

## COMMUNAL VIOLENCE IN INDIA: POST INDEPENDENCE SCENARIO

Shalini Shukla

Assistant Professor of Law Subharti University  
shukla.shalini2190@gmail.com

### INTRODUCTION

It was thought that partition of the country would resolve the problem of communal violence in India, and in the post-partition period, the people would be able to live without facing the ill-effects of the communal violence. However, it was a false hope and except the decade of fifty, people could not live in without communal violence.

In communal violence several causes and multiplicity of factors are involved which contribute to the generation and aggravation of communal riots. Each of these factors, individually and collectively, contributes to creating the communal passion in which even the mildest of provocations erupts into irrational violence. Besides the communal environment in most of the riots, there are precipitating factors, which engineer the fire of communal violence in any area.[1]

It must be noted that in communal violence there are micro as well as macro factors involved. The macro factors are often of ideological in nature and have nationwide sweep. The micro factors may be non-ideological and of local nature. Both are integrally connected with the process of socio-economic development in the country. To fight communalism and stop communal violence, we ought to know what causes are behind the virus of communal violence. Therefore, it is necessary, to know the various causes of communal violence. This chapter will deal on those causes which are responsible for eruption of communal violence in the country.

Communal violence has become a distinct feature of communalism in India. Whenever conflicting groups from two different religions, which are self-conscious communities, clash, it results in a communal riot. An event is identified as a communal riot if

(a) There is violence, and

(b) Two or more communally identified groups confront each other or members of the other group at some point during the violence. The reason for such a clash could be superficial and trivial, though underlying them are deeper considerations of political representation, control of and access to resources and power. Communal riots are not caused spontaneously and also that they are rarely caused by religious animosity. They arise due to

conflicting political interests, which are often linked to economic interests. To fight communalism and stop communal violence, we ought to know what causes are behind the virus of communal violence. Therefore, it is necessary, to know the various causes of communal violence. This chapter will deal on those causes which are responsible for eruption of communal violence in the country.

Communal violence is a form of violence that is perpetrated across ethnic or communal lines, the violent parties feel solidarity for their respective groups, and victims are chosen based upon group membership. The term includes conflicts, riots and other forms of violence between communities of different religious faith or ethnic origins. [2]

### FEATURES OF COMMUNAL VIOLENCE

Communal violence has the following characteristics:

1. Communalism is an ideological concept, which evolved through three broad stages in India:
  - *Communal Nationalism*- this is the stage where a group of people belonging to a particular religion believe that they have the same secular interests also also, i.e. even those matters which have nothing to do with religion affect all of them equally.
  - *Liberal Communalism*- At this stage, two different religious communities believe that they have different secular interest also (i.e. different interest in economic, political and cultural spheres).
  - *Extreme Communalism*- At this stage, two different religious communities believe that their interests are compatible and they cannot coexist together because the interest of one community is in conflict with the interest of another.
2. Communalism is the complex process. Communal conflicts can take many different forms, and in order to understand the different dynamics of communal conflict, it is useful to analysis their underlying causes and the issue over which the conflict is fought.
3. It has a broader base which encompasses social, economic and political aspects for its manifestation.
4. It causes rivalry, violence and tension among masses.
5. It is used by the higher class people and elites as an instrument for division and exploitation of the communal identities of the poorer section of their co religionists.

6. Communalism is simply engineered by opportunistic political and economic interest of contending groups and faction within a political party.
7. It strikes at the roots of democracy, secularism and national integration.

### REASONS FOR COMMUNAL VIOLENCE

The causes for genesis and propagation of communal violence could be general, religious or trivial in nature.

