Subject to the above, the clause was adopted.

Clause 25

4.6.0 The Clause provide for composition and appointment of Judges of Special Courts.

4.6.1 The Committee recommended that while framing the rules, endeavour should be made for providing timely and adequate infrastructure for the Special Courts.

4.6.2 Subject to the above, the clause was adopted.

Clause 26

4.7.0 The Clause provide for the place of sitting of a Special Court

4.7.1 It was suggested that the proviso to the-clause should be deleted in view of the fact that the Court should decide the place of sitting instead of depending upon the certificate of public prosecutor. The Committee therefore recommended deletion of the proviso to the clause.

4.7.2 Subject to the above, the clause was adopted.

Clause 27

4.8.0 The clause provide for jurisdiction of Special Courts.

4.8.1 The clause was adopted without any change.

Clause 28

4.9.0 The clause provide for powers of Special Courts with respect to other offences.

4.9.1 The clause was adopted without any change.

Clause 29

4.10.0 The Clause provide for the appointment of Public Prosecutors. Under the clause, eligibility for appointment of Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor is (i) practice as an Advocate for not less than seven years or (ii) one has held any post in the State or Centre for not less than seven years requiring special knowledge of law.

4.10.1 The Committee was of the view that a person holding a post in the State or the Central Government for not less than seven years having special knowledge of law may not prove himself to be effective prosecutor in cases of communal violence. Special knowledge is different from practical knowledge. Practical knowledge and experience are very important for dealing with legal cases. The Committee, therefore, felt that the eligibility for appointment as a Public Prosecutor should be confined to practice in law for not less than seven years. The Committee also does not agreed with the explanation of the Home Secretary that the provision for appointment of officers of the Union or a State having special knowledge of law as public prosecutors had been made to ease burden on the already over burdened legal practitioners. The Committee, accordingly, recommended the word 'or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law' may be deleted in sub-clause (2) of clause 29.

4.10.2 Subject to the above, the clause was adopted.

Clause 30

4.11.0 The clause provide for procedure and powers of Special Courts.

4.11.1 The Committee held extensive discussion on the clause. The Committee considered the implications of the clause where under a Special Court may take cognizance of any scheduled offence without the accused being committed to it for trial and its effect on the right to life and personal liberty guaranteed under Article 21 of the Constitution. The Committee apprehended receipt of complaints by the Special Courts without any police report may lead to a plethora of flimsy complaints in those Courts. The Committee also took note of the fact that summary trial is well defined in Chapter XXI of the Code of Criminal Procedure. The Committee was, therefore, of the view that the provision of summary trial should be deleted from the clause.

4.11.2 In the light of the reservations of the Committee on the maintainability of the clause *vis-a-vis* Article 21 of the Constitution guaranteeing protection of life and personal liberty of a person and Chapters XV and XXI of the Cr.P.C., the Committee recommends that the Government may have a re-look at clause 30 to bring it in harmony with the above mentioned constitutional and statutory provisions.

4.11.3 Subject to the above, the clause was adopted.

5. The Committee than adjourned 1.40 P.M. to meet at 11.00 A.M. on 16 November, 2006 to continue the clause-by-clause consideration of the Bill.

6. A verbatim record of the proceedings was kept.

X
TENTH MEETING

The Committee met at 11.00 A.M. on Thursday, 16 November, 2006 in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri V. Narayanasamy
3. Shri Rishang Keishing
4. Shri R.K. Dhawan
5. Shri S.S. Ahluwalia
6. Shri Prasanta Chatterjee
7. Shri Sanjay Raut

LOK SABHA

8. Dr. Rattan Singh Ajnala
9. Shri Ilyas Azmi
10. Shri Biren Singh Engti
11. Shri Tapir Gao
12. Shri Raghunath Jha
13. Prof. K.M. Kader Mohideen
14. Shri Ashok Kumar Pradhan
15. Shri M. Rajamohan Reddy
16. Shri Bajju Ban Riyan
17. Shri Brij Bhushan Sharan Singh

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
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Shri Rohtas, Under Secretary
Shri Ashok Kumar Sahoo, Committee Officer

WITNESSES

Representatives of Ministry of Home Affairs

1. Shri V.K. Duggal, Home Secretary
2. Shri P. V. Bhide, Additional Secretary
3. Shri B.A. Coutinho, Joint Secretary (HR)
4. Shri O.P. Mahey, Director

Representative of Department of Legal Affairs, Ministry of Law and Justice

5. Shri T.K. Viswanathan, Law Secretary

Representative of Legislative Department, Ministry of Law and Justice

6. Dr. K.N. Chaturvedi, Secretary

2.0 The Chairperson welcomed the Members and representatives of the Ministry of Home Affairs and Ministry of Law and Justice to the sitting of the Committee. Thereafter, the Committee resumed clause-by-clause consideration of the Communal Violence (prevention, Control and Rehabilitation of Victims) Bill, 2005.

Clause 31

3.1.0 The clause provides for power of Supreme Court to transfer cases.

3.1.1 **The clause was adopted without any change.**

Clause 32

3.2.0 The clause provides for protection of witnesses.

3.2.1 **The Committee, after some discussion, felt that the clause was necessary for protection of witnesses and victims.**

3.2.2 **The clause was adopted without any change.**

Clause 33

3.3.0 The clause provides for power to transfer cases to regular courts.

3.3.1 **The clause was adopted without any change.**

Clause 34

3.4.0 The clause provides for removal of a person likely to commit scheduled offence.

3.4.1 **The Committee felt that the powers, functions, responsibilities of the three organs of the State, *i.e.*, Legislature, Executive and Judiciary were well demarcated in the Constitution and under Clause 34 there seemed to be an attempt to transfer the power of maintenance of law and order from Executive to the Judiciary. The Committee, therefore, recommended that the words '*suo motu or*' may be deleted in sub-clause (1) of the clause. The Committee also felt that the entire clause should be re-looked.**

3.4.2 **Subject to the above, the clause was adopted.**

Clause 35

3.5.0 The clause provides for procedure to be followed in case of failure of a person to remove himself from a communally disturbed area and attempt to return to that area after removal.

3.5.1 **The Committee felt that clause 35 which was linked to Clause 34 also needed to be re-looked.**

3.5.2 **Subject to the above, the clause was adopted.**

Clause 36

3.6.0 The clause provides for appeal against certain restrictions on movement of persons in communally disturbed areas.

3.6.1 **The clause was adopted without any change.**

Clause 37

3.7.0 This clause provides for abolition of certain Special Courts

3.7.1 **The clause was adopted without any change.**

Clause 38

3.8.0 The clause provides for State Communal Disturbance Relief and Rehabilitation Council.

3.8.1 **The clause was adopted without any change.**

3.8.2 Since the Home Secretary had to attend an urgent meeting, he took the leave of the Committee to attend the said meeting. In the absence of the Home Secretary certain clauses in which his clarification was essential were kept pending for the next sitting of the Committee. Other clauses, which were of procedural nature, were taken up for consideration.

Clause 40

3.9.0 The clause provides for functions of State Council.

3.9.1 **The clause was adopted without any change.**

Clause 41

3.10.0 The clause provides for the State Plan for promotion of communal harmony and prevention of communal violence.

3.10.1 **The clause was adopted without any change.**

Clause 42

3.11.0 The clause provides for the constitution of the District Council.

3.11.1 **The Committee felt that women should be given adequate representation in the District Council with at least one woman representative each under sub clauses (e) and (f).**

3.11.2 **Subject to the above, the clause was adopted.**

Clause 43

3.12.0 The clause provides for meetings of District Council.

3.12.1 **The clause was adopted without any change.**

Clause 44

3.13.0 The clause provides for functions of District Council.

3.13.1 **The clause was adopted without any change.**

Clause 45

3.14.0 The clause provides for constitution of National Communal Disturbance Relief and Rehabilitation Council.

3.14.1 The Committee felt that the National Council should be presided over by the Union Home Minister so that application of mind at the political level can take place at that stage itself. The Committee also felt that women may be given adequate representation in the National Council with at least one woman representative each under sub-clauses (iv) and (v).

3.14.2 **Subject to the above, the clause was adopted.**

Clause 46

3.15.0 The clause provides for terms and conditions of office of Members of National Council.

3.15.1 **The clause was adopted without any change.**

Clause 47

3.16.0 The clause provides for powers and functions of National Council.

3.16.1 The Committee took note of the fact that there was no uniformity in the payment of compensation to the victims which was discriminatory and causes discontentment amongst them. The Committee, therefore, felt that the Government should come out with a policy of paying uniform compensation.

3.16.2 **Subject to the above, the clause was adopted.**

Clause 48

3.17.0 The clause provides for report of National Council.

3.17.1 **The clause was adopted without any change.**

Clause 49

3.18.0 The clause provides for State Fund.

3.18.1 **The clause was adopted without any change.**

Clause 50

3.19.0 The clause provides for scheme for grant of relief.

3.19.1 **The clause was adopted without any change.**

Clause 51

3.20.0 The clause provides for District Fund.

3.20.1 **The clause was adopted without any change.**

Clause 52

3.21.0 The clause provides for District Council to function under State Council.

3.21.1 **The clause was adopted without any change.**

Clause 58

3.22.0 The clause provides for prohibition against discrimination.

3.22.1 **The clause was adopted without any change.**

Clause 59

3.23.0 The clause provides that the application of other laws is not barred.

3.23.1 **The clause was adopted without any change.**

Clause 60

3.24.0 The clause provides for power of Central Government to make rules.

3.24.1 **The clause was adopted without any change.**

Clause 61

3.25.0 The clause provides for power of State Government to make rules.

3.25.1 **The clause was adopted without any change.**

A verbatim record of the proceedings was kept.

4.0 The Committee adjourned at 1.00 P.M. to meet again at 11.00 A.M. on 17 November, 2006.

XI
ELEVENTH MEETING

The Committee met at 11.00 A.M. on Friday, 17 November, 2006 in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri V. Narayanasamy
3. Shri Rishang Keishing
4. Shri R.K. Dhawan
5. Shri Prasanta Chatterjee
6. Shri Sanjay Raut

LOK SABHA

7. Dr. Rattan Singh Ajnala
8. Shri Ilyas Azmi
9. Shri Tapir Gao
10. Shri Raghunath Jha
11. Shri Naveen Jindal
12. Prof. K.M. Kader Mohideen
13. Shri M. Rajamohan Reddy
14. Shri Bajju Ban Riyan
15. Shri Mohan Singh

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
Shri P.P.K. Ramacharyulu, Deputy Secretary
Shri Rohtas, Under Secretary
Shri Ashok Kumar Sahoo, Committee Officer

WITNESSES

Representatives of Ministry of Home Affairs

1. Shri V.K. Duggal, Home Secretary
2. Shri P.V. Bhide, Additional Secretary
3. Shri B.A. Coutinho, Joint Secretary (HR)
4. Shri O.P. Mahey, Director

Representative of Department of Legal Affairs, Ministry of Law and Justice

5. Shri T.K. Viswanathan, Law Secretary

Representative of Legislative Department, Ministry of Law and Justice

6. Dr. K.N. Chaturvedi, Secretary

2. The Chairperson welcomed the Members and representatives of the Ministry of Home Affairs and Ministry of Law and Justice to the sitting of the Committee. Thereafter, the Committee resumed clause-by-clause consideration of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005.

