

Bill No. CXV of 2005

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

A

BILL

to empower the State Governments and the Central Government to take measures to provide for the prevention and control of communal violence which threatens the secular fabric, unity, integrity and internal security of the Nation and rehabilitation of victims of such violence and for matters connected therewith or incidental thereto.

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

CHAPTER I

PRELIMINARY

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

Short title, extent and commencement.

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

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

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

Definitions.

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

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

2 of 1974.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The words and expressions used and not defined in this Act but defined in the Explosives Act, 1884 or the Arms Act, 1959 shall have the meanings respectively assigned to them in those Acts.

CHAPTER II

DECLARATION OF CERTAIN AREAS AS COMMUNALLY DISTURBED AREAS

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

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

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

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

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

it may, by notification,—

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

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

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

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

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

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

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

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

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

CHAPTER III

PREVENTION OF ACTS LEADING TO COMMUNAL VIOLENCE

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

Power of District Magistrate to take preventive measures, etc.

group that it is directed to intimidate, threaten or otherwise promote ill-will against that community or caste or group.

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

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

Power of competent authority to take preventive measures.

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

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

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

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

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

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

Power to order deposit of arms, ammunition, etc.

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

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

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

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

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

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

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

the officer in charge of the police station may himself or by another officer, not below the rank of a Sub-Inspector of Police authorised in this behalf by the officer in charge, search the

house or premises occupied by such person or in which the officer in charge has reason to believe that such arms or ammunition, or explosives or corrosive substance, are, or is to be, found, and may have such arms, ammunition, explosives or corrosive substance, if any, seized, and detain the same in safe custody for such period as he thinks necessary although the person may be entitled by virtue of any law for the time being in force to have the same in his possession.

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

Power of competent authority to prohibit certain acts.

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

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

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

(d) the exhibition of persons or corpses of figures or effigies thereof;

(e) the public utterances of cries, singing of songs, playing of music;

(f) delivery of harangues, the use of gestures or threats, and the preparation, exhibition or dissemination of pictures, symbols, placards or any other object or thing,

which may in the opinion of such authority lead to a breach of public peace.

(2) If any person goes armed with any such article or carries any corrosive substance or explosive or missile in contravention of such prohibition, he shall be liable to be disarmed or the corrosive substance or explosive or missile shall be liable to be seized from him by any police officer, and the article, corrosive substance, explosive or missile so seized shall be forfeited to the Government.

(3) The competent authority may also, by order in writing, prohibit in a communally disturbed area any assembly or procession whenever and for so long as he may deem such prohibition to be necessary for the preservation of the public peace:

Provided that no such prohibition ordered by an authority subordinate to the State Government shall remain in force for more than fifteen days without the sanction of the State Government.

(4) The competent authority may, by public notice, in a communally disturbed area temporarily reserve, for any public purpose any street or public place and prohibit persons from entering the area so reserved, except under such conditions as may be specified by such authority.

(5) Whoever disobeys an order lawfully made under this section, or abets the disobedience thereof, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

10. (1) Without prejudice to the provisions of any other law for the time being in force, a competent authority, in regard to a communally disturbed area, may make orders for—

Power to make orders regarding conduct of persons in communally disturbed area.

(a) controlling or regulating the admission of persons to, and the conduct of persons in, and in the vicinity of, such area;

(b) requiring the presence of any person or class of persons in such area, to be intimated to any prescribed authority, specified in the said order; and

(c) prohibiting any person or class of persons from being in possession or control of any article specified in the said order.

(2) Whoever contravenes any order made under this section, without just and sufficient cause, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Punishment for loitering near prohibited places.

11. (1) No person loitering in, or in the vicinity of, any communally disturbed area shall continue to loiter in, or in that vicinity after being ordered to leave it, by a police officer, or any other person authorised in this behalf by the competent authority.

(2) Whoever contravenes the provisions of this section without just and sufficient cause shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Punishment for being in possession of arms, etc., without licences.

12. Whoever, being present within a communally disturbed area, has in his possession any arms, ammunition, explosives or corrosive substance without any license or lawful authority, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Punishment for assisting offenders.

13. Any person who knowing or having reasonable cause to believe that any other person has committed any act or omitted to do an act, the commission or omission of which, would be an offence under the provisions of this Act, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said offence, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Punishment for giving financial aid for the commission of certain offences.

14. Whoever knowingly expends or supplies any money in furtherance or in support of an act which is an offence under this Act, shall be punished with imprisonment for a term, which may extend to three years, and shall also be liable to fine.

Punishment for threatening witnesses, etc.