#### General causes:

1. *Divide and rule policy*- The British policy of divide and rule has deeply impacted the Hindu Muslim relation in India. The seeds of discord has lain by that policy have been a reason of communal riots in today's time also.
2. *Partition of country*- Partition of the country created the great deal of bitterness and communalized political process in post-independence India.
3. *Struggle for identify of class conflicts*- The internal divisions promoted communal violence and social tension at the mass level. Some scholars argue that all classes in the society behave differently according to their economic needs, which when triggered off by a religious issue, lead to communal violence. They attribute class struggle as the root cause behind several communal disturbances, not religion. Some scholars believe that after partition of the country, Indian Muslim developed the psychology of being the deprived group. Thus, an incident, which may be trivial in nature, leads to a chain reaction ending in violence.
4. *Political factor*- Communalism and communal conflict are means of political assertion in most cases, they are politically motivated. There is a growing tendency to maximize political gain by adopting short cuts in term of usages of ancient identities, communal slogans, doctrinaire issues, etc.
5. *Socio-political issues*- Often socio political issues like cow protection and urdu-devnagari controversy have engineered communal violence.
6. *Economic factor*- Many have tried to find economic factors behind communal violence. Theories of development process find the causes in economic competition among Hindus and Muslims in some area. Economic competition often leads to social tensions that can easily turn into communal violence. An important cause of communalism and communal violence springing from it has been unbalanced and exploitative economic relations in Indian society.
7. *Administrative failures*- Weak law and order is one of the causes of communal violence. After partition, the most of communal violence took place because of the weak law and order. There was failure of the police and administrative officers in gauging the intensity of the communal situation in advance. This very cause is attributed behind many serious communal riots including Ahmedabad and Baroda (1969), Bhiwandi (1970), Hyderabad (1978 & 81), Bihar Sharif (1981), Bhagalpur (1989), and several other major riots.
8. *Partisan behavior of police*- In some situations it has been seen that partisan attitude of police allows petty clashes to turn into a major communal violence.
9. *Rumors*- False and exaggerated rumors pave an easy way to communal violence. In almost all riots the role of rumors in rousing communal zeal is quite famous. Rumor plays a mischievous role in fanning the flames in a surcharged atmosphere. It is always a key in the hands of communal elements to engineer communal violence. The most effective to incite the mass is the rumor of the women or girl of one community being molested, raped or kidnapped by the members of another community
10. *Lack of communication*- During communal violence, there is no free exchange of views and opinions between the two communities and both the communities perceive as inimical. Such absence of inter-group communication is favourable for communal violence.
11. *Insecurity and fear*- Communal violence takes place, as members of one community perceive the threat, harassment, fear and danger from the members of the other community. The response to the threat is either fight or departure. The latter generates fear and terror and the former cause's hatred and anger phobia. There is a lack of inter-personal trust and mutual understanding resulting in subsequent fear and worry among the communities.
12. *Misuse of social media*- social media act as an active platform for spreading of rumors, these rumors helps in flaring communal tension. This was sent in the mass exodus of north east people from various cities only due to facebook posts.

#### Religious Causes:

1. *Proselytisation/conversion*- frequent conversion causes a great resentment among people of another community. E.g. conversion was one of

the major factors for the continuous phase of communal violence in Bengal 1905 to 1947.

2. *Religious conflicts*- There is a general religious revival among the different communities in our country. The newfound faith in religion by the communities has, however, given rise to several problems. Every religion teaches its followers that its understanding and interpretation of God, Prophet, etc., is the best and the ultimate. The tremendous faith in one's religious beliefs and a feeling that nonbelievers in these are misguided people who derive to be told regarding the correct path, lead to conflicts, which may be termed as religious conflicts.
3. *Religious/ communal organizations*- Before partition, the communal organizations were able to convince their co-religionists that their problems were because of the other religionists and the solution to these non-religious issues was available in religion. This was the basic cause of widespread communal violence between the two communities. Later, both Hindus and Muslims have established various organizations which has lead to increase communal tensions.
4. *Religious rituals*- Seeds of distrust are planted by exploiting deep religious traditions of both communities; difference in their different religious practices and rituals are highlighted and often, it is shown that one is out to destroy the other. Religiosity imparts passion and intensity to communalism. The extent of religiosity is very high. Even minor variations in the public performance of religious rituals evoke violent reactions.
5. *Religious fanaticism*- Religious fanaticism among the people also has its source in the constant preaching and actions of communal organizations. Since they are interested in sharpening the differences between religious groups, it is in their interest to make their followers hard-boiled, unreasonable and passionate followers of a manipulated form of the religion concerned, a form which is, in fact, farthest from the actual tenets of the faith.
6. *Hurting religious sentiments*- Provocation due to hurting of religious sentiments resulted in the communal violence. For instance, communal violence in Srinagar in 1967 broke out when some torn pieces of the Holy Quran were found in college latrine. In 1968, at Tinsukia in Assam, communal violence took place due to the killing of a cow by a Muslim.