Clause 39

3.1. The clause provides for constitution of State Council.

The Committee felt that the State Council should be presided over by the Home Minister of the concerned State. The application of mind at the political level can take place at that stage itself rather than the proposal being sent by the Council, for consideration of the Chief Minister.

The Committee also felt that adequate representation needed to be provided for women in the State Council with at least one woman representative each under sub-clauses (g) and (h), in view of the fact that women are the first and the worst victims of communal violence.

The Committee was of the view that the composition of the Council does not provide for any representative from Banking and Insurance Sector which play a key role in relief and rehabilitation of victims of communal violence. The Committee therefore, recommended that representative from the Union Ministry of Finance (Department of Economic Affairs, Banking and Insurance Divisions) may be associated as 'Special Invitee' in all the meetings of the State Council.

Subject to the above, the clause was adopted.

Clauses 53 and 54

3.2. Clause 53 provides for compensation to victims by offenders.

Clause 54 provides for immediate compensation to victims by District Council.

The Committee held detailed discussion on both the clauses. The Committee agreed with the suggestion of the Home Secretary that clauses 53 and 54 may be swapped and recommends accordingly.

The Committee expressed its concern on the likely consequences of sub clause (1) of clause 53 whereunder a Special Court may order payment of compensation by the offender to the victims. Although the victims will receive compensation from the offender yet this may lead to further enmity between the individuals and groups and cause more social tension.

The Committee also flagged the points enumerated in proviso to sub-clause (1) of clause 53 and sub-clause (4) of clause 54 whereunder assistance/compensation shall not be paid to a person who was involved in a scheduled offence. The Committee appreciated the intention behind these provisions that compensation should not be paid to the perpetrators of communal violence. However, the Committee expressed its concern over the implications of these provisions. Sometimes, a victim of communal violence may be deliberately implicated in a case just to deprive him of the immediate compensation. Though ultimately

the victim may be acquitted and compensation awarded to him, but it would be too late and its very purpose may get defeated, as he may not receive the same when it was most needed.

The Committee, therefore, felt that Government should address the above issues appropriately and bring suitable amendments in the clauses before the Bill was brought for consideration in Parliament.

Subject to the above, the clauses were adopted.

Clause 55

3.3. The clause provides for power of Central Government to give directions to State Governments and issue notifications etc.

The Committee took note of the fact that out of thirteen National level and State level Political Parties which responded to the request of the Committee, ten opposed the clause, two supported it and one party while supporting the Bill in principle, did not offer any specific comment on the clauses of the Bill.

As for the State Governments, out of twelve States which responded, eight opposed the clause, one supported it while another extended in principle support. Two States did not offer any comment.

The Committee also noted the views of some legal/constitutional experts and social/political scientists on the provisions of the Bill particularly this clause.

The view that emerged in the Committee was that the apprehension of impingement of the clause on the States' autonomy and federal structure, enshrined in the Constitution, had been adequately addressed and necessary safeguards already provided in the clause to prevent its misuse by the Central Government. The Committee felt that the clause in its present form may be retained keeping in view the paramountcy of maintaining the secular fabric, unity, integrity and internal security of the Nation.

The Committee recalled the decision taken earlier for substitution of the words 'death or' by the words 'grievous hurt, loss of life or extensive damage' in sub-clause 1 (a) of clause 3, pertaining to one of the grounds for declaring an area as communally disturbed area by the State Government. Since sub-clause (1) of Clause 55 enumerates the grounds on which Central Government can give directions to the State Government and issue notification etc. to deal with communal violence, the Committee felt that there is a necessity for carrying out consequential amendment in the said sub-clause in line with the amendment recommended in clause 3(1)(a).

Subject to the above, the clause was adopted.

Clause 56

3.4 The clause provides for power of Central Government to extend or modify notifications issued under Section 55.

The clause was adopted without any change.

Clause 57

3.5. The clause provides for protection of action taken in good faith.

The clause was adopted without any change.

Clause 62

3.6. The clause provides for insertion of a new sub-clause (ca), in sub-section (2) of Section 8 of the Representation of People Act, 1951.

The clause was adopted without any change.

The Schedule

3.7. The schedule provides for various sections of the IPC and other enactments under which offences are punishable under the Bill.

The Committee recommended that the amendments proposed in the Schedule may be carried out before the Bill is brought in Parliament for consideration.

Subject to the above, the Schedule was adopted.

A verbatim record of the proceedings was kept.

4. The Committee adjourned at 12.20 P.M.

XII TWELFTH MEETING

The Committee met at 3.00 P.M. on Thursday, December 7, 2006 in Room No. 63, First Floor, Parliament House, New Delhi.

MEMBERS PRESENT

1. Shrimati Sushma Swaraj — *Chairperson*

RAJYA SABHA

2. Shri V. Narayanasamy
3. Shri Rishang Keishing
4. Shri Prasanta Chatterjee
5. Shri N. Jothi

LOK SABHA

6. Shri Biren Singh Engti
7. Shri Tapir Gao
8. Shri T.K. Hamza
9. Shri Raghunath Jha
10. Shri Naveen Jindal
11. Prof. K.M. Kader Mohideen
12. Shri Sachin Pilot
13. Shri G. Karunakara Reddy
14. Shri M. Rajamohan Reddy
15. Shri Bajju Ban Riyan
16. Shri Brij Bhushan Sharan Singh

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
Shri P.P.K. Ramacharyulu, Deputy Secretary
Shri Rohtas, Under Secretary
Shri Sanjeev Chandra, Committee Officer

2. At the outset, the Chairperson welcomed the Members to the meeting of the Committee. Thereafter, she took up the agenda of the meeting *i.e.*, consideration and adoption of draft One Hundred and Twenty Second Report of the Committee on Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005. Commending the draft report for consideration of the Committee, she highlighted the deliberations of the Committee on the Bill, gave a brief description of the structure of the Report and other important aspects on which the Committee had made recommendations.

3.0 The Chairperson, thereafter, informed the Committee that she had received a letter jointly signed by three Members of the Committee namely Shri Prasanta Chatterjee, Shri Bajju Ban Riyan

and Shri T.K. Hamza regarding their disagreement with the draft Report in relation to Para Nos. 5.14.7, 5.15.5, 5.16.6, 5.30.3, 5.30.4, 5.30.5, 5.40.4, 5.64.9, 5.65.10, 5.67.3 and 5.73.3. After a brief discussion, the members pressed for the amendments proposed by them to the aforesaid paras of the draft report. The Committee, however, did not agree to those amendments. At this point, the Members desired that their letter may be treated as “Minute of dissent” and appended to the Report. The Committee agreed.

3.1 Thereafter, the Committee adopted the draft One Hundred and Twenty Second Report. The Committee authorized its Chairperson to make editorial and other necessary changes, if required, in the Report before presenting/laying the same to the Parliament. The Committee also decided to lay on the Table of each House the Evidence tendered before it in connection with the Communal Violence (prevention, Control and Rehabilitation of Victims) Bill, 2005.

4. The Committee then authorized its Chairperson and in her absence Shri N. Jothi to present the Report and the Evidence in Rajya Sabha on 13th December, 2006 and Shri Sachin Pilot and in his absence Shri Tapir Gao to lay a copy each of the Report and the Evidence on the same date in the Lok Sabha.

5. The Committee also took up for consideration the study of “Administration of UTs”. It noted that it had already presented the Report in respect of three UTs *viz.* Pondicherry, Andaman and Nicobar Islands and Chandigarh and the remaining three UTs needed to be examined. After some discussion, the Committee proposed to visit the remaining three UTs, namely, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli, tentatively, during the first/second week of February, 2007 to conclude the study of the subject. The Committee authorised its Chairperson to request Hon’ble Chairman to permit the Committee to undertake the said visit.

6. The Committee then adjourned at 3.30 P.M.

ANNEXURE

ANNEXURE-I

AS INTRODUCED IN THE RAJYA SABHA
ON THE 5TH DECEMBER, 2005

Bill No. CXV OF 2005

THE COMMUNAL VIOLENCE (PREVENTION, CONTROL AND REHABILITATION OF VICTIMS) BILL, 2005

ARRANGEMENTS OF CLAUSES

CHAPTER 1

PRELIMINARY

CLAUSES

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

DECLARATION OF CERTAIN AREAS AS COMMUNALLY DISTURBED AREAS

3. Power of State Government to declare an area a communally disturbed area.
4. Measures to be taken by State Government on declaring a communally disturbed area.

CHAPTER III

PREVENTION OF ACTS LEADING TO COMMUNAL VIOLENCE

5. Power of District Magistrate to take preventive measures, etc.
6. Power of Competent Authority to take preventive measures.
7. Power to order deposit of arms, ammunition, etc.
8. Power to search, detain and seize arms, etc., in communally disturbed areas.
9. Power of competent authority to prohibit certain acts.
10. Power to make orders regarding conduct of persons in communally disturbed area.
11. Punishment for loitering near prohibited places.
12. Punishment for being in possession of arms, etc., without licences.
13. Punishment for assisting offenders.
14. Punishment for giving financial aid for the commission of certain offences.
15. Punishment for threatening witnesses, etc.
16. Driver, owner or any person in charge of goods transport vehicle not to carry more persons than authorised.
17. Punishment for public servants acting in *mala fide* manner.
18. Punishment for violation of orders under section 144 of the Code in communally disturbed areas.

CHAPTER IV

ENHANCED PUNISHMENT FOR COMMUNAL VIOLENCE

CLAUSES

19. Punishment for committing communal violence.

CHAPTER V

INVESTIGATION

20. Scheduled offences to be cognizable.
21. Declaration of places to the police stations.
22. Constitution of review committee.
23. Constitution of Special Investigation Teams.

CHAPTER VI

SPECIAL COURTS

24. Establishment of Special Courts.
25. Composition and appointment of Judges of Special Courts.
26. Place of sitting.
27. Jurisdiction of Special Courts.
28. Powers of Special Courts with respect to other offences.
29. Public Prosecutors.
30. Procedure and powers of Special Courts.
31. Power of Supreme Court to transfer cases.
32. Protection of witnesses.
33. Power to transfer cases to regular courts.
34. Removal of person likely to commit scheduled offence.
35. Procedure on failure of person to remove himself from area and enter thereon after removal.
36. Appeal.
37. Abolition of certain Special Courts.

