

Targeting the Lawbreakers

JAVED ANAND

The subversion of the Constitution by the very institutions created to protect and promote it lies at the heart of the proposed Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011. Its core concern is not so much the lawbreakers as the law-keepers who wilfully ignore their constitutional obligations.

The response of the Bharatiya Janata Party (BJP) and the rest of its right wing parivar to the proposed Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011 is not much of a surprise. Conditioned by a pernicious ideology plus the dictates of Hindu vote bank politics, the protagonists of Hindutva cannot but give such a response to any and every expression of legitimate democratic concern for the sorry plight of India's minorities. The very appointment of the high-powered Sachar Committee by Prime Minister Manmohan Singh in 2005 to look into the socio-economic and educational status of India's Muslims was castigated as "minority appeasement". The report of the National Commission for Religious and Linguistic Minorities (Ranganath Mishra Commission) – also appointed by the UPA government in 2004 to examine and "recommend measures for welfare of socially and economically backward sections among religious and linguistic minorities, including reservation in education and government employment" – has still not been discussed in Parliament. One can thus expect more sound and fury whenever the bill on communal violence is introduced in Parliament.

Apart from the votaries of Hindutva some from within the media and even the secular camp are also opposed to it. The bill, it is fallaciously argued by some, assumes that the Hindu majority is always the perpetrator, never the victim of communal violence, and is therefore denied any protection in it. It is thus seen to be grossly discriminatory. Another argument is that the existing laws of the land are more than sufficient to deal with the perpetrators of communal violence. The need of the hour, according to its proponents, is not more laws but effective implementation of the existing ones. But the most novel argument against the bill has been propounded by the political scientist Ashutosh Varshney who has spent years researching communal strife in India.

Varshney fully supports the "moderate liberal" standpoint that any democracy worth the name must guard against the tendency to drift towards majoritarianism and make special provisions to protect discrimination against minorities. He then proceeds to argue that with India now riding a strong growth curve, the emerging "politics of aspirations" leaves little space for communal politics. Since communal violence belongs to India's past, why create a new institution with a massive bureaucracy for a non-issue?

Some reflection on the context of the contested text, a closer look at the nature of the beast staring us in the face might help us see the issue in a proper perspective. The 1980s marked a decisive shift in the morphology of communal violence in India. Until then the predominant narrative was that of communal riots, a two-way affair in which two communities clashed with each other. The score may not be even but in the end both sides suffered, more or less. Report after report of government appointed commissions of inquiry probing these riots invariably found the police and the administration guilty of biased conduct. But the 1980s marked a major shift in this narrative: from an era of "riots" India moved on to an era of one-sided carnages, and pogroms targeting India's religious minorities. In this post-riots scenario the role of the State is no longer limited to partisan behaviour: in the past three decades it has been an active accomplice, prime instigator, and even chief sponsor of mass crimes. Nellie, Assam 1983 (target Muslims); Delhi 1984 (target Sikhs); Bhagalpur 1989 (target Muslims); Mumbai 1992-93 (target Muslims); Gujarat 2002 (target Muslims); Kandhamal, Orissa 2008 (target Christians) are the most gruesome reminders of this ugly reality.

Were we to go by the definition adopted by the UN's 1948 "Convention on the Prevention and Punishment of the Crime of Genocide", the Indian state emerges with the dubious distinction of having subjected its religious minorities – Muslims, Sikhs, Christians – to genocidal targeting six times in 25 years. It is a record that many dictatorships might find tough to match. Thanks to our prevailing culture of impunity, in each case, the masterminds

Javed Anand (javedanand@gmail.com) is co-editor, *Communalism Combat*.

of the mass killings have gone unpunished, while the police officers responsible for shocking dereliction of duty actually got promotions.

What Is the Consequence?

Two months before India's 26/11 (2008), delivering the General Cariappa Memorial Lecture in Delhi, the then union finance minister, P Chidambaram, foresaw "new waves of terror" in India. "Out of the hopelessness and despair of the Muslim community – and if not addressed firmly, the Christian tribal communities too (Kandhamal) – will rise new waves of terror", he warned. The national media chose to altogether ignore these alarm bells or relegated it to a few paragraphs on the inside pages. Soon after being made the union home minister in the aftermath of 26/11, Chidambaram spoke again: "We cannot fight terrorism effectively unless we fight communalism with equal determination".

