

PREFACE

24 January 2008

1. This draft has been prepared after intensive deliberations and consultations among a cross section of people from the civil society, consisting of lawyers, academics, social scientists, law researchers, human rights activists, secular-humanists, women's rights groups and representatives of non-governmental organizations.
2. Many persons and organizations have participated in the consultations over various points in time over the past 3 years. Due to a paucity of time, it is not possible for us to state all their names at this point in time, and hence, only names of persons involved in the final versions of the draft are indicated below.
3. This final draft has been prepared in a very short period of time for the purposes of submission to the government. However, owing to the complexity as well as the importance of the issue dealt with by this law, we may re-consider some of the ideas proposed and to refine, modify and re-define concepts and provisions at a later point in time based on consultations and deliberations among members of civil society.
4. Although this draft has been prepared based on inputs received from people who have been working with victims / survivors of communal violence, we request the government to use this draft as a basis for further and direct consultations with communities of victims / survivors of communal violence and communities which are likely to be impacted by this law.
5. We look forward to an opportunity for a free and open discussion with members of the government in order to explain provisions suggested in this Bill.

Farah Naqvi, activist and free-lance journalist
Harsh Mander, Director, Centre for Equity Studies, Delhi
Maya Nair, 'Justice & Accountability Matters'
Saumya Uma, ICC-India Campaign
Uma Chakravarti, feminist historian, Delhi
Vahida Nainar, Women's Research & Action Group, Mumbai
Vrinda Grover, advocate, Delhi

THE COMMUNAL CRIMES BILL, 2008

THE COMMUNAL CRIMES BILL, 2008

Statement of Objects and Reasons

1. Recalling that targeted, widespread or systematic communal violence has occurred with alarming regularity causing large scale disturbances, numerous fatalities and injuries, destruction of property, dislocation of lives, sexualized violence against women, violence and trauma to children, threatened the right to life and livelihood, and inflicted untold misery and social suffering, particularly on minority communities.
2. Recalling the findings and recommendations of various Commissions of Enquiry set up such as the Justice Ranganath Mishra Commission (Delhi riots), the Justice Raghuvir Dayal Commission (Ahmednagar riots), the Justice Jagmohan Reddy Commission (Ahmedabad riots), the Justice D.P. Madan Commission (Bhiwandi riots), the Justice Joseph Vithyathil Commission (Tellicheri riots), the Justice, J. Narain, S.K. Ghosh and S.Q. Rizvi Commission (Jamshedpur riots), the Justice R.C.P. Sinha and S.S. Hasan Commission (Bhagalpore riots), and the Justice Srikrishna Commission (Bombay riots).
3. Regretting the fact that these Commissions found, inter alia, that where the police and civil authorities acted impartially and stood firm, the flames of communal passion were quickly doused but where the police and civil authorities were passive, or partisan and connived with the communal elements, abject destruction and loss of lives followed.
4. Regretting the fact that the recommendations of the various Commissions of Enquiry have been largely ignored by successive governments.
5. Noticing that the Commission of Enquiry Act has only a limited jurisdiction and powers and its findings are not enforceable, nor are the proceedings capable of being used in legal proceedings, nor does the Commission have powers in contempt.
6. Noting that during and after communal violence, victims often allege that the magistracy and the police force do not respond to their complaints, do not register FIRs or register them improperly, do not arrest the offenders and do not conduct the investigations and prosecutions properly in a non-partisan, expeditious and fair manner.
7. Noting that there is a growing tendency of the ruling political parties to use the State machinery for perpetrating communal violence and in the process communalizing the state machinery itself leading to the break down of the constitutional governance.