CHAPTER VII

INSTITUTIONAL ARRANGEMENTS FOR RELIEF AND REHABILITATION

38. State Communal Disturbance Relief and Rehabilitation Council.
39. Constitution of State Council.
40. Functions of Council.
41. State plan for promotion of communal harmony and prevention of communal violence.
42. Constitution of District Council.
43. Meeting of District Council.
44. Functions of District Council.

CHAPTER VIII

NATIONAL COUNCIL

45. National Communal Disturbance Relief and Rehabilitation Council.

CLAUSES

46. Terms and conditions of Members of National Council.
47. Powers and functions of National Council.
48. Report of National Council.

CHAPTER IX

FUNDS FOR RELIEF AND REHABILITATION

49. State Fund.
50. Scheme for grant of relief.
51. District fund.
52. District Council to function under State Council.

CHAPTER X

COMPENSATION TO VICTIMS

53. Compensation to victims.
54. Immediate compensation.

CHAPTER XI

SPECIAL POWERS OF THE CENTRAL GOVERNMENT TO DEAL WITH COMMUNAL
VIOLENCE IN CERTAIN CASES

55. Power of Central Government to give directions to State Government and issue Notifications etc.
56. Power of Central Government to extend or modify Notifications issued under section 55.

CHAPTER XII

POWERS, DUTIES AND IMMUNITIES OF THE OFFICERS

57. Protection of action taken in good faith.

CHAPTER XIII

MISCELLANEOUS

58. Prohibition against discrimination.
59. Application of other laws not barred.
60. Power of Central Government to make rules.
61. Power of State Government to make rules.
62. Amendment of section 8 of Act 43 of 1951.

THE SCHEDULE.

Bill No. CXV of 2005

THE COMMUNAL VIOLENCE (PREVENTION, CONTROL AND
REHABILITATION OF VICTIMS) BILL, 2005

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.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Communal Violence (Prevention, Control and Rehabilitation of Victims) Act, 2005.

Short title,
extent and
commencement.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force in the Union Territories on such date as the Central Government may, by notification, appoint.

(4) The provisions of this Act, except Chapters II to VI (both inclusive), shall come into force in the States on such date as the Central Government may, by notification in the Official Gazette; appoint and different dates may be appointed for different provisions of this Act and the provisions of Chapters II to VI (both inclusive), shall come into force in a State as the State Government may, by notification, appoint and any reference to any provision of this Act to the commencement of this Act shall, in relation to a State, be construed as a reference to the commencement of that provision in that State.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) “Code” means the Code of Criminal Procedure, 1973;

(b) “communally disturbed area” means an area declared as such under sub-clause (1) of clause (c) of sub-section (1) of section 3 or under clause (a) of sub-section (3) of section 55;

(c) “communal violence” means any act of omission or commission which constitutes a scheduled offence and which is punishable under section 19;

(d) “competent authority” means such officer or authority as the State Government or the Central Government may, by notification, appoint as the competent authority under sub-section (4) of section 3 or as a Unified Command under sub-section (4) of section 55, as the case may be;

(e) “District Council” means the District Communal Disturbance Relief and Rehabilitation Council established by the State Government under sub-section (1) of section 42;

(f) “District Fund” means the Victims Assistance Fund established by the State Government under section 51;

(g) “National Council” means the National Communal Disturbance Relief and Rehabilitation Council constituted by the Central Government under sub-section (1) of section 45;

(h) “notification” means a notification published in the Official Gazette;

(i) “period of disturbance”, in relation to a communally disturbed area, means the period during which it is declared to be a disturbed area under section 3 or section 55, as the case may be;

(j) “prescribed” means prescribed by rules made under this Act;

(k) “relief and rehabilitation” includes providing shelter, medical care, food, clothing, education, vocational training and counselling or such other measures of relief as may be considered necessary by the State Council or the District Council to the victim of communal violence;

(f) “scheduled offence” means an offence specified in the Schedule;

(m) “Special Court” means a Special Court established under sub-section (1), or an additional special court established under sub-section (2), of section 24;

(n) “State Council” means the Communal Disturbance Relief and Rehabilitation Council established by the State Government under section 39;

(o) “State Fund” means the State Communal Disturbance Relief and Rehabilitation Fund established by the State Government under sub-section (1) of section 49;

(p) “Unified Command” means the authority constituted by the Central Government or the State Government under sub-section (4) of section 55.

4 of 1884. Act but defined in the Explosives Act, 1884 or the Arms Act, 1959 shall have the meanings respectively assigned to them in those Acts.
54 of 1959.

CHAPTER II

DECLARATION OF CERTAIN AREAS AS COMMUNALLY DISTURBED AREAS

3. (1) Whenever the State Government is of the opinion that one or more scheduled offences are being committed in any area by any person or group of persons—

Power of State Government to declare an area a communally disturbed area.

(a) in such manner and on such a scale which involves the use of criminal force or violence against any group, caste or community, resulting in death or destruction of property; and

(b) such use of criminal force or violence is committed with a view to create disharmony or feelings of enmity, hatred or ill-will between different groups, castes or communities; and

(c) unless immediate steps are taken there will be danger to the secular fabric, integrity, unity or internal security of India,

it may, by notification,—

(i) declare such area to be a communally disturbed area;

(ii) constitute such area into a single judicial zone or into as many judicial zones as it may deem fit.

(2) A notification under sub-section (1) in respect of any area shall specify the period during which the area shall, for the purpose of this Act, be a communally disturbed area:

Provided that the period specified in such notification shall not, in the first instance, exceed thirty days, but the State Government, may amend such notification to extend such period from time to time by any period not exceeding thirty days at anyone time, if in the opinion of that Government public peace and tranquillity continues to be disturbed in such area.

(3) Where any area has been notified as a communally disturbed area under sub-section (1), it shall be lawful for the State Government to take all measures, which may be necessary to deal with the situation in such area.

(4) When a notification has been issued under sub-section (1), the State Government shall notify one or more officers of the State Government as the competent authority for the purposes of this Act and different competent authorities may be appointed for different provisions of this Act.

Measures to be taken by State Government on declaring a communally disturbed area.

4. (1) Where the State Government has declared an area to be a communally disturbed area under sub-section (1) of section 3, it shall take such immediate measures as may be necessary to prevent and control communal violence in such area.

(2) If the State Government is of opinion that assistance of the Central Government is required for controlling the communal violence, it may request the Central Government to deploy armed forces of the Union to control the communal violence.

CHAPTER III

PREVENTION OF ACTS LEADING TO COMMUNAL VIOLENCE

Power of District Magistrate to take preventive measures, etc.

5. (1) Notwithstanding anything contained in the Code, whenever the District Magistrate has reason to believe that in any area within his jurisdiction, a situation has arisen where there is an apprehension of breach of peace or creation of discord between members of different groups, castes or communities, he may, by order in writing, prohibit any act which in his opinion is likely to cause apprehension in the minds of another community or caste or group that it is directed to intimidate, threaten or otherwise promote ill-will against that community or caste or group.

(2) Notwithstanding anything contained in sections 6, 7, 9 and 10, the District Magistrate shall also have the same powers as the competent authority has in the area under his jurisdiction in relation to the provisions of the said sections.

(3) Whoever contravenes an order under this section shall be punished with imprisonment for a term, which may extend to one year, or with fine, or with both.

6. (1) A competent authority in any area within his jurisdiction which has been notified as a communally disturbed area, by order in writing,—

Power of competent authority to take preventive measures.

(i) direct the conduct of any assembly or procession in any place or street and specify by general or special notice the routes, if any, by which and the times at which, such procession may or may not pass;

(ii) require, by general or special notice, on being satisfied that any person or class of persons intend to convene or collect an assembly or a procession in any place or street or to form an assembly or a procession which would in his judgment, if uncontrolled, is likely to cause a breach of peace that the person convening or collecting such assembly or procession or directing or promoting such assembly or procession shall not do so without applying for and obtaining a licence; and

(iii) prohibit or regulate the use of loudspeaker, music or sound amplifier or any other noisy instrument in any street or public place or in any private place if the use of which may cause annoyance to neighbours.

(2) An order under sub-section (1) shall remain in force for such period as may be necessary or thirty days, whichever is less:

Provided that the State Government, after reviewing the effect of the order, if considers it necessary for the preservation of communal peace or harmony between different groups, castes or communities or public safety or maintenance of public order in such area, may, by notification, direct that the order issued under sub-section (1) shall remain in force for such further period not exceeding sixty days from the date of the first order.

7. (1) When any area has been notified as a communally disturbed area, then, notwithstanding anything contained in any law for the time being in force, the competent authority may direct, any person or class of persons, or all persons, in a communally disturbed area, to deposit forthwith all arms, ammunition, explosives and corrosive substance, with the nearest police station, whether such person has a licence to keep such arms, ammunition, explosives, corrosive substance, or not:

Power to order deposit of arms, ammunition, etc.

Provided that a competent authority may exempt any individual or class of individuals from the operation of such order.

(2) Whoever contravenes the provisions of an order made under this section, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

8. When any area has been notified as a communally disturbed area, then, notwithstanding anything contained in any law for the time being in force, if an officer in charge of a police station has reason to believe,—

Power to search, detain seize arms, etc., in communally disturbed area.

(a) any person residing in the limits of his jurisdiction within a communally disturbed area has in his possession any arms or ammunition, or explosives or corrosive substance, for any unlawful purpose; and

(b) such person cannot be left in the possession of any arms or ammunition, or explosive or corrosive substance, without danger to the public peace or safety,

the officer in charge of the police station may himself or by another officer, not below the rank of a Sub-Inspector of Police authorised in this behalf by the officer in charge, search the house or premises occupied by such person or in which the officer in charge has reason to believe that such arms or ammunition, or explosives or corrosive substance, are, or is to be, found, and may have such arms, ammunition, explosives or corrosive substance, if any, seized, and detain the same in safe custody for such period as he thinks necessary although the person may be entitled by virtue of any law for the time being in force to have the same in his possession.

Power of competent authority to prohibit certain acts.

9. (1) When any area has been declared as a communally disturbed area, then, notwithstanding anything contained in any law for the time being in force, any competent authority may in the areas under his jurisdiction, whenever and for such time as he may consider necessary, for the preservation of public peace or public safety by a notification publicly promulgated or addressed to individuals, prohibit at any town, village or place or in the vicinity of any such town, village or place in a communally disturbed area—

(a) the carrying of arms, cudgels, swords, spears, bludgeons, guns, knives, sticks or lathis, or any other article, which is capable of being used for causing physical violence;

(b) the carrying of any corrosive substance or explosives;

(c) the carrying, collection and preparation of stones or other missiles or instruments or means of casting or impelling missiles;

(d) the exhibition of persons or corpses of figures or effigies thereof;

(e) the public utterances of cries, singing of songs, playing of music;

(f) delivery of harangues, the use of gestures or threats, and the preparation, exhibition or dissemination of pictures, symbols, placards or any other object or thing,

which may in the opinion of such authority lead to a breach of public peace.

