

## **The Draft Prevention of Communal & Targeted Violence Bill, 2011 Equal Before Law?**

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The Draft Prevention of Communal & Targeted Violence Bill, 2011 proposed by the NAC has attracted welcome debate. Any legislative measure, intended to correct a historical wrong, should indeed be subject to the closest scrutiny to improve and strengthen it. For if we get this right, it can help realize far better than we have so far, the Constitutional guarantees of equality before law to all citizens.

This Bill is built on the experience of recurring bouts of targeted violence since Independence. When citizens who are attacked because of their identity are numerically weak and socially disadvantaged - of minority languages and faiths, Dalits and Tribals - the institutions of law and order and the criminal justice system most frequently act in ways that are biased and discriminatory against them. To accept this Bill, we have to first accept that those who manage these systems of the State can and do discriminate in how they use their powers. The past 63 years are replete with instances of discriminatory exercise of State power when the group under attack is non-dominant in a State. Innumerable Commissions of Enquiry and fact-finding reports confirm recurring abdication of state responsibility, bias and even complicity of local administration, law enforcement and criminal justice machinery. They fail to prevent, control, or provide basic relief. These include the targeting of Dalits and Tribals across States; of Biharis in Maharashtra, Assam and elsewhere; of Sikhs in several states in 1984; of Muslims in Nellie, Bhagalpur, Bhiwandi, Mumbai, and Gujarat; of Tamils in Karnataka; of Christians in Kandhamal. Contrast this with any instance in which Muslims in Gujarat attack the dominant group or Biharis in Maharashtra attack the dominant group. The might of the State machinery would come down and prosecute them to the fullest extent of the law and beyond. This is the reality.

'Minority' is not a frozen national concept based on religion alone; it is on the contrary an entirely shifting category at the level of the States. As the economy expands, populations migrate and demography changes, there may be many points of conflict whose roots are not religious bigotry but regional, linguistic and other chauvinisms heightened by economic competition. India is a continent with myriad diversities besides those of faith. 'Unity in diversity' will come about only if we work towards a reasonably fair society with equality in the working of the law for all - Tamil speakers in Karnataka, Biharis and UP migrants in Mumbai, Bengalis in some Northeastern States, Biharis in Assam. This Bill learns from the past but is not imprisoned by it; it seeks to prevent identity-based violence around old or new fault-lines by making States accountable.

The Bill does not classify or assume any particular group to be the perpetrator of such violence. The perpetrator could be any person, belonging to any region, language, caste or religion. The Bill is only concerned that when the group *under attack* is non-dominant in that State, public officers must not be allowed to let bias breach their impartiality or colour the performance of their sworn constitutional duty.

It seeks to ensure this by making 'dereliction of duty' by any public servant an offence, combined with the principle of command responsibility; so that a mere constable alone will not be prosecuted for prejudicial failures of State institutions. But the Bill does not add further to the powers of the State, because the administration has enough and more powers to control violence when it chooses to do so.

While recognizing that targeted hate-based violence occurs for many reasons (it may be engineered, or result from deep prejudice coupled with economic competition, or be entirely driven by any number of parochial ideologies), the Bill maintains that riots can be controlled, and justice and healing secured, if public officials do their duty. And it is the constitutional right of every citizen, no matter how numerically weak or disadvantaged, to expect the State to be impartial and just.

Positive and rational legislative measures to correct discriminatory exercise of State power draw their strength from a clear, unequivocal constitutional mandate. Article 14 states that 'the State shall not deny to any person equality before the law *or equal protection of the laws* within the territory of India'. Article 21 places on the State the duty to protect all citizens from violence. Article 15 (1) says that 'the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them', thus recognizing that vulnerable groups may require *protection from discrimination by the State*.

The Protection of Women from Domestic Violence Bill, 2005 and the SC/ST (Prevention of Atrocities) Act, 1989 are examples of special legislative provisions in response to social reality and experience. The SC/ST Act does not deny that scheduled castes may attack upper castes. But there is an assumption that when that happens, upper caste groups stand fully protected under the general provisions of the law because of instinctive support of the State machinery.

Any mature democracy must embrace legislative corrections to protect its most vulnerable. We have for decades now needed a special law to correct discriminatory exercise of state power in contexts of identity-based violence – to restore equal access to the law, and give all citizens an equal playing field.

Let us not allow this debate to be muddied by the same tired script about Hindus and Muslims, just because that is the only prism the Right wing refracts itself through. This Bill is about protecting each one of us, wherever we might find ourselves, in any corner of this vast country. When and where we are fortunate enough to be the 'dominant' group, we are secure that the might of the State is with us. When we are unlucky enough to be non-dominant, then special protection is needed to ensure that the might of the State is used fairly.

In the end, this aims to be a corrective Bill to give all citizens everywhere an equal right to protection from identity-based violence, and an equal shot at justice.