8. Noticing that the constitution does not permit any person or group of persons to engage or indulge in any activity, political, social, religious or cultural which promotes communal hatred or propaganda.
9. Alarmed at the failure of the criminal justice system to successfully prosecute the culprits, as a result of which public faith in the administration of justice is eroded.
10. Deploring the growing tendency for hate speeches, communally oriented writings and public glorification of acts of violence.
11. Desiring that the victims of communal violence and other incidents be provided relief, rehabilitation and compensation expeditiously.
12. Desiring further that the state authorities take prompt action so as to instill a sense of apprehension in the offenders and security in the victims.
13. Noting that the common minimum programme of the UPA Government promises the enactment of a 'comprehensive law on communal violence'.
14. Noting also that India has ratified the Convention on the Prevention and Punishment of the Crime of Genocide, 1948.
15. Have decided to enact this statute for the above purposes and also to ensure that the authorities are held accountable when they fail in the exercise of their duty.

PREAMBLE

An Act to enhance accountability of public authorities for the prevention of, and the speedy investigation, prosecution and punishment of those engaging in communal crimes; and to ensure justice and security to victims and survivors and to strengthen the rights of victims and survivors to complete and comprehensive reparations.

CHAPTER – I

PRELIMINARIES

- 1 (i) The Preamble shall be read as an aid to the interpretation of this Act.
- (ii) This Act shall be called the "Communal Crimes Bill, 2008".
- (iii) It shall come into force on notification in the official Gazette.
- (iv) In case of inconsistencies between existing laws and the present Act, provisions of the present Act shall have an overriding effect.

- (v) Words and expressions used herein and not defined but are defined in other laws including Indian Penal Code and Criminal Procedure Code have the meanings respectively assigned to them in those laws.
- (vi) It shall extend to the whole of the territory of the Republic of India.
- (vii) Statute of limitations shall not be applicable for crimes under this Act.

CHAPTER – II

DEFINITION

- 2. i ‘Group’ means any collective of persons having a common religion, race, ethnicity, culture, language, region, caste, class, sexuality or gender identity and includes every person of that group.
- ii. ‘Reparations’ mean and includes restitution, compensation and rehabilitation.
- iii. ‘Public servant’ means and includes the definition under S. 21 of Indian Penal Code.
- iv. ‘Coercive means’ includes intimidation, threat, use of force, fear of violence, duress, detention, psychological oppression and abuse of power on a person or another to commit crimes under this Act.

CHAPTER – III

COMMUNAL CRIMES

- 3. Communal Crime means:
 - (a) any targeted, widespread or systematic communal violence committed on account of the victim’s religion, race, ethnicity, culture, language, region, caste, class, sexuality or gender and the same can be inferred directly or from the nature or circumstances of the attack.
 - (b) any act of omission or commission which amounts to an offence under the Indian Penal Code or any other laws committed on account of the

victim's religion, race, ethnicity, culture, language, region, caste, class, sexuality or gender.

- (c) any public speech made or any article written, or any public communication or event, or audio or video recording, or any direct and public incitement, advocating the use of violence against a group or persons by reason of the identity of the group or persons.
- (d) asserting, insinuating, counseling, advising, propagating or publishing that any group or person be deprived of their rights in law by violent or other coercive means.
- (e) forcible evictions or enforced migration of a group or persons with the intention of erasing any trace of existence of that group or persons in any given area either immediately or over a period of time.
- (g) torture of members of a group or persons. Torture means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.
- (h) extermination including the intentional infliction of conditions of life inter alia the deprivation of access to food and medicines, calculated to bring about the destruction of part of a population.
- (i) rape including all forms of penetration however slight, including penile/vaginal, penile/oral, vaginal/oral, penile/anal, finger/vagina, finger/anal, object/vaginal committed by coercive means.
- (k) sexual slavery meaning exercise of all or any powers of rights of ownership over a woman for any duration of time through means such as confinement, abduction, coercion or other forms of deprivation of liberty including but not limited to, situations where the accused or another person receives pecuniary or other advantage in exchange for or in connection with sexual acts.
- (l) forced pregnancy meaning sexually assaulting women with the intention of impregnating.
- (m) enforced sterilization meaning acts that deprive and impair a woman's reproductive capacity temporarily or permanently through acts such as physical attack on a pregnant woman, withholding of proper medical care, obstructing medical care to women who are pregnant and or due for delivery, withholding provision of safe dwelling places to pregnant women who are displaced by violence, medical experimentation or other acts producing similar effect.