(2) If any person goes armed with any such article or carries any corrosive substance or explosive or missile in contravention of such prohibition, he shall be liable to be disarmed or the corrosive substance or explosive or missile shall be liable to be seized from him by any police officer, and the article, corrosive substance, explosive or missile so seized shall be forfeited to the Government.

(3) The competent authority may also, by order in writing, prohibit in a communally disturbed area any assembly or procession whenever and for so long as he may deem such prohibition to be necessary for the preservation of the public peace:

Provided that no such prohibition ordered by an authority subordinate to the State Government shall remain in force for more than fifteen days without the sanction of the State Government.

(4) The competent authority may, by public notice, in a communally disturbed area temporarily reserve, for any public purpose any street or public place and prohibit persons from entering the area so reserved, except under such conditions as may be specified by such authority,

(5) Whoever disobeys an order lawfully made under this section, or abets the disobedience thereof, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

10. (1) Without prejudice to the provisions of any other law for the time being in force, a competent authority, in regard to a communally disturbed area, may make orders for—

Power to make orders regarding conduct of persons in communally disturbed area.

(a) controlling or regulating the admission of persons to, and the conduct of persons in, and in the vicinity of, such area;

(b) requiring the presence of any person or class of persons in such area, to be intimated to any prescribed authority, specified in the said order; and

(c) prohibiting any person or class of persons from being in possession or control of any article specified in the said order.

(2) Whoever contravenes any order made under this section, without just and sufficient cause, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

11. (1) No person loitering in, or in the vicinity of, any communally disturbed area shall continue to loiter in, or in that vicinity after being ordered to leave it, by a police officer, or any other person authorised in this behalf by the competent authority.

Punishment for loitering near prohibited place.

(2) Whoever contravenes the provisions of this section without just and sufficient cause shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

12. Whoever, being present with in a communally disturbed area, has in his possession any arms, ammunition, explosives or corrosive substance without any license or lawful authority, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Punishment for being in possession of arms, etc., without licences.

Punishment
for assisting
offenders.

13. Any person who knowing or having reasonable cause to believe that any other person has committed any act or omitted to do an act, the commission or omission of which, would be an offence under the provisions of this Act, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said offence, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Punishment
for giving
financial aid
for the
commission of
certain
offences.

14. Whoever knowingly expends or supplies any money in furtherance or in support of an act which is an offence under this Act, shall be punished with imprisonment for a term, which may extend to three years, and shall also be liable to fine.

Punishment
for threatening
witnesses, etc.

15. Whoever, threatens any person,—

(i) who is, or is likely to be, a witness in any prosecution for an offence under this Act, or in any trial before a special court constituted under this Act;

(ii) who has in his possession or knowledge any material document or other information which if produced before an investigating officer, or a court, could be used as evidence in the investigation for an offence under this Act, or in a trial before a Special Court constituted under this Act;

(iii) with any injury to his person or property or to the person or property of any one in whom that person is interested, with intent to cause harm to that person, or to compel that person to refrain or withdraw from being a witness in such investigation or trial, or to prevent that person from producing such material, document or information before the investigating officer or court as mentioned aforesaid,

shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Driver, owner
or any person
in charge of
goods
transport
vehicle not to
carry more
persons than
authorised.

16. Whoever being the owner, driver or otherwise in charge of any goods transport vehicle carries or causes to be carried in the vehicle in a communally disturbed area, any number of persons in excess of the numbers permitted under the Motor Vehicles Act, 1988 or the rules made thereunder, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

59 of 1988.

Punishment
for public
servants acting
in *mala fide*
manner.

17. (1) Whoever being a public servant or any other person authorised to act by a competent authority under any provisions of this Act or orders made thereunder,—

(a) exercises the lawful authority vested in him under this Act in a *mala fide* manner, which causes or is likely to cause harm or injury to any person or property; or

(b) wilfully omits to exercise lawful authority vested in him under this Act and thereby fails to prevent the commission of any communal violence, breach of public order or disruption in the maintenance of services and supplies essential to the community,

shall be punished with imprisonment which may extend to one year, or with fine, or with both.

Explanation.—For the purposes of this section, any police officer who, wilfully refuses—

(i) to protect or provide protection to any victim of communal violence;

(ii) to record any information under sub-section (1) of section 154 of the Code relating to the commission of any scheduled offence or any other offence under this Act;

(iii) to investigate or prosecute any scheduled offence or any other offence under this Act,

shall be deemed to be guilty of wilfully omitting to exercise the lawful authority vested in him.

(2) Notwithstanding anything contained in the Code, no court shall take cognizance of an offence under this section except with the previous sanction of the State Government:

Provided that every request for the grant of sanction under this section shall be disposed of by the State Government within thirty days from the date of the request.

18. Notwithstanding anything contained in any other law for the time being in force, whoever contravenes an order under section 144 of the Code, if that order is in respect of any person or thing or any matter relating to a communally disturbed area under this Act, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Punishment for violation of orders under section 144 of the Code in communally disturbed area.

CHAPTER IV

ENHANCED PUNISHMENT FOR COMMUNAL VIOLENCE

19. (1) Whoever commits any act of omission or commission which constitutes a scheduled offence on such scale or in such manner which tends to create internal disturbance within any part of the State and threatens the secular fabric, unity, integrity or internal security of the nation is said to commit communal violence.

Punishment for committing communal violence.

45 of 1860.

(2) Notwithstanding anything contained in the Indian Penal Code, or in any other Act specified in the Schedule, whoever commits any act of omission or commission which constitutes communal violence shall, except in the case of an offence punishable with death or imprisonment for life, be punished with imprisonment for a term which may extend to twice the longest term of imprisonment and twice the highest fine provided for that offence in the Indian Penal Code or in any other Act specified in the Schedule, as the case may be:

Provided that whoever being a public servant or any other person authorised to act by a competent authority under any provisions of this Act or orders made thereunder, commits communal violence shall without prejudice to the foregoing provisions be punished with imprisonment which shall not be less than five years.

(3) Any person who is guilty of an offence under sub-section (1) shall be disqualified to hold any post or office under the Government for a period of six years from the date of such conviction.

CHAPTER V

INVESTIGATION

Scheduled offences to be cognizable.

20. (1) Notwithstanding anything contained in the Code or any other law, every scheduled offence shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and “cognizable case” as defined in that clause shall be construed accordingly.

(2) Notwithstanding anything contained in the Code, no police officer, below the rank of Sub-Inspector of Police or a police officer of equivalent rank shall investigate any offence punishable under this Act.

(3) Section 167 of the Code shall apply in relation to a case involving a scheduled offence subject to the modification that the reference in sub-section (1) thereof to “Judicial Magistrate” shall be construed as a reference to “Judicial Magistrate or Executive Magistrate”.

(4) Sections 366 to 377 (both inclusive) and section 392 of the Code shall apply in relation to a case involving a scheduled offence, subject to the modification that the 15 references to “Court of Session”, wherever occurring therein, shall be construed as references to “Special Court”.

Declaration of places to be police stations.

21. (1) Whenever an area has been declared under sub-section (1) of section 3 as a communally disturbed area, the State Government shall, without prejudice to the provisions of clause(s) of section 2 of the Code, declare any post or place within such area to be a police station and the provisions of Chapter XII of the Code shall, so far as may be, apply in relation to information to the police and their powers to investigate.

(2) The State Government shall provide as many women police officers as possible to record any information relating to the commission of a scheduled offence committed against women or children in the communally disturbed area and to investigate any such offence.

22. (1) Notwithstanding anything contained in the Code, every case, registered in connection with a scheduled offence committed in a communally disturbed area, and where the Investigating Officer does not file a charge sheet within a period of three months from the date of registration of the First Information Report shall be reviewed by a committee headed by an officer of the level of an Inspector-General of Police to be constituted, by the State Government and such committee may pass orders for a fresh investigation by another officer not below the rank of Deputy Superintendent of Police wherever it comes to the conclusion that, having regard to the nature of investigation already carried out, such investigation would be necessary.

Constitution of
review
committee.

(2) The committee constituted under sub-section (1) may also review cases of such offences where the trial ends in acquittal and issue orders for filing appeal, wherever required.

(3) The committee shall submit a report of its findings and action taken in each case or cases to the Director General of Police.

23. Notwithstanding anything contained in any other law for the time being in force, where the State Government comes to the conclusion that the investigation of offences committed in any communally disturbed area were not carried out properly in a fair and impartial manner it may constitute one or more Special Investigation Teams as it thinks necessary for the purposes of investigation of such offences.

Constitution of
Special
Investigation
Teams.

CHAPTER VI

SPECIAL COURTS

24. (1) The State Government shall establish one or more Special Courts for trial of scheduled offences committed during the period of disturbance by issuing a notification for the purpose.

(2) Notwithstanding anything contained in sub-section (1), if, having regard to the exigencies of the situation prevailing in a State, the Government is of the opinion that it is expedient to establish, Additional Special Courts outside the State, for the trial of such scheduled offences committed in a communally disturbed area, the trial whereof within the State—

(a) is not likely to be fair or impartial or completed with utmost despatch; or

(b) is not likely to be feasible without occasioning a breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and the Judge or any of them; or

(c) is not otherwise in the interests of justice,

it may request the Central Government to establish, in relation to such communally disturbed area, an Additional Special Court outside the State and thereupon the Central Government may, after taking

into account the information furnished by the State Government and making such inquiry, if any, as it may deem fit, establish, by notification, such Additional Special Court at such place outside the State as may be specified in the notification.

Composition
and
appointment
of Judges of
Special Courts.

25. (1) A Special Court shall be presided over by a Judge to be appointed by the State Government with the concurrence of the Chief Justice of the High Court.

(2) The State Government may also appoint, with the concurrence of the Chief Justice of the High Court, Additional Judges to exercise jurisdiction in a Special Court.

(3) A person shall not be qualified for appointment as a Judge or an Additional Judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge in any State.

(4) For the removal of doubts, it is hereby provided that the attainment by a person, appointed as a Judge or an Additional Judge of a Special Court, of age of superannuation under the rules applicable to him in the service to which he belongs, shall not affect his continuance as such Judge or Additional Judge.

(5) Where any Additional Judge is, or the Additional Judges are, appointed in a Special Court, the Judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among himself and the Additional Judge or Additional Judges and also for the disposal of urgent business in the event of his absence or the absence of any Additional Judge.