Obviously, Chidambaram sees a close link between terrorism – "bomb terror" – and communalism – "mob terror". He even implies that the roots of terrorism lie in the failure of the State to protect minorities from the tyranny of the majority. The highly regarded former senior police officer, Julio Ribeiro, had this to say in unison with several other retired police officers and civil servants more than a decade ago: "By its failure to protect the life and property of a section of its citizens, the state sows the seeds of extremism".

We all know now that extremism or terrorism was never the monopoly of a particular religion or community. (For those who still harbour some doubts on the terror-religion relationship, the latest message from a "Christian fundamentalist" in Norway should help.) India now is home to both Muslim and Hindu extremists: sadhus and sadhvis are as much implicated in the web of terror as self-styled jihadists. Unchecked mob terror gave birth to bomb terror which in turn has given rise to "retaliatory" bombs. We also happen to be living in the immediate vicinity of the Taliban, the Inter-Services Intelligence, and the Lashkar-e-Toiba.

Given the context, we can continue to ignore the implications of state-condoned, state-sponsored mass killings at our own peril. Let us keep this backdrop in mind as

we return to the proposed bill and the objections to it.

Are Existing Laws Sufficient?

The answer to this proposition is both yes and no. It is true that even in the worst moments in Mumbai in 1992-93 and Gujarat in 2002, one can find examples of islands of peace simply because the inspector in-charge of a police station, the officer in-charge of a zone, the police chief of a district sent out a clear signal in his jurisdiction that there would be zero tolerance towards lawbreakers. Yes, the existing laws have been sufficient for the conscientious police officer alive to his/her constitutional obligation to impartially enforce the rule of law. Meanwhile, there was mass murder and mayhem all around because the police in those areas saw themselves not as servants of the Constitution but as slaves of their political masters. Yes, dereliction of duty is an offence even in the existing laws but it exists only on paper. The proposed bill is necessary because it sends out a clear warning that under the new legislation law-keepers guilty of dereliction of duty will be severely dealt with. If ministers and other public servants can be jailed for corruption, why should they not be punished, more severely so, for such callous disregard for the life and property of any group of targeted citizens?

No one can criticise the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 as "dalit/advansi appeasement" because it provides selective shelter to scheduled castes and scheduled tribes (scs/sts) and discriminates against upper castes. Since dalits and advasis are the repeated targets of atrocities, they need a special law for their protection. Similarly, no one should have a problem with the Protection of Women from Domestic Violence Act, 2005 on the ground that it is discriminatory towards men and therefore amounts to "women's appeasement". There is a Backward Classes Commission in the country but no corresponding "Forward" Classes Commission. Why does no one complain of "appeasement of backward classes"? Why then the selective heartburn over the communal violence bill which too seeks to give protection to those who are frequent targets of communal carnages and pogroms: religious and linguistic minorities? Apparently it is not the linguistic but religious minorities who are the "problem" for Hindu majoritarians.

Article 14 of the Constitution promises every citizen of India the fundamental right to equality: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". And Article 21

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guarantees the Right to Life and Personal Liberty: “No person shall be deprived of his life or personal liberty except according to procedure established by law”. But what happens when those sworn to uphold the Constitution and impartially enforce the rule of law turn into agents of its subversion, to deny minorities the right to equality and the right to life?

The subversion of the Constitution by the very institutions created to protect and promote it lies at the heart of the proposed bill on communal violence. The core concern of the communal violence bill is not so much the lawbreakers as the law-keepers who wilfully ignore their constitutional obligations. Who have been the repeated victims of the deliberate failure to protect life, liberty and property? Sikhs (1984), Muslims (1983, 1989, 1992-93, 2002), Christians (2008), Tamilians in Karnataka, the Hindi-speaking in Maharashtra, and dalits in many parts of India are the obvious examples. These then are the obvious sections of society in need of special protection in the proposed bill. Need one add that the right to life and equality are no special privileges being granted to the minorities? If anything, the bill is an attempt to restore the constitutional rights of all citizens which have been long denied to them.