- (n) other sexual violence including sexual acts that causes women physical or mental harm and anguish such as sexual assault, mutilation of sexual organs, breasts or anus and non-invasive forms such as use of abusive sexual language, exposing sexual organs and gesticulation, forced stripping, forced to engage in sexual acts other acts of comparable gravity. Sexual assault includes invasive sexual acts not amounting to rape.
- (o) enforced disappearances meaning the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or a political organization; or by persons or groups of persons, acting with the authorization, support or acquiescence of the State or a political organization, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law for a prolonged period of time.

Explanation: For the purpose of this definition, authorization, support and acquiescence include both direct and implicit acts.

- (p) persecution meaning intentional and severe deprivation of fundamental rights contrary to law by reason of identity of the group including discrimination, restrictions on use and spread of language, religion and culture, socio-economic boycott and treatment as social outcasts.
- (q) other communal crimes of comparable gravity such as engaging in any financial dealing including the soliciting or collecting of cash or contribution in kind, the giving of funds or contribution in kind, knowing that the same is to be used or is likely to be used in the abetting, instigating or commission of a communal crime; distribution of symbols of religion for use of weapons.

CHAPTER IV

AGGRAVATED COMMUNAL CRIMES

4. The communal crimes listed in Chapter III are to be considered as “Aggravated Communal Crimes” when the perpetrators are:
 - (i) public servants or by any person under their command in state structures/ office or exercises authority vested in him by the State
 - (ii) members of organizations or by any person under their orders in non-state structures.
 - (iii) staff member of a hospital or persons under their command.
 - (iv) staff member (or any person under their command) of an establishment where the victim is taking shelter.

CHAPTER V

COMMUNAL CRIMES BY POLICE PERSON, PARAMILITARY FORCES, MEMBERS OF THE ARMED FORCES, ALL CIVIL AUTHORITIES AND ALL PERSONS HOLDING CONSTITUTIONAL OR STATUTORY POSTS AND ALL ELECTED REPRESENTATIVES OF THE PEOPLE

5. In addition to the communal crimes set out in Chapter III, it shall be an offence for police person, paramilitary forces, members of the armed forces, all civil authorities and all persons holding constitutional or statutory posts and all elected representatives of the people to:
- (i) engage in, attempt, abet, incite or enter into a conspiracy to commit a communal crime;
 - (ii) fail without due cause to take effective steps to prevent a communal crime, to refuse to register an FIRs in accordance with law, or to refuse to investigate and prosecute a communal crime in accordance with law;
 - (iii) refuse to protect or provide security to a victim of a communal crime;
 - (iv) refuse to prevent damage to property;
 - (v) refuse to provide adequate deployment of forces in an area subjected to or likely to be subjected to communal crimes.
 - (vi) making false charges, preparing false or misleading documents to intimidate victims and witnesses; or to absolve or mitigate responsibility of those committing communal crimes.
 - (vii) interferes with work of public authorities in respect of a communal crime with the intention of subverting the rule of law.

Explanation 1: With regard to acts stated in S. 5 (i) to (viii) above, it shall be open to the accused person to show a valid reason for the non-observance of the duty.

Explanation 2: For the purposes of acts stated in S. 5 (i) to (viii) above, the evidentiary principle of res ipsa loquitur (i.e. facts speak for themselves) shall apply.