Place of
sitting.

26. A Special Court may, if it considers it expedient or desirable so to do sit for any of its proceedings at any place, other than the ordinary place of its sitting in the State in which it is established:

Provided that if the Public Prosecutor certifies to the Special Court that it is in his opinion necessary for the protection of the accused or any witness or otherwise expedient in the interest of justice that the whole or any part of the trial should be held at some place other than the ordinary place of its sitting, the Special Court may, after hearing the accused, make an order to that effect unless, for reasons to be recorded in writing, the Special Court thinks fit to make any other order.

Jurisdiction of
Special Courts.

27. (1) Notwithstanding anything contained in the Code or in any other law, a scheduled offence committed in a judicial zone in a State at any time during the period during which such judicial zone is, or is part of, a judicial zone, shall be triable, whether during or after the expiry of such period only by the Special Court established for such judicial zone in the State:

Provided that where the period specified under sub-section (2) of section 3 as the period during which an area declared by notification under sub-section (1) of that section to be a

communally disturbed area commences from a date earlier than the date on which such notification is issued, then—

(a) nothing in the foregoing provisions of this sub-section shall apply to a 5 scheduled offence committed in such area in which the whole of the evidence for the prosecution has been taken before the date of issue of such notification; and

(b) all other cases involving scheduled offences committed in such area and pending before any court immediately before the date of issue of such notification shall stand transferred to the Special Court having jurisdiction under this section and the Special Court to which such proceedings stand transferred shall proceed with such cases from the stage at which they were pending at that time.

(2) Notwithstanding anything contained in sub-section (1), if in respect of a case involving a scheduled offence committed in any judicial zone in a State, the State Government, having regard to the provisions of this Act and the facts and circumstances of the case and all other relevant factors, is of the opinion that it is expedient that such offence should be tried by the Additional Special Court established in relation to such judicial zone outside the State, the State Government may make a declaration to that effect.

Explanation.—Where an Additional Special Court is established in relation to two or more judicial zones, such Additional Special Court shall be deemed, for the purposes of this sub-section, to have been established in relation to each of such judicial zones.

(3) A declaration made under sub-section (2) shall not be called in question in any court.

(4) Where any declaration is made in respect of any offence committed in a judicial zone in a State, any prosecution in respect of such offence shall be instituted only in the Additional Special Court established outside the State in relation to such judicial zone and if any prosecution in respect of such offence is pending immediately before such declaration in any other court, the same shall stand transferred to such Additional Special Court and such Additional Special Court shall proceed with such case from the stage at which it was pending at that time.

28. (1) When trying any scheduled offence, a Special Court may also try any offence other than the scheduled offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with the scheduled offence.

Powers of
Special Courts
with respect to
other offences.

(2) If, in the course of any trial under this Act, it is found that the accused person has committed any offence, the Special Court may, whether such offence is or is not a scheduled offence, convict such person of such offence and pass any sentence authorised by law for the punishment thereof.

Public
Prosecutors.

29. (1) For every Special Court, the State Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutors:

Provided that the Government may also appoint for any case or class of cases a Special Public Prosecutor.

(2) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section only if he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

Procedure and
powers of
Special Courts.

30. (1) A Special Court may take cognizance of any scheduled offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

(2) Notwithstanding anything contained in the Code, the Special Court shall conduct its proceedings on a day-to-day basis excluding public holidays.

(3) Where a scheduled offence is punishable with imprisonment for a term not exceeding three years, or with fine, or with both, a Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(4) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the

offence and to every other person concerned whether as principal or a better in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(5) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with such procedure specified in the Code for the trial before a Court of Session.

(6) Subject to the other provisions of this Act, every case before an Additional Special Court shall be dealt with as if such case had been transferred under section 406 of the Code to such Additional Special Court.

31. Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case be transferred from one Special Court to another Special Court.

Power of Supreme Court to transfer cases.

32. (1) A Special Court may, on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of the witness secret.

Protection of witnesses.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the measures which a Special Court may take under that sub-section may include-

(a) the holding of the proceedings at a protected place;

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any direction for securing that the identity and addresses of the witnesses are not disclosed.

(3) Any person who contravenes any direction issued under sub-section (2) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

33. Where, after taking cognizance of any offence, a Special Court is of opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it has taken cognizance of the offence.

Power to transfer cases to regular courts.

34. (1) Where a Special Court is satisfied, *suo motu* or upon a complaint or a police report that a person is likely to commit a scheduled offence in any communally disturbed area, it may, by

Removal of person likely to commit scheduled offence.

order in writing, direct such person to remove himself beyond the limit of such area, by such route and within such time as may be specified in the order, and not to return to that area from which he was directed to remove himself for such period, not exceeding six months, as may be specified in the order.

(2) The Special Court shall, along with the order under subsection (1), communicate to the person directed under that subsection the grounds on which such order has been made.

(3) The Special Court may revoke or modify the order made under subsection (1), for the reasons to be recorded in writing, on the representation made by the person against whom such order has been made or by any other person on his behalf within thirty days from the date of the order.

35. (1) If a person to whom a direction has been issued under section 34 to remove himself from any area—

(a) fails to remove himself as directed; or

(b) having so removed himself enters such area within the period specified in the order, otherwise than with the permission in writing of the Special Court under subsection (2),

the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

(2) The Special Court may, by order in writing, permit any person in respect of whom an order under section 34 has been made, to return to the area from which he was directed to remove himself for such temporary period and subject to such conditions as may be specified in such order and may require him to execute a bond with or without surety for the due observation of the conditions imposed.

(3) The Special Court may at any time revoke any such permission.

(4) Any person who, with such permission, returns to the area from which he was directed to remove himself shall observe the conditions imposed, and at the expiry of the temporary period for which he was permitted to return, or on the revocation of such permission before the expiry of such temporary period, shall remove himself outside such area and shall not return thereto within the unimpaired portion specified under section 34 without a fresh permission.

(5) If a person fails to observe any of the conditions imposed or to remove himself accordingly or having so removed himself enters or returns to such area without fresh permission the Special Court may cause him to be arrested and removed in the police custody to such place outside such area as the Special Court may specify.

Procedure on failure of person to remove himself from area and enter thereon after removal.

36. (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being interlocutory order, of a Special Court to the High Court both on facts and on law. Appeal.

(2) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order of a Special Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

37. Where any area ceases to be a communally disturbed area and no cases are pending before a Special Court or an Additional Special Court established in relation to such communally disturbed area, the State Government, may, by notification, abolish such Special Court or Additional Special Court, as the case may be. Abolition of certain Special Courts.

CHAPTER VII

INSTITUTIONAL ARRANGEMENTS FOR RELIEF AND REHABILITATION

38. Every State Government shall, by notification, establish a Council to be known as State Communal Disturbance Relief and Rehabilitation Council. State Communal Disturbance Relief and Rehabilitation Council.

39. The State Council shall consist of the following members, namely:— Constitution of State Council.

(a) the Chief Secretary of the State – Chairperson, *ex officio*;

(b) the Director General of Police of the State – Member, *ex officio*;

(c) the Secretary of the Department entrusted with Relief and Rehabilitation work in the State Government – Member, *ex officio*;

(d) the Secretary of the Department of Finance in the State Government – Member, *ex officio*;

(e) the Secretary of the Department of Home in the State Government – Member, *ex officio*;

(f) the Secretary to the Department of Social Welfare dealing with Tribal Welfare or Minorities Welfare or Women and Child Development in the State Government – Member, *ex officio*;

(g) three persons to be nominated by the State Government to represent individuals or private voluntary organisations engaged in the work relating to promotion of communal harmony or providing relief to the victims of communal violence – Members;

(h) not less than five persons to be nominated by the State Government in such a manner that all important religious groups in the State are represented in the State Council – Members;

(i) an officer not below the level of Joint Secretary to the State Government to be nominated by the State Government – Member-Secretary, *ex officio*;

(j) the term of Members appointed under clauses (g) and (h) shall be such as may be prescribed by the State Government.

Functions of
Council.

40. (1) The State Council shall have the responsibility of planning relief, including immediate relief and rehabilitation measures and co-ordination and monitoring the implementation of such measures and issue suitable directions for their implementation may be required.

(2) Without prejudice to the generality of the provision of sub-section (1), the State Council shall—

(a) advise the State Government in matters relating to relief and rehabilitation of victims of communal violence including drawing up of guidelines for the assessment of compensation including grant of immediate or interim compensation which shall not be less than twenty, per cent of the full rates of compensation in respect of the losses suffered by an individual in-communal violence in respect of—

(i) loss of, or damage to, homes and belongings;

(ii) loss of life and injuries sustained;

(iii) destruction of, or damage to, business and the loss of means of livelihood;

(iv) impact of sexual assaults or abuse on women;

(b) issue suitable guidelines for setting-up of relief camps for victims of communal violence, which shall provide for the following:—

(i) arrangements for providing security at such camps;

(ii) appropriate shelter for winter, monsoon or summer seasons;

(iii) food, drinking water, toilet and bathing facilities;

(iv) health services, certification of injuries at the camp itself and issuance of medical cards with a validity of six months for purchase of free medicine, psychosocial support like trauma counselling;

(v) issue of temporary ration cards valid for a specific period;

(c) establish a system of single window to complete all administrative formalities in relation to providing quick relief and rehabilitation to the victims of communal violence including making available ration cards or other identity cards;

(d) certify loss or damage of educational or other certificates or ownership or other documents in respect of the victims of communal violence; and facilitate the students of the area affected by communal violence to appear for any examination and to provide security for the purpose;

(e) establish centres for rehabilitating the children of victims of communal violence;

(f) establish a single window clearance scheme for speedy disposal of insurance claims and for providing soft loans through financial institutions or measures relating to re-scheduling of loans and payments of interest in cases of victims of communal violence in consultation with the financial institutions;

(g) facilitate the efforts of other organisations who may come forward to help the victims in all manner feasible;

(h) recommend welfare measures to be adopted and implemented by the appropriate Government with a view to ameliorating the conditions of victims of communal violence;

(i) draw suitable guidelines and issue directions for funding the restoration and repair of the places of worship damaged or destroyed during the communal violence, in consultation with and consensus of the members of the affected community;

(j) formulate a comprehensive, and affirmative scheme for welfare of victims of communal violence and devise a programme for implementing such schemes with the approval of the appropriate Government and implement the scheme;

(k) activate the functioning of the district communal harmony committee;

(l) maintain comprehensive data bank relating to the socio and economic development of victims of communal violence;

(m) report to the appropriate Government the inadequacies or shortcomings in meeting with the situation and also on the remedial measures; and

(n) perform such other functions as may be incidental or ancillary thereto as may be assigned by the appropriate Government from time to time.