15. Whoever, threatens any person,—

(i) who is, or is likely to be, a witness in any prosecution for an offence under this Act, or in any trial before a special court constituted under this Act;

(ii) who has in his possession or knowledge any material document or other information which if produced before an investigating officer, or a court, could be used as evidence in the investigation for an offence under this Act, or in a trial before a Special Court constituted under this Act;

(iii) with any injury to his person or property or to the person or property of any one in whom that person is interested, with intent to cause harm to that person, or to compel that person to refrain or withdraw from being a witness in such investigation or trial, or to prevent that person from producing such material, document or information before the investigating officer or court as mentioned aforesaid,

shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Driver, owner or any person in charge of goods transport vehicle not to carry more persons than authorised.

16. Whoever being the owner, driver or otherwise in charge of any goods transport vehicle carries or causes to be carried in the vehicle in a communally disturbed area, any number of persons in excess of the numbers permitted under the Motor Vehicles Act, 1988 or the rules made thereunder, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

17. (1) Whoever being a public servant or any other person authorised to act by a competent authority under any provisions of this Act or orders made thereunder,—

Punishment for public servants acting in *mala fide* manner.

(a) exercises the lawful authority vested in him under this Act in a *mala fide* manner, which causes or is likely to cause harm or injury to any person or property; or

(b) wilfully omits to exercise lawful authority vested in him under this Act and thereby fails to prevent the commission of any communal violence, breach of public order or disruption in the maintenance of services and supplies essential to the community,

shall be punished with imprisonment which may extend to one year, or with fine, or with both.

Explanation.—For the purposes of this section, any police officer who, wilfully refuses—

(i) to protect or provide protection to any victim of communal violence;

(ii) to record any information under sub-section (1) of section 154 of the Code relating to the commission of any scheduled offence or any other offence under this Act;

(iii) to investigate or prosecute any scheduled offence or any other offence under this Act,

shall be deemed to be guilty of wilfully omitting to exercise the lawful authority vested in him.

(2) Notwithstanding anything contained in the Code, no court shall take cognizance of an offence under this section except with the previous sanction of the State Government:

Provided that every request for the grant of sanction under this section shall be disposed of by the State Government within thirty days from the date of the request.

18. Notwithstanding anything contained in any other law for the time being in force, whoever contravenes an order under section 144 of the Code, if that order is in respect of any person or thing or any matter relating to a communally disturbed area under this Act, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Punishment for violation of orders under section 144 of the Code in communally disturbed areas.

CHAPTER IV

ENHANCED PUNISHMENT FOR COMMUNAL VIOLENCE

19. (1) Whoever commits any act of omission or commission which constitutes a scheduled offence on such scale or in such manner which tends to create internal disturbance within any part of the State and threatens the secular fabric, unity, integrity or internal security of the nation is said to commit communal violence.

Punishment for committing communal violence.

(2) Notwithstanding anything contained in the Indian Penal Code, or in any other Act specified in the Schedule, whoever commits any act of omission or commission which constitutes communal violence shall, except in the case of an offence punishable with death or imprisonment for life, be punished with imprisonment for a term which may extend to twice the longest term of imprisonment and twice the highest fine provided for that offence in the Indian Penal Code or in any other Act specified in the Schedule, as the case may be:

Provided that whoever being a public servant or any other person authorised to act by a competent authority under any provisions of this Act or orders made thereunder, commits communal violence shall without prejudice to the foregoing provisions be punished with imprisonment which shall not be less than five years.

(3) Any person who is guilty of an offence under sub-section (1) shall be disqualified to hold any post or office under the Government for a period of six years from the date of such conviction.

CHAPTER V

INVESTIGATION

Scheduled offences to be cognizable.

20. (1) Notwithstanding anything contained in the Code or any other law, every scheduled offence shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and “cognizable case” as defined in that clause shall be construed accordingly.

(2) Notwithstanding anything contained in the Code, no police officer, below the rank of Sub-Inspector of Police or a police officer of equivalent rank shall investigate any offence punishable under this Act.

(3) Section 167 of the Code shall apply in relation to a case involving a scheduled offence subject to the modification that the reference in sub-section (1) thereof to “Judicial Magistrate” shall be construed as a reference to “Judicial Magistrate or Executive Magistrate”.

(4) Sections 366 to 377 (both inclusive) and section 392 of the Code shall apply in relation to a case involving a scheduled offence, subject to the modification that the references to “Court of Session”, wherever occurring therein, shall be construed as references to “Special Court”.

Declaration of places to be police stations.