**CHAPTER VI
PROPER CONDUCT OF THE PROSECUTION**

6. (i) The State Government for the prosecution of communal crimes shall prepare for each District a panel of such number of advocates who have been in practice for not less than seven years and who have an impeccable reputation and integrity and untainted from communal prejudices, to provide free legal aid and representation to the victims of a communal crime.
- (ii) The State Government shall constitute a panel of such number of Public Prosecutors who have an impeccable reputation and integrity and untainted from communal prejudices, for conducting cases in the Courts, shall also be specified.
- (iii) The Court of Sessions shall review at least twice in a calendar year, in the month of January and July, the performance of Public Prosecutors and the advocates appointed to represent the victims and submit a report to the State Government. This report shall be made public.
- (iv) If the State Government is satisfied that a Public Prosecutor so appointed or the advocate appointed to represent a victim, has not conducted the case to the best of his ability and with due care and caution or he is in anyway connected with persons or groups engaging in communal crimes, his name shall be removed from the panel.
- (v) The Court of Sessions shall review the position of cases registered under the Act and submit a monthly report to the State Government. This report shall specify the actions taken/proposed to be taken in respect of investigation and prosecution of each case. This report shall be made public.
- (vi) The Court of Session shall have duties to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses at all times, in accordance with guidelines stated by the Supreme Court, report of Law Commission of India and other existing standards of law.
- (vii) In performing its duties during the trial including at the time of examining the evidence, the Court shall have regard to all relevant factors including due processes of a fair trial, nature of the crime and age, gender and health of victims and witnesses as well as exceptional circumstances related to the violence that may have resulted in a non-availability of certain types of evidence.
- (viii) While assessing the evidence before it, the Court shall refrain from making any adverse inference on the based of a delay in lodging the First Information Report if the delay was caused due to displacement, existing situation of violence, fear for the complainant's or his / her family members' lives or a lack of confidence in / fear of the local police and the same is pleaded by the complainant in court.

CHAPTER VII
INITIATION OF PROSECUTION

- 7(i). Information to Police Officer in-charge of a Police Station.-
- (a) Every information relating to the commission of an offence under the Act, if given orally or sent electronically by email to an officer in-charge of a police station shall be reduced to writing by her or him or under her or his direction. and be read over to the informant, if present, and every such information, whether given in writing or reduced to writing or sent electronically as aforesaid, shall be signed by the persons giving it, and the substance thereof shall be entered in a book to be maintained by that police station.
 - (b) A copy of the information as so recorded under sub-rule (1) above shall be given forthwith, free of cost, to the informant.
 - (c) In situations where victims / survivors are placed in relief camps, police personnel shall be deputed to record First Information Report at the relief camps.
 - (d) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred in sub-rule (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who after investigation either by himself, herself or by a police officer not below the rank of Deputy Superintendent of Police, shall make an order in writing to the officer in-charge of the concerned police station to enter the substance of that information to be entered in the book to be maintained by the police station.
 - (e) Every communal crime reported in the print or electronic media or otherwise shall be registered *suo-moto* by the police as a crime and investigated.
 - (f) Every adverse finding against public authorities or private individuals by Judicial Commissions of Enquiry shall *suo-moto* be registered as an FIR compulsorily in relation to each of these findings, and investigation and prosecution necessarily follow as per the provisions of this Act. The public authorities against who the findings have been made shall not be involved in or be responsible for such investigation and prosecution.

Note: This will require a corresponding amendment in the Commissions of Enquiry Act

- 7 (ii) Spot inspection by officers.-

- (a) Whenever the District Magistrate or the Sub-Divisional Magistrate or any other executive Magistrate or any police officer not below the rank of Deputy Superintendent of Police receives an information from any person or upon her or his own knowledge that a communal crime has been committed on the members of a victim group within her or his jurisdiction he or she shall immediately himself or herself visit the place of occurrence to assess the extent of communal crime, loss of life, loss and damage to the property and submit a report forthwith to the State Government.
- (b) The District Magistrate or the sub-Divisional Magistrate or any other executive Magistrate and the Superintendent of Police, Deputy Superintendent of Police after inspecting the place or area on the spot,-
 - (i) draw a list of victims, their family members and dependents entitled for relief;
 - (ii) prepare a detailed report of the extent of the communal crime, loss and damage to the property of the victims;
 - (iii) order for intensive police patrolling in the area or recommend that the State Government deploy other forces in case victims have no confidence in the police;
 - (iv) take effective and necessary steps to provide protection to the witnesses and other sympathizers of the victims;
 - (v) provide relief, including food, shelter, warm clothing, medicines and other basic needs, to the victims, within 48 hours of the commission of communal crime.