#### Trivial causes:

Trivial causes also leads to communal violence in an intolerant and communally charged environment. These causes may be changing the route of processions; clashing of time of prayers of two communities; disputes over place of worship; dispute between property owner and tenants; tension due to migration of refugees, laying the foundation of new statues; marriage between members of two communities; personnel quarrels; road accidents and so on.[3]

#### PROBLEMS CAUSED DUE TO COMMUNAL VIOLENCE

Communal violence creates many evils effects as mentioned below:

1. *Unavailability of jobs to children of communal riots*- in any communal violence, many innocent people lose their lives. Families lose their breadwinners and become economically vulnerable. The entire responsibility falls on the children of these families. However because of their low education and skills, they are left jobless and hopeless.
2. *Loss of life and destruction of property*- violence leads to destruction of public and private property. It also takes away the life's of many people, including youth, women, and children irrespective of the age group.
3. *Psychology of fear*- communal violence creates a strong fear in the mind of people, whether they are victims or just viewers of the television coverage. This fear is long term and remains for a long time after violence subsides.
4. *Distrust among people*- Communal violence creates strong feeling of distrust and hatred among two communities. This increases in distrust and fera leads to repetition of communal clashes at the same time.
5. *Hampers the economic status of people*- communal violence impacts the whole economic fabric of an area. The shop and industries are burned and businessmen fear from running their business in a normal area. Workers and citizens stay back home in the fear of persecution. This greatly impacts the economic climate of the area.
6. *Communal violence act as an obstacle to unity*- Communal violence creates artificial division between two communities. The interest of a community becomes greater than the interest of nation.
7. *Increase in radicalization and terrorism*- communal violence alienates the youth of a community. This alienation, coupled with attraction provided by terrorist organizations, radicalizes the youth and drives them towards the world of terrorism. Incidences of communal

violence in Indian history like Babri Masjid riot, Gujarat Riots of 2002, and Muzaffarnagar riots, are used by the terrorist leaders to radicalize Indian youth and motivate them to conduct terrorist acts against their own people.

### **COMMUNAL RIOTS AND ADMINISTRATIVE RESPONSE**

Communal violence has been a recurring phenomenon in India. Somehow, and for some reasons, our administration has failed in containing these situations. Some of these reasons according to Second Administrative Reforms Commission are:

#### **• Systematic problems**

1. Our conflict resolution mechanism are ineffective,
2. The intelligence gathered is not accurate, timely and actionable, and
3. Poor choice of personnel and frequent transfers leads to lack of grasp over the local situation.

#### **• Administrative shortcomings**

1. The administration and police fails to read indicators which precipitated violence earlier.
2. They are slow to react to first signals of violence.
3. Field authorities wait to seek orders from the superiors and the superiors often interfere in the situation to curb local initiative.
4. The administration and police at times act in a partisan manner.

#### **• Post Riot Management Deficiencies**

1. Rehabilitation is often neglected, breeding resentment and residual anger, and
2. There is a weak accountability mechanism where officers are not held responsible for their incompetence in handling communal violence.

However, we have been practices in which communal flares have been suitably contained. We will discuss the methodologies followed by them. These should be replicated throughout the India.[4]

Communal riots often have a incurable period during which the underlying cause develops and distrust keeps on simmering. The spark is provided by an incident, which may be accidental, causing the situation to flare up. The administration and the police should take suitable measures at different stages of the communal riot. These measures are as follows:

### **Measures taken during peace time**

During peace time, following steps are taken (and should be taken in cases they are not followed):

1. *Address conflict issues-* Administration should make every effort to address issues which may lead to outbreak of violence. For this, administration must win the trust of all sections of the society by being responsive, transparent, vigilant and fair in dealing with all.
2. *Community policing-* Police should use the philosophy of community policing to collect useful information about rising tension in the society.
3. *Riot control/internal security plans-* Every district and police station have riot control and internal security plans based on the ground realities, to meet any eventuality.

### **Measures to be taken when an outbreak of riot is apprehended**

Once it appears that outbreak of riot is likely, the police take the followings actions to prevent the outbreak:

1. Security proceedings against the suspects.
2. Address property dispute.
3. Regulate procession and gatherings.
4. *Impositions of prohibitory orders-* Section 144 of CrPC gives the power to executive magistrate to impose several prohibitory orders like abstaining any person from doing a certain act, and so on. This power if proactively used can be an effective tool to prevent outbreak of violence.