21. (1) Whenever an area has been declared under sub-section (1) of section 3 as a communally disturbed area, the State Government shall, without prejudice to the provisions of clause (s) section 2 of the Code, declare any post or place within such area to be a police station and the provisions of Chapter XII of the Code shall, so far as may be, apply in relation to information to the police and their powers to investigate.

(2) The State Government shall provide as many women police officers as possible to record any information relating to the commission of a scheduled offence committed against women or children in the communally disturbed area and to investigate any such offence.

Constitution of review committee.

22. (1) Notwithstanding anything contained in the Code, every case, registered in connection with a scheduled offence committed in a communally disturbed area, and where the Investigating Officer does not file a charge sheet within a period of three months from the date of registration of the First Information Report shall be reviewed by a committee headed by an officer of the level of an Inspector-General of Police to be constituted by the State Government and such committee may pass orders for a fresh investigation by another officer not below the rank of Deputy Superintendent of Police wherever it comes to the conclusion that, having regard to the nature of investigation already carried out, such investigation would be necessary.

(2) The committee constituted under sub-section (1) may also review cases of such offences where the trial ends in acquittal and issue orders for filing appeal, wherever required.

(3) The committee shall submit a report of its findings and action taken in each case or cases to the Director General of Police.

Constitution of Special Investigation Teams.

23. Notwithstanding anything contained in any other law for the time being in force, where the State Government comes to the conclusion that the investigation of offences committed in any communally disturbed area were not carried out properly in a fair and impartial manner it may constitute one or more Special Investigation Teams as it thinks necessary for the purposes of investigation of such offences.

CHAPTER VI

SPECIAL COURTS

24. (1) The State Government shall establish one or more Special Courts for trial of scheduled offences committed during the period of disturbance by issuing a notification for the purpose. Establishment of Special Courts.

(2) Notwithstanding anything contained in sub-section (1), if, having regard to the exigencies of the situation prevailing in a State, the Government is of the opinion that it is expedient to establish, Additional Special Courts outside the State, for the trial of such scheduled offences committed in a communally disturbed area, the trial whereof within the State—

(a) is not likely to be fair or impartial or completed with utmost dispatch; or

(b) is not likely to be feasible without occasioning a breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and the Judge or any of them; or

(c) is not otherwise in the interests of justice,

it may request the Central Government to establish, in relation to such communally disturbed area, an Additional Special Court outside the State and thereupon the Central Government may, after taking into account the information furnished by the State Government and making such inquiry, if any, as it may deem fit, establish, by notification, such Additional Special Court at such place outside the State as may be specified in the notification.

25. (1) A Special Court shall be presided over by a Judge to be appointed by the State Government with the concurrence of the Chief Justice of the High Court. Composition and appointment of Judges of Special Courts.

(2) The State Government may also appoint, with the concurrence of the Chief Justice of the High Court, Additional Judges to exercise jurisdiction in a Special Court.

(3) A person shall not be qualified for appointment as a Judge or an Additional Judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge in any State.

(4) For the removal of doubts, it is hereby provided that the attainment by a person, appointed as a Judge or an Additional Judge of a Special Court, of age of superannuation under the rules applicable to him in the service to which he belongs, shall not affect his continuance as such Judge or Additional Judge.

(5) Where any Additional Judge is, or Additional Judges are, appointed in a Special Court, the Judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among himself and the Additional Judge or Additional Judges and also for the disposal of urgent business in the event of his absence or the absence of any Additional Judge.

26. A Special Court may, if it considers it expedient or desirable so to do sit for any of its proceedings at any place, other than the ordinary place of its sitting in the State in which it is established: Place of sitting.

Provided that if the Public Prosecutor certifies to the Special Court that it is in his opinion necessary for the protection of the accused or any witness or otherwise expedient in the interest of justice that the whole or any part of the trial should be held at some place other than the ordinary place of its sitting, the Special Court may, after hearing the accused, make an order to that effect unless, for reasons to be recorded in writing, the Special Court thinks fit to make any other order.

27. (1) Notwithstanding anything contained in the Code or in any other law, a scheduled offence committed in a judicial zone in a State at any time during the period during which such judicial zone is, or is part of, a judicial zone, shall be triable, whether during or after the expiry of such period only by the Special Court established for such judicial zone in the State: Jurisdiction of Special Courts.

Provided that where the period specified under sub-section (2) of section 3 as the period during which an area declared by notification under sub-section (1) of that section to be a communally disturbed area commences from a date earlier than the date on which such notification is issued, then—

(a) nothing in the foregoing provisions of this sub-section shall apply to a scheduled offence committed in such area in which the whole of the evidence for the prosecution has been taken before the date of issue of such notification; and

(b) all other cases involving scheduled offences committed in such area and pending before any court immediately before the date of issue of such notification shall stand transferred to the Special Court having jurisdiction under this section and the Special Court to which such proceedings stand transferred shall proceed with such cases from the stage at which they were pending at that time.