State Plan for promotion of communal harmony and prevention of communal violence.

(3) While performing the functions under this section, the State Council shall follow such procedure as may be prescribed.

41. (1) The State Council shall prepare a plan for every State to be called the State communal harmony plan for promotion of communal harmony and prevention of communal violence, hereinafter called the State Plan, and recommend the same to the State Government for adoption.

(2) The State Plan shall be prepared providing for—

(i) the measures to be adopted for prevention or mitigation of communal violence including the constitution of District Level Peace Committees;

(ii) the capacity-building and preparedness of measures to be taken to deal with communal violence including a Riot Prevention Scheme at the district and sub-district level.

(3) The State Government shall adopt the State Plan after such modification as considered necessary.

(4) The State Government shall cause the State Plan and also any advice, recommendation and guidelines issued under section 40 to be laid on the table of the State Legislature:

Provided that where the State Government does not accept any of the recommendations of the State Council under section 40 or under this section, it shall expressly state the reasons for not accepting the recommendation and submit it along with the Action Taken Report and cause the same to be laid on the table of the State Legislature as soon as may be while it is in session and where the State Legislature is not in session within fifteen days from the date of commencement of its session.

(5) The State Plan shall be reviewed and updated every two years.

(6) The State Government shall make appropriate provisions for financing the activities to be carried out under the State Plan.

Constitution of District Council.

42. (1) The State Government shall, by notification, establish a District Communal Disturbance Relief and Rehabilitation Council in respect of each district in the State.

(2) The District Council shall consist of such number of members, not exceeding ten, as may be prescribed by the State Government, and unless the rules otherwise provides, it shall consist of the following members, namely:—

(a) the Collector or District Magistrate or Deputy Commissioner, as the case may be, of the district who shall be the Chairperson—*ex officio*;

(b) the Superintendent of Police of the District—Member, *ex officio*;

(c) the Chief Medical Officer of the District—Member, *ex officio*;

(d) such other district level officers of the Departments of Social Welfare, Tribal Welfare, Minority Welfare, Women and Child Development or such other Departments as may be prescribed by the State Government—Members, *ex officio*;

(e) two persons representing the Private Voluntary Organisations to be nominated by the State Government—Members;

(j) not less than five persons to be nominated in such a manner that all important religious groups in the district are represented in the District Council-Members;

(g) the terms and conditions of appointment of Members under clauses (e) and (f) shall be such as may be prescribed by the State Government.

43. The District Council shall meet as and when necessary and at such time and place as the Chairperson may think fit. Meetings of District Council.

44. (1) The District Council shall act as the district level co-ordinating and implementing body for relief and rehabilitation of victims of communal violence and take all measures for the purpose in accordance with the guidelines laid down by the National Council and the State Council including,— Functions of District Council.

(a) assessment of compensation in respect of the losses suffered by an individual in communal violence in respect of—

(i) loss of life and injuries sustained;

(ii) loss of, or damage to, homes, shops and such other structures and belongings;

(iii) destruction of, or damage to, business and the loss of means of livelihood;

(iv) impact of sexual assaults or abuse on women;

(b) setting-up of relief camps for victims of communal violence including—

(i) arrangements for providing security at such camps;

(ii) appropriate shelter for winter, monsoon or summer seasons;

(iii) food, drinking water, toilet and bathing facilities;

(iv) health services, certification of injuries at the camp itself and issuance of medical cards with a validity of six months for purchase of free medicine, psychosocial support like trauma counselling; and

(v) temporary ration cards valid for a specific period.

(2) The District Council shall prepare a District Plan for promotion of communal harmony and prevention of communal violence and recommend the same to the State Council.

(3) The District Council shall periodically review the implementation of the orders passed by any Court for award of compensation to victims of communal violence under the provisions of this Act and submit an annual report to the State Council.

CHAPTER VIII

NATIONAL COUNCIL

National
Communal
Disturbance
Relief and
Rehabilitation
Council.

45. (1) The Central Government shall, by notification, constitute, with effect from such date as it may specify in such notification, a Council to be known as the National Communal Disturbance Relief and Rehabilitation Council, consisting of not more than eleven members, to exercise the powers conferred on, and to perform the functions assigned to it by or under this Act.

(2) The National Council shall consist of the following, namely:—

(i) the Secretary to the Government of India, Ministry of Home Affairs—Member, *ex officio*;

(ii) the Secretary to the Government of India, Ministry of Defence—Member, *ex officio*;

(iii) the Secretary to the Government of India, Ministry of Finance—Member, *ex officio*;

(iv) four persons to be nominated by the Central Government representing Minority and weaker sections of the society—Members;

(v) four persons nominated by the Central Government representing other sections of the society who have been striving to maintain the communal harmony—Members.

(3) The Central Government shall appoint one of the Members of the National Council as its Chairperson.

Terms and
conditions of
Members of
National
Council.

46. (1) Every Member of the National Council (other than the *ex officio* Members) shall hold office for a term of four years from the date of their appointment.

(2) The travelling and other allowance payable to the Members of the National Council (other than the *ex officio* Members) shall be such as may be prescribed by the Central Government.

Powers and
functions of
National
Council.

47. (1) The National Council shall recommend to the appropriate Government as to—

(a) how the victims of the communal violence should be helped and what kind of relief could be given to them;

(b) how the victims of the communal violence shall be rehabilitated;

(c) the kind of compensation to be given to the victims of the communal violence.

(2) The National Council shall advise the State Government as to the assistance to be given to the victims of communal violence.

(3) The National Council shall also perform such other act, which may help to control and contain communal violence and help to give relief and rehabilitation and compensation to the victims of communal violence.

(4) It shall be the duty of the National Council to visit the areas affected by the communal violence as soon the information of occurrence of such violence is received and to send a report of the situation prevailing in such areas along with its recommendations to the Central Government.

48. The National Council shall, from time to time, submit reports to the Central Government recommending the steps required to be taken to deal with the situation giving rights to communal violence.

Report of
National
Council.

CHAPTER IX

FUNDS FOR RELIEF AND REHABILITATION

49. (1) **Every State Government shall establish a Fund to be called the State Communal Disturbance Relief and Rehabilitation Fund and there shall be credited thereto—**

State Fund.

(a) **all moneys received from the Central Government;**

(b) **all moneys received from the State Government;**

(c) all moneys received by way of gifts or donations from a public sector undertaking or a local authority or an individual or a private voluntary organisation for all or any of the purposes of this Act;

(d) amounts received as aid from the international organisations or organisations in India, where necessary, in terms of the existing regulations governing such aid, for the rehabilitation or welfare of victims of communal violence.

(2) The Fund shall be applied for the following purposes, namely:—

(a) for the purposes of grants for relief and rehabilitation as provided for under sections 40 and 42;

(b) for meeting the expenses for exercising or performing other powers and functions of the State Council under section 40; and

(c) for such other purposes as may be prescribed.

(3) The State Council shall submit an annual report to the National Council to review the implementation of the orders passed by the courts with regard to awarding of compensation to victims of communal violence.

Scheme for grant of relief.

50. (1) Every State Government shall, by notification, make a scheme for providing funds for the purpose of grant of immediate compensation to the victims or their dependents in the event of loss of life or injury, as the case may be, or to those who have suffered loss or damage to property or loss of means of livelihood or as a result of an offence under the provisions of this Act.

(2) The Scheme shall be administered by the District Council.

District Fund.

51. Every State Government shall establish a Fund to be called the Victims Assistance Fund in each district and placed the same at the disposal of the District Council and there shall be credited thereto—

(a) all monies received from the State Government;

(b) all monies received by way of gifts or donations from a public or private sector undertakings or a local authority or an individual or a private voluntary organisation for any or all the purposes of this Act.

District Council to function under State Council.

52. The District Councils in a State shall function under the overall supervision and directions of the State Council.

CHAPTER X

COMPENSATION TO VICTIMS

Compensation to victims.

53. (1) Whenever a Special Court convicts a person for an offence punishable under this Act, it may, by its sentence, also pass an order that the offender shall make such monetary compensation as may be specified therein to the person mentioned in sub-section (5) for any loss or damage arising from such offence:

Provided that no such compensation shall be awarded to a person who is involved in any offence committed under the Indian Penal Code as specified in the schedule.

45 of 1860.

(2) The amount of compensation shall be such as is determined by the Special Court and be equitable, having regard to the provisions of sub-section (4).

(3) An order under sub-section (1) may be made in addition to any other punishment to which the person convicted is sentenced or where the offence is punishable with fine only, or with imprisonment for a period not exceeding three months, such order may be in lieu of any other punishment.

(4) Before passing any order under sub-section (1) the Special Court shall take into consideration the nature of the offence, the motive therefor, the economic status of the offender and the person in whose favour such order is made and all other relevant factors.

(5) The compensation awarded under sub-section (1) may be directed to be paid—

(i) to any person who has incurred expenses in prosecution or defraying any other expenses properly incurred;

(ii) to any person for any loss, damage or injury caused by the offence, when the compensation therefor is, in the opinion of the Special Court, recoverable by such person in a civil court;

(iii) in the case of a conviction for any offence for having caused the death of another person or of having abetted the commission of such offence to the person who are, under the Fatal Accidents Act, 1855, entitled to recover damages from the person sentenced, for the loss resulting to them from such death;

(iv) in the case of a conviction for any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, robbery, dacoity, extortion or of having dishonestly received or retained, or having voluntarily assisted in disposing off stolen property knowing or having reason to believe the same to be stolen to any *bona fide* purchaser of such property for the loss of the same, if such property is restored to the possession of the person entitled thereto.

(6) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section.

54. (1) The District Council shall entertain claims by or on behalf of persons affected by Communal Violence and the District Council shall decide the quantum of immediate compensation to be awarded to the victim or his dependents, as the case may be, after due inquiry within a period of one month from the date of the claim.

Immediate
compensation.

(2) The amount of compensation shall not be less than twenty per cent of the full rate of compensation as prescribed under each category of cases.

(3) The compensation shall be disbursed to the victim after adjusting any amount of assistance he might have received under any other scheme of the State Government for grant of relief or compensation.

(4) The assistance from the District Fund may not be given to those victims or to the legal heirs if the victim is involved in the Commission of any offence under the provisions of this Act.

CHAPTER XI

SPECIAL POWERS OF THE CENTRAL GOVERNMENT TO DEAL WITH
COMMUNAL VIOLENCE IN CERTAIN CASES

Power of
Central
Government to
give directions
to State
Government
and issue
notifications,
etc.