### **Measures to be taken once a riot has started**

1. *Proper mobilization and deployment-* As soon as breach of peace is apprehended, the police force available in the district should be properly mobilized. Even central forces can be requisitioned if the situation demands. Police officers having knowledge of the local areas should be deployed in sensitive areas.
2. *Suppress violence immediately-* Proportionate force should be used to immediately suppress the violence once it starts. Prohibitory orders, if not already imposed should be promulgated forthwith and enforced firmly.
3. *Regular patrolling-* Once peace is restored, vulnerable areas need to be patrolling and protected.
4. *Make suitable arrest-* Once the violence situation subsides, police should arrest the

instigator, rowdy and mischievous elements causing communal harmony.

5. *Avoid spread of rumors*- Media should be briefed with correct facts and figures so that there is no scope for rumors mongering.

#### Measures to be taken once normalcy is restored

1. *Investigation and prosecution*- Offences committed during communal violence should be efficiently investigated so that the perpetrators of violence are strictly punished.
2. *Relief and rehabilitation*- Immediate steps should be taken for the relief and rehabilitation of the victims of communal violence. Any delay in relief measures result in prolonged suffering of the victims which may further aggravate tensions
3. *Commission of enquiry*- It gives report on people responsible for riots. It submits report within six months so that a sense of justice prevails.
4. *Proper documentation on future learning*- All riots should be documented properly and analyzed so that lesson could be drawn from such experience.

#### Infamous communal violence in India

##### Partition of India, 1947

After partition, millions of population were forced to move from both sides of the border. Hindus in Pakistan and Muslims in India were killed in masses, women were raped, and many children lost their parents. There was hatred everywhere, violence didn't see anything except bloodshed. Later, it turned in the problem of refugees and their rehabilitation became one of the biggest challenge for independent India

##### Anti-Sikh riots, 1984

This is one of the bloodshed in India, where Sikhs in large number were massacred by anti- Sikh mob. This massacre took place in response to the assassination of Prime Minister Indira Gandhi by his own Sikh body Guard in response to her actions authorising the military operation.

##### Ethnic cleansing of Kashmiri Hindu Pundits in 1989

Kashmir is known as the heaven of India and was known for its *Kashmiryat*, i.e. the reflection of love, peace and harmony through brotherhood and unity of Hindu, Muslims and other communities living together. But, the brotherhood saw a serious blow due to Extremist Islamic terrorism in the Kashmir valley, which led to mass killing

and large scale exodus of Kashmiri Pundits from the valley to the various regions and corners of the India, giving them the status of refugee in their own country. Since then, the valley is under the grip of communal violence and the ongoing unrest has become a problem for the development of the people.

##### Babri masjid demolition in Ayodhya, 1992

According to Hindu mythology, Ayodhya is birth place of Lord Rama and therefore it is sacred place for Hindu religion. But in medieval period Mughal general Mir Baqi, built a mosque, named after Mughal ruler Babur. There were disputes since then and riots also took place. But in 1990, due to some political mobilisation, there was atmosphere of protest by Hindu religious groups and in large scale "kar sevak" visited Ayodhya from all parts of India, in support of demolishing Babri masjid and building Ram temple there. These movements caused huge amount of bloodshed and since then it is a disputed matter.

After this, violence was followed by the Godhra incident in 2002, when "kar sevak" returning from Ayodhya in a Sabarmati Express were killed by fire in the coaches of train. This act was followed by the extended communal violence in Gujarat. That violence is like black spot in the history of the Gujarat and nation too, as people were killed without any mercy. Hindu and Muslim community became antagonist to each other. Till now people are fighting for justice in Supreme Court, with a ray hope from the Indian Judiciary.

##### Assam Communal violence, 2012

North eastern states are known for its distinguished tribal population & ethnic diversity and large scale Bangladeshi immigration has changed the demography of North eastern states, which often becomes reason for clashes. In 2012, there were ethnic clashes between Bodos (Tribal, Christian & Hindu faith) and Muslims. Ethnic tensions between Bodos and Bengali-speaking Muslims escalated into a riot in Kokrajhar in July 2012, when unidentified miscreants killed four Bodo youths at Joypur.