(2) Notwithstanding anything contained in sub-section (1), if in respect of a case involving a scheduled offence committed in any judicial zone in a State, the State Government, having regard to the provisions of this Act and the facts and circumstances of the case and all other relevant factors, is of the opinion that it is expedient that such offence should be tried by the Additional Special Court established in relation to such judicial zone outside the State, the State Government may make a declaration to that effect.

Explanation.—Where an Additional Special Court is established in relation to two or more judicial zones, such Additional Special Court shall be deemed, for the purposes of this sub-section, to have been established in relation to each of such judicial zones.

(3) A declaration made under sub-section (2) shall not be called in question in any court.

(4) Where any declaration is made in respect of any offence committed in a judicial zone in a State, any prosecution in respect of such offence shall be instituted only in the Additional Special Court established outside the State in relation to such judicial zone and if any prosecution in respect of such offence is pending immediately before such declaration in any other court, the same shall stand transferred to such Additional Special Court and such Additional Special Court shall proceed with such case from the stage at which it was pending at that time.

Powers of Special Courts with respect to other offences.

28. (1) When trying any scheduled offence, a Special Court may also try any offence other than the scheduled offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with the scheduled offence.

(2) If, in the course of any trial under this Act, it is found that the accused person has committed any offence, the Special Court may, whether such offence is or is not a scheduled offence, convict such person of such offence and pass any sentence authorised by law for the punishment thereof.

Public Prosecutors.

29. (1) For every Special Court, the State Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutors:

Provided that the Government may also appoint for any case or class of cases a Special Public Prosecutor.

(2) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section only if he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

30. (1) A Special Court may take cognizance of any scheduled offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts. Procedure and powers of Special Courts.

(2) Notwithstanding anything contained in the Code, the Special Court shall conduct its proceedings on a day-to-day basis excluding public holidays.

(3) Where a scheduled offence is punishable with imprisonment for a term not exceeding three years, or with fine, or with both, a Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(4) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(5) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Sessions so far as may be in accordance with such procedure specified in the Code for the trial before a Court of Session.

(6) Subject to the other provisions of this Act, every case before an Additional Special Court shall be dealt with as if such case had been transferred under section 406 of the Code to such Additional Special Court.

31. Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case be transferred from one Special Court to another Special Court. Power of Supreme Court to transfer cases.

32. (1) A Special Court may, on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of the witness secret. Protection of witnesses.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the measures which a Special Court may take under that sub-section may include—

(a) the holding of the proceedings at a protected place;

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any direction for securing that the identity and addresses of the witnesses are not disclosed.

(3) Any person who contravenes any direction issued under sub-section (2) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

Power to transfer cases to regular courts.

33. Where, after taking cognizance of any offence, a Special Court is of opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it has taken cognizance of the offence.

Removal of person likely to commit scheduled offence.

34. (1) Where a Special Court is satisfied, *suo motu* or upon a complaint or a police report that a person is likely to commit a scheduled offence in any communally disturbed area, it may, by order in writing, direct such person to remove himself beyond the limit of such area, by such route and within such time as may be specified in the order, and not to return to that area from which he was directed to remove himself for such period, not exceeding six months, as may be specified in the order.

(2) The Special Court shall, along with the order under sub-section (1), communicate to the person directed under that sub-section the grounds on which such order has been made.

(3) The Special Court may revoke or modify the order made under sub-section (1), for the reasons to be recorded in writing, on the representation made by the person against whom such order has been made or by any other person on his behalf within thirty days from the date of the order.

Procedure on failure of person to remove himself from area and enter thereon after removal.

35. (1) If a person to whom a direction has been issued under section 34 to remove himself from any area—

(a) fails to remove himself as directed; or

(b) having so removed himself enters such area within the period specified in the order, otherwise than with the permission in writing of the Special Court under sub-section (2), the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

(2) The Special Court may, by order in writing, permit any person in respect of whom an order under section 34 has been made, to return to the area from which he was directed to remove himself for such temporary period and subject to such conditions as may be specified in such order and may require him to execute a bond with or without surety for the due observation of the conditions imposed.

(3) The Special Court may at any time revoke any such permission.