55. (1) Whenever the Central Government is of the opinion that one or more scheduled offences are being committed in any area within a State by any person or group of persons in such manner and on such a scale which involves the use of criminal force or violence against the members of any group, caste or community resulting in death or destruction of property and such use of criminal force or violence is committed with a view to create disharmony or feelings of enmity, hatred or ill-will between different groups, castes or communities and there is an imminent threat to the secular fabric, unity, integrity or internal security of India etc. which requires that immediate steps shall be taken by the State Government concerned, it shall—

(a) draw the attention of the State Government to the prevailing situation in that area; and

(b) direct the State Government to take all immediate measures to suppress such violence or the use of criminal force within such time as may be specified in the direction.

(2) The State Government shall take appropriate action to prevent and control communal violence on the issue of a direction under sub-section (1).

(3) Where the Central Government is of opinion that the directions issued under sub-section (2) are not followed, it may take such action as is necessary including—

(a) the issue of a notification declaring any area within a State as a “communally disturbed area”;

(b) the deployment of armed forces, to prevent and control communal violence, on a request having been received from the State Government to do so.

(4) Where it is decided to deploy armed forces under sub-section (3), the Central Government or the State Government may constitute an authority to be known as Unified Command for the purpose of co-ordinating and monitoring the role and responsibilities of the forces of the Union and States and for giving appropriate directions to such forces.

(5) The forces deployed under sub-section (3) shall act under the control and as per the directions of the District Magistrate or any officer nominated by the State Government or the Unified Command.

(6) Every notification issued by the Central Government under clause (a) of sub-section (3) shall be laid before each House of Parliament.

56. (1) A notification under section 55 shall specify the period for which the area shall remain so notified:

Provided that the period specified under such notification shall not, in the first instance, exceed thirty days:

Provided further that the Central Government may extend the said period, by notification, if in its opinion the area continues to be a communally disturbed area:

Provided also that the total period during which an area may be notified as a communally disturbed area shall not exceed a total continuous period of sixty days.

(2) Where the Central Government is satisfied that such disturbance of public peace and tranquillity as is referred to in sub-section (1) no longer persists in such area, it shall amend the notification issued in respect of that area to limit the period specified therein [whether originally or by amendment under sub-section (1)].

Power of Central Government to extend or modify notifications issued under section 55.

CHAPTER XII

POWERS, DUTIES AND IMMUNITIES OF THE OFFICERS

57. (1) No suit, prosecution or other legal proceedings shall lie against the State Government, the Central Government or any officer or authority of such Government or any other person or any member of the State Council, National Council or District Council for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Protection of action taken in good faith.

(2) It shall be the duty of the State Government or Central Government, as the case may be, to provide required legal aid to an officer or authority facing a suit or legal proceedings in terms of sub-section (1).

(3) Any officer or authority of the State Government or the Central Government who suffers an injury or is killed in the discharge of his duty while acting under the provisions of this Act shall be given special compensation or *ex gratia* relief at double the rate of such compensation or *ex gratia* relief as is admissible in respect of other Government servants on duty in terms of the rules or guidelines framed by the State Government or the Central Government, as the case may be.

CHAPTER XIII

MISCELLANEOUS

58. While providing compensation and relief to the victims of communal violence,—

Prohibition against discrimination.

(a) there shall be no discrimination on the ground of sex, caste, community, descent or religion; and

(b) uniformity of assistance irrespective of caste, community or religion is maintained.

Application of other laws not barred.

59. Save as otherwise provided, the provisions of this Act shall be in addition to, and not in derogation of, any other laws for the time being in force except to the extent the provisions of other laws are inconsistent with the provisions of this Act.

Power of Central Government to make rules.

60. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the travelling and other allowances payable to the Members of the National Council under sub-section (1) of section 46;

(b) any other matter which is required to be, or may be, prescribed by the Central Government.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power of State Government to make rules.

61. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the term of members appointed under clauses (g) and (h) of section 39;

(b) the procedure to be followed by the State Council while performing its functions under sub-section (2) of section 40;

(c) the number of members of the District Council and such other Departments which may be represented by the district level officers in the District Council under-clause (d) of sub-section (2) of section 42;

(d) the terms and conditions of appointment of members under clauses (e) and (f) of sub-section (2) of section 42;

(e) the other purposes for which the State Fund shall be applied under clause (c) of sub-section (2) of section 49;

(f) any other matter which is required to be, or may be prescribed.

(3) Every notification, rule and Scheme made under this Act shall be laid, as soon as may be after it is made, before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

62. In the Representation of the People Act, 1951, in section 8, in sub-section (2), after clause (c), the following clause shall be inserted, namely:—

Amendment of
section 8 of
Act 43 of
1951.

“(ca) Any provision of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Act, 2005.”.

THE SCHEDULE

[See clause (1) of sub-section (1) of section 2]

1. Offences under the following provisions of the Indian Penal Code (45 of 1860):—

Sections 120B, 143, 144, 145, 147, 148, 150, 151, 152, 153, 153A, 153B, 154, 155, 156, 157, 158, 160, 295, 295A, 296, 297, 298, 302, 303, 304, 307, 308, 323, 324, 325, 326, 327 to 335, 341 to 348, 352, 353, 354, 355 to 358, 363 to 369, 376, 379, 380, 383, 384 to 387, 392, 402, 411, 412, 426, 427, 431, 435, 436, 440, 447 to 462, 504 to 506 and 509.

2. Offences under the following provisions of the Arms Act, 1959 (54 of 1959):—

Sections 25, 26, 27, 28, 29 and 30.

3. Offences under the following provisions of the Explosives Act, 1884 (4 of 1984):—

Sections 6(3), 8(2) and 9B.

4. Offences under the following provisions of the Prevention of Damage to Public Property Act, 1984 (3 of 1984)—Sections 3 and 4.

5. Offence under the following provisions of the Places of Worship (Special Provisions) Act, 1991 (42 of 1991)—Section 6.

6. Offences under the following provisions of the Religious Institutions (prevention of Misuse) Act, 1988 (41 of 1988)—Section 7.

STATEMENT OF OBJECTS AND REASONS

Communal violence threatens the secular fabric, unity, integrity and internal security of a nation. With a view to empowering the State Governments and the Central Government to take effective measures to provide for the prevention and control of communal violence and to rehabilitate the victims of such violence, for speedy investigation and trial of offences including imposition of enhanced punishments, than those provided in the Indian Penal Code, on persons involved in communal violence and for matters connected therewith, it has been decided to enact a law by Parliament.

2. The Bill, *inter alia*, seeks to—

(i) provide for declaration of certain areas as communally disturbed areas by the State Governments;

(ii) lay down measures for prevention of acts leading to communal violence;

(iii) enhance punishments for offences relating to communal violence and for certain other offences;

(iv) make provisions for speedy investigation and trial of offences through Special Courts;

(v) make institutional arrangements for relief and rehabilitation measures for victims of communal violence;

(vi) make provisions for compensation to the victims of communal violence and provide for special powers to the Central Government in certain cases;

(vii) provide for constitution of a National Communal Disturbance Relief and Rehabilitation Council, State Communal Disturbance Relief and Rehabilitation Council and District Communal Disturbance Relief and Rehabilitation Council; and

(viii) prohibit any discrimination in providing compensation and relief to the victims of communal violence on grounds of sex, caste, community or religion.

3. The Notes on clauses explain in detail the various provisions contained in the Bill.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 26th November, 2005.

SHIVRAJ V. PATIL.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE
117(3) OF THE CONSTITUTION OF INDIA

(Copy of letter No. 11034/20/2004-NI-I(Vol.-V) dated the 29th November, 2005 from Shri Shivraj Vishwanath Patil, Minister of Home Affairs to the Secretary-General, Rajya Sabha).

'The President having been informed of the subject matter of the proposed "The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005", recommends to the House the consideration of the Bill under Article 117(3) of the Constitution.'

NOTES ON CLAUSES

Clause 1.— This clause provides for the short title of the proposed legislation, the area of its operation and its commencement. The proposed legislation will not be applicable to the State of Jammu and Kashmir. As certain preparatory steps are required to be taken before the proposed legislation is brought into force, it is proposed to empower the Central Government to bring it into force on such date as it may appoint by notification in the Official Gazette. The Central Government may notify different dates for different provisions of the Bill. However, the power to bring Chapters II to VI (both inclusive) of the Bill is proposed to be vested in the State Government.

Clause 2.— This clause contains definitions of certain words and expressions used in the Bill. These definitions include the definitions of “communally disturbed area”, “communal violence”, “competent authority”, “relief and rehabilitation”, “scheduled offence”, “State Fund” and “Unified Command”. It has also been provided that the expressions used in the Explosives Act, 1884 or the Arms Act, 1959 shall be applicable to the interpretation of the words used in the proposed legislation and not defined therein but defined in those Acts. The expression “communal violence” means any act of omission or commission which constitutes a scheduled offence and which is punishable under sub-clause (1) of clause 19 of the proposed legislation.

Clause 3.— This clause deals with the powers of the State Government to declare an area to be a communally disturbed area in certain circumstances.

Clause 4.— This clause lays down the measures to be taken by the State Government to prevent and control communal violence in a communally disturbed area.

Clause 5.— This clause lays down the powers of District Magistrate to take preventive measures in case of a situation which has arisen causing apprehension of breach of peace and creation of discord between members of different groups, castes or communities.

Clauses 6 to 10.— These clauses describe the powers of the competent authority to take preventive measures in a notified communally disturbed area.

Clauses 11 to 15.— These clauses provide for the punishment for various offences like loitering near prohibited places in violation of orders, being in possession of arms, etc., without licences, for assisting offenders, for giving financial aid for the commission of certain offences and for threatening witnesses.

Clause 16.— This clause provides for the punishment for the driver, owner or any person in charge of goods transport vehicle for carrying more persons than authorized.

Clause 17.— This clause provides for punishment for public servants acting in *mala fide* manner and for failure to discharge their duties through wilful commissions or omissions.

Clause 18.— This clause provides for the punishment for violation of orders under section 144 of the Code of Criminal Procedure, 1973 in a communally disturbed area.

Clause 19.— This clause prescribes the criterion for communal offence and enhanced punishment for committing communal violence.

Clause 20.— This clause provides that the scheduled offences shall be cognizable offences for the purposes of the proposed legislation.

Clause 21.— This clause provides for declaration of certain places to be police stations.

Clause 22.— This clause empowers the State Government to constitute a Review Committee headed by an officer of the level of Inspector General of Police to review cases of scheduled offences where the trial ends in acquittal and to issue orders for filing of appeals, wherever required. The Committee is required to submit a report on its findings and the action taken in each case to the Director General of Police.

Clause 23.— This clause provides for the constitution of one or more Special Investigation Teams by the State Government in case the State Government comes to the conclusion that the investigation of offences committed in a communally disturbed area were not carried out properly in a fair and impartial manner.

Clause 24.— This clause provides that the State Government shall, by notification in the Official Gazette, establish one or more special courts for the trial of scheduled offences committed during the period of disturbance.