##### Muzaffarnagar violence, 2013

The cause of this ethnic clash between Jat and Muslim community is very much disputed and has many versions. According to few, it was started after some suspicious post on Social media platform Facebook. According to some, it was escalated after the eve teasing case in Shamli. Let the reasons be unknown, but what matters is, the nature and scale of loss to the country with respect to human resource and peace.

In all these and hundreds of other riots, one thing is common that huge majority of victims have nothing to do with communal hatred. In short, preparators of violence and victims of violence are different persons. Similar to above mentioned list, there are many more, which has impact on the masses and killed people on large scale. Bombay bomb incident, 1993, Attack on Akshardham in 2002 by Lashkar-e-Toiba & Varanasi Bomb attack, 2006 are few of them, having Anti-Hindu outlook.

Lot of movies have been pictured on the above mentioned communal violence, which can give us understanding about the damages and harm, done by these violence- "**Bombay**" & "**Black Friday**" based on 1992 attacks. "**Train to Pakistan**" based on the novel of Khuswant singh about partition of India, 1947. "**Gandhi**" is portrayal of Direct Action Day and partition of India. "**Hawayein**" based of 1984 Sikh riots and "**Machis**" about Punjab terrorism.

These are the few ones to name and there are many more, which may sensitise us about such issues, so that in future it can be avoided[5].

### **PEACE COMMITTEES**

Citizen's peace committee in the district has been found useful in times of communal tension. These committees consist of politicians and influential members of different communities. They have proved successfully in reducing communal tension in the society. To increase their effectiveness, representations from different communities should be such as to instill confidence in citizens about the effectiveness of the committee. They should identify issues of local relevance which a propensity to degenerate into conflagration and suggest measures to deal with them.[6]

### **NATIONAL INTEGRATION COUNCIL (NIC) AND ITS FUNCTIONS**

National integration council was convened in 1961 by ex PM Jawaharlal Nehru to find ways and means to combat the evils of communalism, casteism, regionalism, and narrow-mindedness and to formulate define conclusion in order to give a lead to the country.

#### **Objectives of NIC**

NIC conducts meetings of government officials, political parties, voluntary organizations, press educationalists, artists, writers, intellectuals, businessmen, and so on, and call upon them to:

1. Discourage communal ill-will and regional animosities and wean away the misguided elements from the paths of violence.
2. Propagate the principles of tolerance and harmony.
3. Mobilize constructive forces of society in the cause of national unity and solidarity and giving them leadership and articulation.
4. Devise suitable communities' activities and programmes for fostering fellow feelings.

#### **Organizational structure**

NIC is chaired by the prime minister of India and its members include union ministers, leaders of opposition in lok sabha and rajya sabha, chief ministers of all states and union territories. NIC is extra constitutional and extra legal body.

#### **Meetings of NIC**

NIC has conducted 16 meetings till date, the last one been conducted in September 2013. It was conducted in the light of Muzaffarnagar riots and its main agenda was communal violence in the country, atrocities on women, increasing crime against SC's and ST's and not allowing any political party to get benefit from communal violence.

### **NATIONAL FOUNDATION FOR COMMUNAL HARMONY (NFCM)**

NFCH is an autonomous organization under the administrative control of MHA having the objective of promoting communal harmony and national integration amongst people of country. It undertakes various activities to attain its objectives. Some of its activities are mentioned below:

1. *Project 'assist'*- Under this financial assistance is provided to the child and youth victims of communal caste ethnic or terrorist violence all over the country for there care and education so that they are effectively rehabilitated to enable them to merge in the mainstream of the society.
2. *Communal harmony campaign*- The foundation approaches various organizations like school colleges public sector enterprises and so on, to create awareness about communal harmony and national integration. It also organizes Flag Day and Communal Harmony Campaign Meek from 19<sup>th</sup> to 25<sup>th</sup> November every year. During this period the variety of activities are organized throughout the country to emphasize the significance of communal harmony.

3. *The national communal harmony awards*- Every year two awards are given under the category of “individual” and “organization” for outstanding contribution for promoting communal harmony and national integration.
4. *Extension activities*- the foundation undertakes various activities, either independently or with the support of government, NGOs, educational institutions, etc, with a view to promote harmony and national integration. These includes cultural programmes, seminars, symposia, essay competition, and academic institutions.