In the proposed bill, “‘Communal and Targeted Violence’ means and includes any act or series of acts, whether spontaneous or planned, resulting in injury or harm to the person and or property, knowingly directed against any person by virtue of his or her membership of any group”. Further, “‘Group’ means a religious or linguistic minority, in any state in the Union of India, or Scheduled Castes and Scheduled Tribes...” Hindus, it must be remembered, are a minority in states like Jammu, Kashmir, Nagaland and they are as much the concern of the bill as other religious and linguistic minorities in different states.

The message of the bill to the police force and the administration is loud and clear. Failure to enforce rule of law impartially and to protect the minorities will count as serious “dereliction of duty” and post the enactment will invite severe punishment. What is far more important, for the first time in India public servants and senior officers are being told that “breach

of command responsibility” too will be treated as an offense far more serious than dereliction of duty. No longer will the constable or the police inspector at the trouble spot alone be accountable for failure to prevent violence. In the event of protracted and widespread violence, a superior public servant in command, control or supervision of the force on the ground will be considered to have failed in his/her duty and “shall be guilty of breach of command responsibility”. While the punishment for dereliction of duty is “imprisonment for two years which may extend to five years and shall be liable to fine”, the punishment for breach of command responsibility is “rigorous imprisonment for life, when such failure related to organised targeted violence and in any other case with imprisonment for a term of 10 years and fine”.

‘Breach of Command Responsibility’

Some claim that communal violence is a complex affair and even the best police officers in command may fail to control the situation. In such cases, the “breach of command responsibility” provision will end up unfairly inflicting harsh punishment on such superiors. To this, one need only point out that the bill does not envisage summary trials in kangaroo courts. The breach of command responsibility will need to be established through a fair trial and due process in a court of law.

An equally important provision of the bill is that the breach of command responsibility offence also applies to “any non-state actor or superior or office bearer of any association” who fails to prevent them from committing criminal offences outlined in the bill. In short, Hindutva’s high command would be held accountable for the misdemeanours of its flock. The punishment for such non-State superiors is identical to those envisaged for public servants.

Is communal violence a thing of the past? When the BJP-led National Democratic Alliance came to power at the centre in 1999, many political commentators with impeccable secular credentials prophesied that with power comes responsibility. But then there was Gujarat 2002 followed by Kandhamal and Karnataka in 2008. “Believe in Allah but remember to

tie your camel”, the Prophet of Islam taught his followers. The politics of aspirations trumping the politics of communalism is no doubt a tantalising thought. But should we get so mesmerised by the idea as to lose sight of the fact that the repeated collapse of rule of law and the continued denial of justice to victims of mass crimes has taken the country to a point where the descent from the lofty growth curve to the abyss could be one short leap? Can India afford another Gujarat?

According to Gregory H Stanton, president, Genocide Watch, “Genocide is a process that develops in eight stages that are predictable but not inexorable. At each stage, preventive measures can stop it.” *Crime against Humanity*, the fact-finding report of the Concerned Citizens’ Tribunal headed by three retired judges (two of the Supreme Court) released in November 2002, concluded that the communal carnage in Gujarat 2002 was genocidal in nature and that the chief minister of Gujarat, Narendra Modi was its “chief author and architect”. It was this report that for the first time highlighted the urgent need for a law on mass crimes in India. The proposed bill responds to that call.

Among the many positive aspects of the bill is the fact that it pays as much attention to the prevention (keeping a sharp-eye on the build-up, stage by stage) as to the different stages involved in the prosecution and punishment for mass crimes (proper registration, investigation, preservation of all records, witness protection, selection of impartial public prosecutors, videography of the trials in the lower courts) and to obligatory relief measures, compensation and reparation packages. All this will of course not be possible without an appropriate institutional mechanism. The bill envisages a National Authority for Communal Harmony, Justice and Reparation and its equivalents in all the states.

One could of course have differences with some provisions of the proposed bill and seek appropriate amendments. But there is no denying that the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011 is a response to the crying need of the hour. As one political commentator aptly put it, it is a bill to settle a terrible debt that the Indian state owes to its battered minorities.