(4) Any person who, with such permission, returns to the area from which he was directed to remove himself shall observe the conditions imposed, and at the expiry of the temporary period for which he was permitted to return, or on the revocation of such permission before the expiry of such temporary period, shall remove himself outside such area and shall not return thereto within the unimpaired portion specified under section 34 without a fresh permission.

(5) If a person fails to observe any of the conditions imposed or to remove himself accordingly or having so removed himself enters or returns to such area without fresh permission the Special Court may cause him to be arrested and removed in the police custody to such place outside such area as the Special Court may specify.

Appeal.

36. (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order of a Special Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

37. Where any area ceases to be a communally disturbed area and no cases are pending before a Special Court or an Additional Special Court established in relation to such communally disturbed area, the State Government, may, by notification, abolish such Special Court or Additional Special Court, as the case may be.

Abolition of certain Special Courts.

CHAPTER VII

INSTITUTIONAL ARRANGEMENTS FOR RELIEF AND REHABILITATION

38. Every State Government shall, by notification, establish a Council to be known as State Communal Disturbance Relief and Rehabilitation Council.

State Communal Disturbance Relief and Rehabilitation Council.

39. The State Council shall consist of the following members, namely:—

Constitution of State Council.

(a) the Chief Secretary of the State – Chairperson, *ex officio*;

(b) the Director General of Police of the State – Member, *ex officio*;

(c) the Secretary of the Department entrusted with Relief and Rehabilitation work in the State Government – Member, *ex officio*;

(d) the Secretary of the Department of Finance in the State Government – Member, *ex officio*;

(e) the Secretary of the Department of Home in the State Government – Member, *ex officio*;

(f) the Secretary to the Department of Social Welfare dealing with Tribal Welfare or Minorities Welfare or Women and Child Development in the State Government – Member, *ex officio*;

(g) three persons to be nominated by the State Government to represent individuals or private voluntary organisations engaged in the work relating to promotion of communal harmony or providing relief to the victims of communal violence – Members;

(h) not less than five persons to be nominated by the State Government in such a manner that all important religious groups in the State are represented in the State Council – Members;

(i) an officer not below the level of Joint Secretary to the State Government to be nominated by the State Government – Member-Secretary, *ex officio*;

(j) the term of Members appointed under clauses (g) and (h) shall be such as may be prescribed by the State Government.

40. (1) The State Council shall have the responsibility of planning relief, including immediate relief and rehabilitation measures and co-ordination and monitoring the implementation of such measures and issue suitable directions for their implementation may be required.

Functions of Council.

(2) Without prejudice to the generality of the provision of sub-section (1), the State Council shall—

(a) advise the State Government in matters relating to relief and rehabilitation of victims of communal violence including drawing up of guidelines for the assessment of compensation including grant of immediate or interim compensation which shall

not be less than twenty per cent. of the full rates of compensation in respect of the losses suffered by an individual in communal violence in respect of –

- (i) loss of, or damage to, homes and belongings;
 - (ii) loss of life and injuries sustained;
 - (iii) destruction of, or damage to, business and the loss of means of livelihood;
 - (iv) impact of sexual assaults or abuse on women;
- (b) issue suitable guidelines for setting-up of relief camps for victims of communal violence, which shall provide for the following:—
- (i) arrangements for providing security at such camps;
 - (ii) appropriate shelter for winter, monsoon or summer seasons;
 - (iii) food, drinking water, toilet and bathing facilities;
 - (iv) health services, certification of injuries at the camp itself and issuance of medical cards with a validity of six months for purchase of free medicine, psychosocial support like trauma counselling;
 - (v) issue of temporary ration cards valid for a specific period;
- (c) establish a system of single window to complete all administrative formalities in relation to providing quick relief and rehabilitation to the victims of communal violence including making available ration cards or other identity cards;
- (d) certify loss or damage of educational or other certificates or ownership or other documents in respect of the victims of communal violence; and facilitate the students of the area affected by communal violence to appear for any examination and to provide security for the purpose;
- (e) establish centres for rehabilitating the children of victims of communal violence;
- (f) establish a single window clearance scheme for speedy disposal of insurance claims and for providing soft loans through financial institutions or measures relating to re-scheduling of loans and payments of interest in cases of victims of communal violence in consultation with the financial institutions;
- (g) facilitate the efforts of other organisations who may come forward to help the victims in all manner feasible.
- (h) recommend welfare measures to be adopted and implemented by the appropriate Government with a view to ameliorating the conditions of victims of communal violence;
- (i) draw suitable guidelines and issue directions for funding the restoration and repair of the places of worship damaged or destroyed during the communal violence, in consultation with and consensus of the members of the affected community;
- (j) formulate a comprehensive and affirmative scheme for welfare of victims of communal violence and devise a programme for implementing such schemes with the approval of the appropriate Government and implement the scheme.
- (k) activate the functioning of the district communal harmony committee;
- (l) maintain comprehensive data bank relating to the socio and economic development of victims of communal violence;
- (m) report to the appropriate Government the inadequacies or shortcomings in meeting with the situation and also on the remedial measures; and

(n) perform such other functions as may be incidental or ancillary thereto as may be assigned by the appropriate Government from time to time.