Clauses 25 to 33.— These clauses lay down the various administrative and procedural aspects in relation to the Special Courts to facilitate speedy trial of offences and awarding of punishment to the guilty. These aspects include – (i) composition and appointment of Judges of Special Courts; (ii) place of sitting of Special Courts; (iii) jurisdiction of Special Courts; (iv) powers of Special Courts with respect to other offences; (v) appointment of Public Prosecutors; (vi) procedure and powers of Special Courts; (vii) power of Supreme Court to transfer cases; (viii) protection of witnesses; and (ix) power to transfer cases to regular courts.

Clauses 34 to 36.— These clauses lay down the procedure for imposing certain restrictions on movement of persons in

communally disturbed areas and dealing with appeals against such restrictions imposed.

Clause 37.— This clause provides for abolition of certain Special Courts when a notified area ceases to be a communally disturbed area.

Clauses 38 to 48.— These clauses provide for establishment of institutional arrangements for relief and rehabilitation measures through constitution of State Communal Disturbance Relief and Rehabilitation Council, its composition and functions (Clauses 38 to 40), State Plan for promotion of communal harmony and prevention of communal violence (clause 41); constitution of District Councils, their composition and functions (clauses 42-44); constitution of National Council and its composition (clause 45), terms and conditions of members of the National Council (clause 46), the powers and functions of the National Council (clause 47) and submission of Report by the National Council to the Central Government (clause 48).

Clauses 49 to 51.— These clauses provide for the establishment of funds for relief and rehabilitation which include establishing- (i) State Fund, purpose and submission of annual report to the National Council (Clause 49); (ii) Scheme for grant of relief or immediate relief (clause 50) and establishment of District Fund (clause 51).

Clause 52.— This clause lays down that the District Councils shall function under State Council.

Clause 53.— This clause lays down the modalities for payment of compensation to victims as per the orders of the Special Courts.

Clause 54.— This clause provides for the payment of immediate compensation to the victims of communal violence through the District Council.

Clauses 55 and 56.— These clauses lay down the Special powers of the Central Government to deal with communal violence in certain cases.

Clause 57.— This clause lays down the power, duties and immunities of officers and for protection of action taken in good faith as well as grant of special compensation or *ex-gratia* relief at double the rates admissible for officer or authority who suffers an injury or death in the discharge of his duties while acting under the provisions of the proposed legislation.

Clause 58.— This clause imposes prohibition against discrimination on grounds of sex, caste, community, descent or religion while providing compensation or relief to the victims of communal violence.

Clause 59.— This clause provides that the application of other laws are not barred and the provisions of the proposed

legislation shall be in addition to and not in derogation of any other law for the time being in force.

Clause 60.— This clause empowers the Central Government to make rules for carrying out the provisions of the proposed legislation. These rules, *inter alia*, relate to the travelling and other allowances payable to the members of the National Council.

Clause 61.— This clause empowers the State Government to make rules for carrying out the provisions of the proposed legislation. These rules may, in particular, relate to the terms of members of the State Council (clause 39), procedure to be followed by the State Council (clause 40), composition of the District Council and terms and conditions of its members (clause 42), other purposes for which the State Fund shall be applied (clause 49).

Clause 62.— This clause seeks to insert a new clause (ca) in sub-section (2) of section 8 of the Representation of People Act, 1951 so as to lay down that any person convicted for the contravention of the provisions of the proposed legislation shall incur disqualification under the said section 8.

The Schedule to the proposed legislation enumerates the various offences which shall be the scheduled offences for the purposes of the proposed legislation.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 45 of the Bill provides that the Central Government shall, by notification, constitute, with effect from such date as it may specify in such notification, a council to be known as the National Communal Disturbance Relief and Rehabilitation Council, consisting of not more than eleven members; to exercise the powers conferred on, and to perform the functions assigned to, it by or under the proposed legislation. Sub-clause (1) of clause 46 lays down that every Member of the National Council (other than the *ex officio* Members) shall hold office for a term of four years from the date of their appointment. Sub-clause (2) of the said clause provides that the travelling and other allowances payable to the Members of the National Council (other than the *ex officio* Members) shall be such as may be prescribed by the Central Government.

2. Sub-clause (1) of clause 49 of the Bill, *inter alia*, stipulates that every State Government shall establish a Fund to be called the State Communal Disturbance Relief and Rehabilitation Fund and there shall be credited thereto all moneys received from the Central Government. In case the Central Government decides to contribute to the State Communal Disturbance Relief and Rehabilitation Fund expenditure from the Consolidated Fund of India would be involved.

3. Sub-clause (1) of clause 50 of the Bill provides that every State Government shall prepare a Scheme for providing funds for the purpose of grant of immediate compensation to the victims or their dependents in the event of loss of life or injury, as the case may be, or to those who have suffered loss or damage to property or loss of means of livelihood or as a result of an offence under the provisions of the proposed legislation. Clause 51 provides that every State Government shall establish a Fund to be called the Victims Assistance Fund in each district and placed the same at the disposal of the District Council and there shall be credited thereto, *inter alia*, all monies received from the State Government. Since the Central Government being the Government in respect of the Union territories, some expenditure on this account may have to be borne by the Central Government.

4. As involvement of expenditure depends mainly on the occurrence of communal violence, it is difficult to make an estimate of the expenditure, both recurring and non-recurring, from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 60 of the Bill provides that the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the matters in respect of which such rules may be made under the proposed legislation. These matters relate to the travelling and other allowances payable to the Members of the National Council as well as any other matter which are required to be, or may be, prescribed by the Central Government.

2. Clause 50 of the Bill seeks to empower the State Governments to make, by notification, schemes for providing funds for the purpose of grant of immediate compensation to the victims or their dependents of communal violence.

3. Sub-clause (1) of clause 61 of the Bill empowers the State Governments to make rules to carry out the purposes of the proposed legislation. Such rules may, *inter alia*, provide for the term of members of the State Council appointed under clause 39, the procedure to be followed by the State Council while performing its functions under sub-clause (2) of clause 40, the number of members of the District Communal Disturbance Relief and Rehabilitation Council and such other Departments which may be represented by the district level officers in the District Communal Disturbance Relief and Rehabilitation Council under clause (d) of sub-clause (2) of clause 42, the terms and conditions of appointment of members of the District Communal Disturbance Relief and Rehabilitation Council under clauses (e) and (f) of sub-clause (2) of clause 42, the other purposes for which the State Communal Disturbance Relief and Rehabilitation Fund shall be applied under paragraph (c) of sub-clause (2) of clause 49 and any other matter which is required to be, or may be prescribed.

4. The rules made by the Central-Government under-the Bill are required to be laid before Parliament and the rules and schemes made by the State Government are required to be laid before the State Legislature.

5. The matters in respect of which rules or scheme may be made are matters of procedure or administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACT FROM THE REPRESENTATION OF THE PEOPLE ACT, 1951

(41 of 1951)

*	*	*	*	*
8.	<i>(1)</i> *	*	*	*
(2)	A person convicted for the contravention of—			* Disqualification on conviction from certain offences.
*	*	*	*	*

RAJYA SABHA

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.

(Shri Shivraj Vishwanath Patil, Minister of Home Affairs)

ANNEXURE-II

List of Witnesses and Organisations who have given oral Evidence before the committee on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005

- (i) Justice Jaspal Singh, Retd. Judge, Delhi High Court;
- (ii) Prof. M.P. Singh, Department of Political Science, University of Delhi;
- (iii) Shri Fali S. Nariman, Ex-MP, Rajya Sabha;
- (iv) Prof. Zoya Hasan, Centre for Political Studies, Jawaharlal Nehru University;
- (v) Women's Groups headed by Shrimati Uma Choudhary on Gender aspects of Communal violence;
- (vi) Shri Syed Shahabuddin, Ex-MP, and President, all India Muslim Majlis-e-Mushawarat; and
- (vii) Shri H.S. Phoolka, Advocate, Delhi High court.

List of the State Government and Political Parties which have sent their views/suggestions on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005

List of State Government

1. State Government of Arunachal Pradesh – No comments to offer.
 2. State Government of Gujarat – Opposed Clause 55
 3. State Government of Himachal Pradesh – Extended in-principle support.
 4. State Government of Jharkhand – Opposed Clause 55
 5. State Government of Mizoram – Opposed Clause 55
 6. State Government of Rajasthan – Opposed Clause 55
 7. State Government of Tamil Nadu – Opposed Clause 55
 8. State Government of Madhya Pradesh – Opposed Clause 55
 9. State Government of Punjab – No comments to offer
 10. State Government of Uttar Pradesh – Opposed Clause 55
 11. State Government of Nagaland – Supported the Bill
 12. State Government of Maharashtra – Opposed Clause 55
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List of Political Parties which have sent their views/suggestions on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005

1. Communist Party of India
2. Communist Party of India (Marxist)
3. Indian National Congress
4. Nationalist Congress Party
5. Assam United Democratic Front
6. Lok Jan Shakti Party
7. Maharashtrawadi Gomantak
8. Mizo National Front
9. Muslim League Kerala State Committee
10. Nagaland People's Front
11. Rashtriya Lok Dal
12. Telugu Desam Party
13. Zoram Nationalist Party

The number of States: 28

The number of those who responded: 12

Those who opposed Clause 55 : 8

Those who supported the Bill : 1

Those who supported in-principle : 1

No comments to offer : 2

ANNEXURE-IV

List of individuals/bodies from whom Memoranda were received on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005

1. Justice Shri V.S. Mallimath, Former Chief Justice of Karnataka and Kerala High Courts
2. Justice A.M. Ahmadi, Former Chief Justice of India
3. Shri Syyed Shahubuddin, Ex MP
4. National Commission for Minorities
5. Shri Ram Jethmalani, MP (RS)
6. Prof. Alka Balram Kshatriya, MP (RS)
7. Shri Ravi Shankar Prasad, MP (RS)
8. Dr. P.C. Alexander, MP (RS)
9. Shri Arun Jaitley, MP (RS)
10. Shrmati Nirmala Despande, MP (RS)
11. Shri Rati Lal Kalidas Verma, MP (LS)
12. Shrimati Girija Vyas, Chairperson, National Commission for Women
13. Ms. Teesta Setalvad, Advocate
14. Shri H.K. Patil, Minister of Law, Karnataka
15. Shri Asgar Ali Engineer, Sr. Journalist
16. Shri O.M. Reddy
17. Shri D.B. Chandre Gowda
18. Shri Aanmath
19. Shri Murthy
20. Shri Madhuswamy
21. Shri Asif Ali
22. Shri Handenappa
23. Shri Jai Prakesh Hegde
24. Shri Jai Gobind
25. Shri Rajendran