7 (iii) Investigating Officer.-

- (a) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government, Director-General of Police, Superintendent of Police after taking into account her or his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time. The investigation officer so appointed shall be untainted by communal prejudices. Provided that no trial shall be declared invalid on account of the fact that the investigation was not done by an officer specified in clause (a) above
- (b) As directed by the Supreme Court in Prakash Singh Vs UOI (Sept. 2007) there shall be a clear separation of police engaged in investigation and law and order work. State statutes created pursuant to this directive to specify that communal crimes shall be investigated only by those specifically assigned the task of investigation.

- (c) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director-General of Police of the State Government.
 - (d) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution the officer-in-charge of Prosecution and the Director-General of Police shall review by the end of every quarter the position/ status of all investigations done by the investigating officer.
 - (e) The Investigating Officer shall report to the authorities identified in (c) above every month about the progress of the investigation.
 - (f) During the investigation the victims shall have the right to present evidence and other information in their possession.
 - (g) Witnesses, victims and complainant shall be given copies of their statements so that they can verify that their statements have been correctly recorded and that all relevant material collected.
 - (h) It shall be mandatory for the senior officer to have at least 3 meetings with the victims before the investigation is completed. Victims must have a right to make a representation to senior police officers during investigation if the Investigating Officer fails to conduct a proper investigation.
 - (i) It shall be the duty of the Investigating Officer to inform the victims of the status of arrest / bail of the accused, and to inform the complainant when the chargesheet is filed in court.
8. Complainant has a right to make a representation to the Court of Session if the investigation is not conducted in an impartial manner.
 9. The Court of Session trying an offence under this Act may, if it is satisfied that the investigation of the case has not been done in a proper, unbiased and professional manner, may direct that investigation will be entrusted to any other investigating agency, including the Central Bureau of Investigation.
 10. Travelling allowances, daily allowance, maintenance expenses and transport facilities to the victim of communal crimes, his or her dependent and witnesses–
 - (a) Every victim of a communal crime or his/her dependent and witnesses shall be paid to and for rail fare by second class in express / mail/ passenger train or actual bus or taxi fare from his / her place of residence or actual bus or taxi fare from his /her place of residence or place of stay to the place of investigation or hearing of trial of an offence under the Act.
 - (b) The Court of Session shall make necessary arrangements for providing transport facilities or reimbursement of full payment thereof to the victims

of a communal crime and witnesses for visiting the investigating officer, Superintendent of Police/Deputy Superintendent of Police, District Magistrate or any other Executive Magistrate.

- (c) Every woman witness, the victim of communal crime or her dependent being a woman or a minor, a person more than sixty years of age and a person having 40 per cent or more disability shall be entitled to be accompanied by an attendant of her/ his choice. The attendant shall also be paid travelling and maintenance expenses as applicable to the witness or the victim of a communal crime when called upon during hearing, investigation and trial of an offence under the Act.
- (d) The witness, the victim of communal crime or his/her dependent and the attendant shall be paid daily maintenance expenses for the days he/she is away from the place of his/her residence or stay during investigation, hearing and trial of an offence, at such rates but not less than the minimum wages, as may be fixed by the State Government for the agricultural laborers.
- (e) In addition to daily maintenance expenses the witness' the victim of communal crime (or his/her dependent) and the attendant shall also be paid diet expenses at such rates as may be fixed by the State Government from time to time.
- (f) The payment of travelling allowance, daily allowance, maintenance expenses and reimbursement of transport facilities shall be made immediately or not later than three days by the Court of Session to the victims, their dependents/attendant and witnesses for the days they visit the investigating officer or in-charge police station or hospital authorities or Superintendent of Police, Deputy Superintendent of Police or District Magistrate or any other officer concerned or the Special Court.
- (g) When an offence has been committed under Sec. 3 of the Act, the Court of Session shall reimburse the payment of medicines, special medical consultation, blood transfusion, replacement of essential clothing, meals and fruits provided to the victim(s) of communal crime.

CHAPTER VIII

SUPERIOR AND SUBORDINATE RESPONSIBILITY

- 11 (i) Nothing in Sections 45, 195, 196 and 197 of the Code of Criminal Procedure or similar provisions of other laws enacted by Central or State governments shall apply in relation to any case involving the arrest and prosecution of any person on a charge of having committed an offence under this Act.
- (ii) The provisions of this Act shall prevail over any immunity or privilege that may attach to the official capacity of a person under national or international law.