(3) While performing the functions under this section, the State Council shall follow such procedure as may be prescribed.

41. (1) The State Council shall prepare a plan for every State to be called the State communal harmony plan for promotion of communal harmony and prevention of communal violence, hereinafter called the State Plan, and recommend the same to the State Government for adoption.

State Plan for promotion of communal harmony and prevention of communal violence.

(2) The State Plan shall be prepared providing for—

(i) the measures to be adopted for prevention or mitigation of communal violence including the constitution of District Level Peace Committees;

(ii) the capacity-building and preparedness of measures to be taken to deal with communal violence including a Riot Prevention Scheme at the district and sub-district level.

(3) The State Government shall adopt the State Plan after such modification as considered necessary.

(4) The State Government shall cause the State Plan and also any advice, recommendation and guidelines issued under section 40 to be laid on the table of the State Legislature:

Provided that where the State Government does not accept any of the recommendations of the State Council under section 40 or under this section, it shall expressly state the reasons for not accepting the recommendation and submit it along with the Action Taken Report and cause the same to be laid on the table of the State Legislature as soon as may be while it is in session and where the State Legislature is not in session within fifteen days from the date of commencement of its session.

(5) The State Plan shall be reviewed and updated every two years.

(6) The State Government shall make appropriate provisions for financing the activities to be carried out under the State Plan.

42. (1) The State Government shall, by notification, establish a District Communal Disturbance Relief and Rehabilitation Council in respect of each district in the State.

Constitution of District Council.

(2) The District Council shall consist of such number of members, not exceeding ten, as may be prescribed by the State Government, and unless the rules otherwise provides, it shall consist of the following members, namely:—

(a) the Collector or District Magistrate or Deputy Commissioner, as the case may be, of the district who shall be the Chairperson—*ex officio*;

(b) the Superintendent of Police of the District —Member, *ex officio*;

(c) the Chief Medical Officer of the District—Member, *ex officio*;

(d) such other district level officers of the Departments of Social Welfare, Tribal Welfare, Minority Welfare, Women and Child Development or such other Departments as may be prescribed by the State Government—Members, *ex officio*;

(e) two persons representing the Private Voluntary Organisations to be nominated by the State Government—Members;

(f) not less than five persons to be nominated in such a manner that all important religious groups in the district are represented in the District Council—Members;

(g) the terms and conditions of appointment of Members under clauses (e) and (f) shall be such as may be prescribed by the State Government.

Meetings of District Council. **43.** The District Council shall meet as and when necessary and at such time and place as the Chairperson may think fit.

Functions of District Council. **44.** (1) The District Council shall act as the district level coordinating and implementing body for relief and rehabilitation of victims of communal violence and take all measures for the purpose in accordance with the guidelines laid down by the National Council and the State Council including,—

(a) assessment of compensation in respect of the losses suffered by an individual in communal violence in respect of—

(i) loss of life and injuries sustained;

(ii) loss of, or damage to, homes, shops and such other structures and belongings;

(iii) destruction of, or damage to, business and the loss of means of livelihood;

(iv) impact of sexual assaults or abuse on women;

(b) setting-up of relief camps for victims of communal violence including—

(i) arrangements for providing security at such camps;

(ii) appropriate shelter for winter, monsoon or summer seasons;

(iii) food, drinking water, toilet and bathing facilities;

(iv) health services, certification of injuries at the camp itself and issuance of medical cards with a validity of six months for purchase of free medicine, psychosocial support like trauma counselling; and

(v) temporary ration cards valid for a specific period.

(2) The District Council shall prepare a District Plan for Promotion of Communal Harmony and Prevention of communal violence and recommend the same to the State Council.

(3) The District Council shall periodically review the implementation of the orders passed by any Court for award of compensation to victims of communal violence under the provisions of this Act and submit an annual report to the State Council.

CHAPTER VIII

NATIONAL COUNCIL

National Communal Disturbance Relief and Rehabilitation Council.