### GOVERNMENT SCHEMES OF COMMUNAL HARMONY

1. *Central scheme for assistance to victims of communal violence and terrorism*- The schemes provides for financial assistance to be given to the family members of the victims in the events of death and permanent and incapacitation of the victim, in terrorist, communal or naxal violence. The assistance amount is between 3 and 4 lakh rupees. The scheme is to be implemented by a district level committee headed by the District Magistrate.
2. *Kabir puraskar scheme*- kabir puruskar (award) was instituted in 1990 to promote communal, caste and ethnic harmony by recognizing acts of physical/moral courage and humanity exhibited by members of one community, caste or ethnic group in saving the lives and properties of the members of another community, caste or ethnic group.
3. *Essay competition in the cause of national integration and communal harmony*- annual essay are conducted for schools and college students on different topics under national integration and communal harmony.
4. *Assistance to voluntary organization, etc for the cause of national integration*- under this scheme, assistance is provided to voluntary organizations, institutions, universities, and other educational institutions for carrying out activities with the aim of national integration and communal harmony. These activities should have the same object as those of NIC.
5. *Celebration of Rashtriya Ekta Diwas/ Rashtriya Sankalap Diwas* on (31<sup>st</sup> October every year) and Quami Ekta Diwas (from 19<sup>th</sup> to 25<sup>th</sup> November every year)

### LAWS AND ACTS TO CONTROL COMMUNAL VIOLENCE

### PROVISIONS IN IPC[7]

#### SECTION 153 A:

The purpose of the Section 153 A is to punish persons who indulge in wanton vilification or attacks upon the religion, race, place of birth, residence, language etc of any particular group or class or upon the founders and prophets of a religion. The jurisdiction of this Section is widened so as to make promotion of disharmony, enmity or feelings of hatred or ill-will between different religious, racial, language or regional groups or castes or communities punishable. Offence on moral turpitude is also covered in this section.

The offence is a cognizable offence and the punishment for the same may extend to three years, or with fine, or with both. However, the punishment of the offence committed in a place of worship is enhanced up to five years and fine.

Ingredients of Section 153A:

- The act of promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste, community or any other group.
- Acts prejudicial to the maintenance of harmony between different groups or castes or communities, if the acts disturb public tranquility.
- Acts causing fear or alarm or a feeling of insecurity among members of any religious, racial, language or regional group or caste or community by use of criminal force or violence against them.

#### SECTION 295:

Section 295 of the I.P.C makes destruction, damage, or defilement of a place of worship or an object held sacred, with intent to insult the religion of a class of persons, punishable with imprisonment which may extend to two years, or with fine, or with both. This section has been enacted to compel people to respect the religious susceptibilities of persons of different religious persuasion or creeds.

Ingredients of Section 295:

- The accused must do such an act with the intention of insulting the religion of any person, or with the knowledge that any class of person is likely to consider such destruction, damage or defilement as an insult to their religion.

- The accused must destroy, damage or defile any place of worship or any object which is held as sacred by any class of persons.

### SECTION 295 A:

The object of section 295 A is to punish deliberate and malicious instrument intended to outrage the religious feeling of any class by insulting its religion or the religious beliefs. This section only punishes an aggravated form of insult to religion when it is perpetrated with deliberate and malicious intention of outraging the religious feelings of a class.

Ingredients of Section 295-A:

- The accused must insult or attempt to insult the religion or religious beliefs of any class of citizens of India.
- The said insult must be with a deliberate and malicious intention of outraging the religious feelings of the said class of citizens.
- The said insult must be by words, either spoken or written, by signs or by visible representation or otherwise.
- The offence under Section 295-A is cognizable and a non-bailable and non-compoundable offence.

### PROVISIONS OF THE CONSTITUTION

The idea of the bill is based on the article 355 of the constitution of India. Article 355 of the constitution says: "Duty of the Union to protect States against external aggression and internal disturbance- It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution."

Public order comes under the State list provided in schedule VII of the constitution. On the perusal of the constitution it becomes clear that the public order is specifically the dominion of the state government. The central government has nothing to do with it. Entries have to be made in the Union List for the Union to interfere in the maintenance of public order. Though the Union has power to interfere in the matters concerning the working of the Indian Penal Code. The scope of this entry needs to be expanded so that it includes the communal violence as well.