- (iii) A public servant in state structures or members of organizations in non-state structures following a line of command from their superiors shall be criminally responsible for crimes committed by forces or officers under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control the crimes get committed with impunity; where
- (a) The public servant or a member of an organization either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
 - (b) The public servant or a member of an organization failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
 - (c) Where mandatory duties specified under this Act are not fulfilled.
- (iv) With respect to superior and subordinate relationships in state and non-state structures not described in paragraph (iii), a superior shall be criminally responsible for crimes under this Act, committed by subordinates under his or her effective authority and control as a result of his or her failure to exercise control properly over such subordinates, where:
- (a) The superior either knew, should have known or consciously disregarded information which clearly indicated that the subordinates were committing or about to commit such crimes;
 - (b) It was within the effective responsibility and control of the superior to prevent such crimes; and
 - (c) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (v) Superior orders and prescription of law:
- The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:
- (a) The person was under a legal obligation to obey orders of the Government or the superior in question;
 - (b) The order was not manifestly unlawful.

Explanation: For the purposes of this Act, orders to commit communal crimes are manifestly unlawful.

CHAPTER IX
MANDATORY DUTIES OF GOVERNMENT

12. (a) The Central Government and the State Government shall take such measures as may be necessary for the effective implementation of this Act.
- (b) In particular, and without prejudice to the generality of the foregoing provisions, such measures shall include-
- (i) the setting up of relief camps and the provision of immediate, substantial and effective relief for the victims of a communal crimes. Such victims shall be considered internally displaced persons and shall have all rights at par with existing standards including standards listed in the United Nations Guiding Principles on Internal Displacement. Such rights would include a payment of a subsistence allowance at the minimum wage to the victims in the relief camps as long as the camp is in existence, at state expense.
 - (ii) The Central government shall set up a policy for reparations to victims and survivors in accordance with existing standards of law and no government, Central or State shall have discretion to change it except to raise the relief provided therein.
 - (iii) the providing of immediate police intervention, and if police fails to control the violence within 12 hours of its commencement or if the victims lacks confidence in the police force, army protection to the victim group of a communal crime and for their properties.
 - (iv) the provision for adequate facilities, including free and expert legal aid, to the persons subjected to communal crimes, to enable them to avail themselves of justice;
 - (v) the provision for the economic and social rehabilitation of the victims (including the rebuilding of property destroyed, at state expense) at least to levels which they enjoyed before the communal crime was committed;
 - (vi) the identification of the areas where the members of a group are likely to be subjected to communal crimes and adoption of such measures so as to ensure safety for such members.
 - (vii) the reasonable rehabilitation at alternative sites chosen in consultation with the victim when return to the original site is considered unsafe by the victims, and entirely at state expense.
 - (viii) the reconstruction, entirely at state expense, of all places of worship, educational or other institutions of the victim or his

community that had been destroyed during and as part of commission of communal crimes.

- (ix) the provision for travelling and maintenance expenses to witnesses, including the victims of communal crimes, during investigation and trial of offences under this Act;
 - (x) the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;
 - (xi) take all steps and measures to prevent intimidation of victims and witnesses and provide protection to victims and witnesses before, during and after investigation and prosecution, in accordance with guidelines stated by the Supreme Court, report of Law Commission of India and other existing standards of law.
 - (xii) the setting up of committees at such appropriate levels as the State Government may think fit to assist that Government in formulation or implementation of such measures;
 - (xiii) provisions for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provisions of this Act;
 - (xiv) the identification of the areas where the members of a group are likely to be subjected to communal crimes and adoption of such measures so as to ensure safety for such members.
- (c) The Central Government shall take such steps as maybe necessary to co-ordinate the measures taken by the State Governments.
 - (d) The Central Government shall, every year, place on the table of each House of Parliament a report on the measures taken by itself and by the State Governments in pursuance of the provisions of this section.
 - (e)(i) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
 - (ii) Every rule made 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; show however, that any such modification annulment shall be without prejudice to the validity of anything previously done under that rule.