45. (1) **The Central Government shall, by notification, constitute, with effect from such date as it may specify in such notification, a council to be known as the National Communal Disturbance Relief and Rehabilitation Council, consisting of not more than eleven members, to exercise the powers conferred on, and to perform the functions assigned to it by or under this Act.**

(2) The National Council shall consist of the following, namely:—

(i) the Secretary to the Government of India, Ministry of Home Affairs—Member, *ex officio*;

(ii) the Secretary to the Government of India, Ministry of Defence—Member, *ex officio*;

(iii) the Secretary to the Government of India in the Ministry of Finance—Member, *ex officio*;

(iv) four persons to be nominated by the Central Government representing Minority and weaker sections of the society—Members;

(v) four persons nominated by the Central Government representing other sections of the society who have been striving to maintain the communal harmony—Members.

(3) The Central Government shall appoint one of the Members of the National Council as its Chairperson.

46. (1) Every Member of the National Council (other than the *ex officio* Members) shall hold office for a term of four years from the date of their appointment.

Terms and conditions of Members of National Council.

(2) **The travelling and other allowance payable to the Members of the National Council (other than the *ex officio* Members) shall be such as may be prescribed by the Central Government.**

47. (1) The National Council shall recommend to the appropriate Government as to—

Powers and functions of National Council.

(a) how the victims of the communal violence should be helped and what kind of relief could be given to them;

(b) how the victims of the communal violence shall be rehabilitated;

(c) the kind of compensation to be given to the victims of the communal violence.

(2) The National Council shall advise the State Government as to the assistance to be given to the victims of communal violence.

(3) The National Council shall also perform such other act, which may help to control and contain communal violence and help to give relief and rehabilitation and compensation to the victims of communal violence.

(4) It shall be the duty of the National Council to visit the areas affected by the communal violence as soon the information of occurrence of such violence is received and to send a report of the situation prevailing in such areas along with its recommendations to the Central Government.

48. The National Council shall, from time to time, submit reports to the Central Government recommending the steps required to be taken to deal with the situation giving rights to communal violence.

Report of National Council.

CHAPTER IX

FUNDS FOR RELIEF AND REHABILITATION

49. (1) Every State Government shall establish a Fund to be called the State Communal Disturbance Relief and Rehabilitation Fund and there shall be credited thereto—

State Fund.

(a) **all moneys received from the Central Government;**

(b) **all moneys received from the State Government;**

(c) all moneys received by way of gifts or donations from a public sector undertaking or a local authority or an individual or a private voluntary organisation for all or any of the purposes of this Act;

(d) amounts received as aid from the international organisations or organisations in India, where necessary, in terms of the existing regulations governing such aid, for the rehabilitation or welfare of victims of communal violence.

(2) The Fund shall be applied for the following purposes, namely:—

(a) for the purposes of grants for relief and rehabilitation as provided for under sections 40 and 42;

(b) for meeting the expenses for exercising or performing other powers and functions of the State Council under section 40; and

(c) for such other purposes as may be prescribed.

(3) The State Council shall submit an annual report to the National Council to review the implementation of the orders passed by the courts with regard to awarding of compensation to victims of communal violence.

Scheme for
grant of relief.

50. (1) Every State Government shall, by notification, make a scheme for providing funds for the purpose of grant of immediate compensation to the victims or their dependents in the event of loss of life or injury, as the case may be, or to those who have suffered loss or damage to property or loss of means of livelihood or as a result of an offence under the provisions of this Act.

(2) The Scheme shall be administered by the District Council.

District Fund.

51. Every State Government shall establish a Fund to be called the Victims Assistance Fund in each district and placed the same at the disposal of the District Council and there shall be credited thereto—

(a) all monies received from the State Government;

(b) all monies received by way of gifts or donations from a public or private sector undertakings or a local authority or an individual or a private voluntary organisation for any or all the purposes of this Act.

District Council
to function
under State
Council.

52. The District Councils in a State shall function under the overall supervision and directions of the State Council.

CHAPTER X

COMPENSATION TO VICTIMS

Compensation
to victims.

53. (1) Whenever a Special Court convicts a person for an offence punishable under this Act, it may, by its sentence, also pass an order that the offender shall make such monetary compensation as may be specified therein to the person mentioned in sub-section (5) for any loss or damage arising from such offence:

Provided that no such compensation shall be awarded to a person who is involved in any offence committed under the Indian Penal Code as specified in the schedule.

45 of 1860.

(2) The amount of compensation shall be such as is determined by the Special Court and be equitable, having regard to the provisions of sub-section (4).

(3) An order under sub-section (1) may be made in addition to any other punishment to which the person convicted is sentenced or where the offence is punishable with fine only, or with imprisonment for a period not exceeding three months, such order may be in lieu of any other punishment.