### NEED FOR THE SPECIAL LEGISLATION

Today riots have become the major source for the disturbance of the public tranquility. Two riots one in Aligarh (UP) in April and other Vadodra (Gujarat) in May, 2006 reiterated the necessity of acts dealing with communal violence. A cursory look at the history of the communal riots in the country suggests that Aligarh and Vadodra are not isolated event but part of the larger picture of the communal program that's being carried out intermittently. Riots after riots have similar story to tell. The provisions in the Indian Penal Code appear to be inadequate to deal with such type of situations. To control such types of communal situations the UPA government introduced the Communal Violence (Suppression) Bill in the Parliament in 2005. The bill is still pending for approval. The Bill emphasises on the relief part, true to its name. The bill truly answers to the call of time as we don't have any particular legislation dealing with the relief and rehabilitation of the victims of communal violence.

The parliamentary standing committee of the Home Ministry is currently discussing the bill. The discussions are centering around two fundamental issues; can a communal situation in a state be dealt with by the central government without encroaching upon the state's rights of maintaining law and order? Second, can the deployment of central forces be done independently or at the request of the state government and, in any case, can such forces act independently or do they act under the command of the state government? Notwithstanding the rights of the states to be encroached upon, the fact remains that in the name of state autonomy and provinces exclusive right over 'law and order', the central government cannot remain a spectator to the instances of communal violence taking place in a state.<sup>[8]</sup>

### (PREVENTION OF COMMUNAL AND TARGETED VIOLENCE (ACCESS TO JUSTICE AND REPARATIONS) BILL, 2011)

The Preamble of the Bill makes it clear that the enactment is being done with a view to empower the government to take measures. The Preamble of the Communal Violence (Suppression) Bill says that it is meant to "provide for the State government and the Central government to take more effective measures to suppress communal violence perpetrated on such a scale which threatens the secular fabric, unity and integrity of the nation". Section 11 deals with the special powers of the central government to act in circumstances where the state government does not take appropriate measures. But here too, Section 3(b) attaches a rider that this can be done only at the request of the concerned state government. This is a ridiculous provision that even today the central government has to take permission for

the humanitarian work. The failing of this mechanism was witnessed in the Gujarat Riots 2002 and the Bombay Bomb blasts in 1994. The Human Rights activists point out that an “insensitive” government like in Gujarat would never have asked for the help from the center. The fear is that the provision in the bill that gives power to the state government to draft their own anti-communal laws will give draconian powers to the police. The bill borrows such powers heavily from the withdrawn Prevention of Terrorism Act and the Armed Forces (Special Powers) Act in operation in northeast India.

**The thrust of the legislation is itself misplaced given that it is the government agents that are the principal wrongdoer. The provisions in the bill can be applied in a particular state only if the government of that particular state recognizes it by notification. All opposition governments could ignore this statute completely. It is totally in the hands of the state government to declare the areas to be “communally disturbed” the power which it is liable to misuse. The bill is silent about the social issues that are the steps taken for the protection of the children and women and other like issues. The rules of evidence need to be modified so that the victim is not victimised during the trial. Chapter III of the bill relates to the prevention of communal violence and appears to empower the district magistrate to prevent the breach of peace by, inter alia, curbing processions, regulating the use of loudspeakers, seizing arms, detaining persons and conducting searches. This particular section has no relevance because the police has already these powers through the Cr PC.**

Chapter VII is a progressive part of the act. It deals with relief and rehabilitation in a ‘ceremonial’ manner. It calls for the setting up of national, state and district level ‘Communal Disturbance Relief and Rehabilitation Councils’ — but nowhere in the statute does the right of the victim to relief, compensation and rehabilitation emerge as a right according to an acceptable international standard. When the state fails to provide maintenance to the victims should the victims not have the right to compensation so that they can enforce the government to pay heed to their pleas.

Sections 7 to 10 are taken almost word to word from Sections 3 to 6 of the AFSPA. Once an area has been declared communally disturbed any commissioned or non-commissioned officer will have the power to open fire on any person breaking law to the extent of causing death. The bill gives the power to the officer to arrest without warrant on the on the grounds of reasonable suspicion.