- (f) It shall be an offence on the part of any officer, agent and authority of the state including the police, the paramilitary forces, the armed forces, the fire brigade, the health services, and the entire administration to fail, without cause, to take immediate and active steps to prevent the commission of a communal crime.
- (g) failure to perform a mandatory duty under this Chapter shall be an offence under this Act and punishable as such.

CHAPTER X

COMMUNAL CRIME PREVENTION AUTHORITY

- 13. (i) The Central Government shall constitute a “Communal Crime Prevention Authority” for each State having one member appointed by the Central Government, one member appointed by the State Government and a Chairperson appointed by the Central Government in consultation with the Chief Justice of the respective High Court, member of the National Human Rights Commission and representative of non-governmental organizations. The Chairperson shall be a person who has been a Judge of either the High Court or the Supreme Court.
- (ii) The Communal Crime Prevention Authority shall have the power and authority to direct the State Government or any official entrusted with any duty under any provision of this Act to enforce and implement the provisions of this Act and it shall be duty of the State Government or any such official to carry out the directions promptly and effectively;
- (iii) The Communal Crime Prevention Authority shall have the further power to entertain any complaint of any victim of any communal crime or by any person acting on behalf of any victim of any communal crime and make appropriate direction or order against any official or any other person who has been entrusted with any duty or function under this Act. The Authority shall also have the power to grant any temporary injunction or interim orders during the pendency of any such complaint.
- (iv) All directions and orders of the Authority including interim orders shall be final save and except by a challenge under Art 226 or 277 of the

Constitution of India and no civil court or criminal court shall have the jurisdiction to question any such direction or order.

- (v) Any persons or official who has been directed to do or not do any particular act by the Authority shall promptly and effectively carry out the directions and any refusal or omission to carry out the directions or order passed under subsections 15cc(i) and (ii) without proper cause shall constitute a communal crime.

CHAPTER XI

CREATION OF SPECIAL APPARATUS AT THE COURT OF SESSIONS

14. At the entry into force of this Act, all State governments shall create a special apparatus at the Courts of Sessions comprising of official of the Office of the Public Prosecutor, official of the investigating agencies, experts in trauma and psycho-social counseling and members of non-governmental organizations. The Special Apparatus shall:
 - (i) provide information on the status of investigations.
 - (ii) provide a list of legal aid lawyers to victims and witnesses.
 - (iii) disseminate information of the current Act including responsibilities of public servants and rights of victims and survivors.
 - (iv) direct victims and survivors to appropriate agencies for relief and rehabilitation.
 - (v) facilitate protection of victims and witnesses, in accordance with guidelines stated by the Supreme Court, report of Law Commission of India and other existing standards of law.
 - (vi) direct victims and survivors to medical and psycho-social assistance.
 - (vii) facilitate interpretation and translation of courts proceedings for victims, survivors and witnesses where necessary.

CHAPTER XII

ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS ETC.

15. There shall be a right of Appeal in the matter of communal crimes Criminal trials, to the High Court, as provided under the Criminal Procedure Code.
16. The National Human Rights Commission will oversee the implementation of reparation measures provided by the Courts to ensure they are in conformity with the order of reparations under various laws including the Communal Crimes Act.
17. The National Minorities Commission, National Women's Commission, National Commission for Schedule Castes and Schedules Tribes would ensure that the rights of minorities, women, schedule castes, schedule tribes and children are protected in the context of communal crimes.