The new bill has provisions that empower the state or the central government to set up special courts. The judges

to these courts can be appointed by the state in concurrence with the chief justice of high court. These courts have been given unprecedented power by the bill. If the court is satisfied with the report of the police that the accused is likely to commit some offence in the ‘communally disturbed’ area the court can order him to leave the area for a period not exceeding 6 months. The court has the power to forcibly evict him of the place if he so refuses. The important thing about this provision is that it dispenses the provision contained in section 130 of the Cr. Procedure code which makes it mandatory for the armed forces to obtain the permission of the Executive magistrate before they use force to disperse an unlawful assembly. In a disastrous move that goes back to the POTA the maximum period of detention has been extended from 15 day to 30 days which can go upto 1 year. The Cr PC has the provision for the maximum detention for the period of 60 to 90 days when the charges have not been proved, depending on the severity of the offence. The maximum term for the jail punishment under this bill has been doubled except life term and death sentence. The conditions of the bail have been made stringent. No bail can be granted unless the public prosecutor is given the opportunity to contest the bail plea.

Communal Violence Relief and Rehabilitation Council consisting of the State Chief Secretary as ex-officio Chairperson, the Collector and the Superintendent of Police of the District as ex-officio members, two persons nominated by the Central government to represent social workers and four persons, again nominated by the Central government, to represent the minority community and the victims of communal violence. This council is responsible for the speedy distribution of relief and rehabilitating the victims. It has every power for the speedy dispensation of justice to the communal violence victims; it can also frame guidelines for the distribution of compensation amount.[9]example of the work written by our professional law writer

### CONCLUSION & SUGGESTIONS

The world is realizing the need for peaceful resolution of the conflicts - but in a slow pace. The conventional methods used by the government machinery to control crimes and violence are not a real solution for the rising culture of violence. Conflicts suppressed or transformed cannot ensure a permanent situation of peace and more positive non-violent methods are essential for this purpose. Science and technology is being used today for the perpetuation of violence. Amassing mass destructive weapons is an example of this practice. A lot of resources are spent to improve the so called technology which can produce sophisticated weapons which can wipe out life from the earth. Due emphasis should be given for the

propagation of the noble culture of non violence for the secure well being of humanity in the future.

The problem of communal violence encompasses religious, political, socio-economic, cultural, historical and intellectual spheres in different ratios and extent with reference to different states and regions. After partition of the country, communal violence is organized, planned and executed by the stakes for deriving selfish gains. In most cases, it is politically motivated and the role of rumors in rousing communal passions is quite famous.

The post-partition violence, more often than not, has turned out to be an attempt to adversely affect the prosperity of each other. Many attempts by minorities in making some progress in order to gain some degrees of economic self-sufficiency have been frustrated by communal violence in Mumbai, Moradabad, Bhiwandi, Aligarh, Varanasi, Jabalpur, etc., and particularly in

Gujarat, where concerted efforts were made in this direction.

Thus, the basic cause of all communal disturbances is the communal atmosphere pervading the country and the communal tension built up between the two communities. The communal atmosphere provides a ready-tilled soil for communal minded people to sow seeds of communal hatred and nurture them until the bitter harvest of communal violence is reaped.[10]

## SUGGESTION

- To promote the spirit of secularism.
- Religious institutions should be under the control of government officials.
- Religious teachers should be well educated.
- Education officers should regularly visit.
- Peace committee should be established at district level.
- Recommendations of communal community should be kept in mind at the time of enacting laws

[1] [shodhganga.inflibnet.ac.in](http://shodhganga.inflibnet.ac.in)

[2] Lohit Matani, *Internal Security Concept. Dynamics. Challenges, 1<sup>st</sup> Edition*

[3] Lohit Matani, *Internal Security Concept. Dynamics. Challenges, 1<sup>st</sup> Edition*

[4] [shodhganga.inflibnet.ac.in](http://shodhganga.inflibnet.ac.in)

[5]

<http://www.insightsonindia.com/2014/11/07/communalism-meaning-and-issues/>

[6] Lohit Matani, *Internal Security Concept. Dynamics. Challenges, 1<sup>st</sup> Edition*

[7] K.D Gaur. *Indian Penal Code, 5<sup>th</sup> Edition*

[8] <https://www.lawteacher.net/free-law-essays/common-law/the-communal-violence.php>

[9] <https://www.lawteacher.net/free-law-essays/common-law/the-communal-violence.php>

[10] [shodhganga.inflibnet.ac.in](http://shodhganga.inflibnet.ac.in)