CHAPTER XIII
PUNISHMENT FOR COMMITTING COMMUNAL CRIME

18. (i) All communal crimes are cognizable and arenon bailable. Bailable would mean that they will get bailed at the time of arrest from the PS itself. We don't have to write which ct will grant bail it is understood that bail can only be granted by a court of competent jurisdiction and not an inferior court.
- (ii) Any person or persons convicted of committing aggravated communal crimes shall be punished with rigorous imprisonment for a minimum term of seven years to life for Life and shall also be punished with fine which may range upto ten times the value of property loss caused during the course commission of the crimes.
- (iii) Any person or persons convicted of committing communal crimes shall be punished with rigorous imprisonment ranging upto twenty years and shall also be punished with fine which may range upto ten times the value of property loss caused during the course of the carnage.
- (iv) Any person or persons convicted of crimes under chapters V and IX S. 11 (f) and (g) shall be punished with rigorous imprisonment ranging upto twenty years and shall also be punished with fine which may range upto ten times the value of property loss caused during the course of the carnage.
- (v) Any person or persons convicted of sexual violence crimes as specified in S. 3 (i) – (n) shall be punished with rigorous imprisonment of minimum period of 7 years ranging upto life shall also be punished with fine which may range upto ten times the value of property loss caused during the course of the carnage.
- (vi) Whoever knowingly holds, uses or otherwise appropriates property derived or obtained from the commission of a communal crime or conspiracy or abetment to these crimes shall be punished with imprisonment for a term not less than 10 years and shall also be liable for fine.
- (vii) In addition, the proceeds, properties and assets derived directly or indirectly from the commission of the communal crime or conspiracy or abetment to these crimes shall be forfeited.

CHAPTER – XIV

PROCEDURAL AND EVIDENTIARY RULES FOR SEXUAL VIOLENCE

- 19.
- (i) When a person is charged with the crimes in chapter III section 3 (i) to 3 (n), it shall be presumed that the victim did not consent to the acts specified therein.
 - (ii) In matters pertaining to crimes in Chapter III section 3 (i) to 3 (n), no corroboration of the victim's testimony shall be required. Moreover, absence of eye witnesses, delayed lodging of FIR, absence of or delayed medical examination to corroborate victims' testimony shall not used to disbelieve the victim.
 - (iii) The accused will not be allowed to lead any evidence concerning the past or subsequent sexual history of the victim nor ask any humiliating or scandalous questions during cross-examination.
 - (iv) In matters concerning crimes in Chapter III Sections 3 (i) to 3 (n), the victim's counsel can make a submission to the court in situations where impartiality of the trial or interests of the victims are compromised.
 - (v) Unless the victim provides her informed consent, all trials concerning crimes in Chapter III Sections 3 (i) to 3 (n) will be held in camera.
 - (vi) When crimes in Chapter III Sections 3 (i) to 3 (n) is found to be an aggravated communal crime, the presumption of innocence is reversed and the onus of proving innocence lies with the accused.
 - (vii) The Courts shall ensure that trial proceedings of crimes in Chapter III Sections 3 (i) to 3 (n) is conducted with due sensitivity keeping in mind the trauma and anguish caused to victims of such crimes.

CHAPTER – XV

REPARATIONS FOR THE VICTIMS OF COMMUNAL CRIMES

20. Reparations as defined in this Act are inviolable and legally enforceable rights of the victim and survivors.
21. The Central Government shall set up an independent Commission to create a national framework of entitlements for victims of communal crimes across the country, based on the principles that
- (i) reparations should be provided in conformity with international standards for internally displaced persons, including UN Guiding Principles on Internal Displacement;
 - (ii) The victims of communal crimes shall be fully compensated by the State Government at least to the extent to which they have suffered loss of property without regard to the legal title to the properties destroyed, loss of life, injuries, trauma and losses relating to the communal crime and

(iii) Restitution should ensure that victims and survivors are restored to levels of housing, habitat and livelihood, and economic standards, that are at par or better than those that they enjoyed before the acts of communal violence.

22. This compensation shall be paid by the state within 8 weeks of the commission of the communal crime on an assessment made by the State Government, with the help of non-governmental organizations and representatives of the victims themselves.

CHAPTER XVI
DISQUALIFICATION FROM PUBLIC OFFICE

23. Person convicted of an offence under this Act will be ineligible for any public office under the Central Government, State Government or local Government or in any public undertakings or institution. A person so convicted will also be debarred from contesting elections in any representative body, including cooperatives, for a period of 10 years as reckoned from the date of conviction.

Appropriate amendments have to be made in Representation of Peoples Act and any other relevant statute or Rules.