(4) Before passing any order under sub-section (1) the Special Court shall take into consideration the nature of the offence, the motive therefor, the economic status of the offender and the person in whose favour such order is made and all other relevant factors.

(5) The compensation awarded under sub-section (1) may be directed to be paid—

(i) to any person who has incurred expenses in prosecution or defraying any other expenses properly incurred;

(ii) to any person for any loss, damage or injury caused by the offence, when the compensation therefor is, in the opinion of the Special Court, recoverable by such person in a civil court;

(iii) in the case of a conviction for any offence for having caused the death of another person or of having abetted the commission of such offence to the person who are, under the Fatal Accidents Act, 1855, entitled to recover damages from the person sentenced, for the loss resulting to them from such death;

12 of 1855.

(iv) in the case of a conviction for any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, robbery, dacoity, extortion or of having dishonestly received or retained, or having voluntarily assisted in disposing off stolen property knowing or having reason to believe the same to be stolen to any *bona fide* purchaser of such property for the loss of the same, if such property is restored to the possession of the person entitled thereto.

(6) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section.

54. (1) The District Council shall entertain claims by or on behalf of persons affected by Communal Violence and the District Council shall decide the quantum of immediate compensation to be awarded to the victim or his dependents, as the case may be, after due inquiry within a period of one month from the date of the claim.

Immediate compensation.

(2) The amount of compensation shall not be less than twenty per cent. of the full rate of compensation as prescribed under each category of cases.

(3) The compensation shall be disbursed to the victim after adjusting any amount of assistance he might have received under any other scheme of the State Government for grant of relief or compensation.

(4) The assistance from the District Fund may not be given to those victims or to the legal heirs if the victim is involved in the Commission of any offence under the provisions of this Act.

CHAPTER XI

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

55. (1) Whenever the Central Government is of the opinion that one or more scheduled offences are being committed in any area within a State by any person or group of persons in such manner and on such a scale which involves the use of criminal force or violence against the members of any group, caste or community resulting in death or destruction of property and such use of criminal force or violence is committed with a view to create disharmony or feelings of enmity, hatred or ill-will between different groups, castes or communities and there is an imminent threat to the secular fabric, unity, integrity or internal security of India which requires that immediate steps shall be taken by the State Government concerned, it shall—

Power of Central Government to give directions to State Government and issue notifications, etc.

(a) draw the attention of the State Government to the prevailing situation in that area; and

(b) direct the State Government to take all immediate measures to suppress such violence or the use of criminal force within such time as may be specified in the direction.

(2) The State Government shall take appropriate action to prevent and control communal violence on the issue of a direction under sub-section (1).

(3) Where the Central Government is of opinion that the directions issued under sub-section (2) are not followed, it may take such action as is necessary including—

(a) the issue of a notification declaring any area within a State as a “communally disturbed area”;

(b) the deployment of armed forces, to prevent and control communal violence, on a request having been received from the State Government to do so.

(4) Where it is decided to deploy armed forces under sub-section (3), the Central Government or the State Government may constitute an authority to be known as Unified Command for the purpose of co-ordinating and monitoring the role and responsibilities of the forces of the Union and States and for giving appropriate directions to such forces.

(5) The forces deployed under sub-section (3) shall act under the control and as per the directions of the District Magistrate or any officer nominated by the State Government or the Unified Command.

(6) Every notification issued by the Central Government under clause (a) of sub-section (3) shall be laid before each House of Parliament.

Power of Central Government to extend or modify notifications issued under section 55.

56. (1) A notification under section 55 shall specify the period for which the area shall remain so notified:

Provided that the period specified under such notification shall not, in the first instance, exceed thirty days:

Provided further that the Central Government may extend the said period, by notification, if in its opinion the area continues to be a communally disturbed area:

Provided also that the total period during which an area may be notified as a communally disturbed area shall not exceed a total continuous period of sixty days.

(2) Where the Central Government is satisfied that such disturbance of public peace and tranquillity as is referred to in sub-section (1) no longer persists in such area, it shall amend the notification issued in respect of that area to limit the period specified therein [whether originally or by amendment under sub-section (1)].

CHAPTER XII

POWERS, DUTIES AND IMMUNITIES OF THE OFFICERS

Protection of action taken in good faith.

57. (1) No suit, prosecution or other legal proceedings shall lie against the State Government, the Central Government or any officer or authority of such Government or any other person or any member of the State Council, National Council or District Council for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

(2) It shall be the duty of the State Government or Central Government, as the case may be, to provide required legal aid to an officer or authority facing a suit or legal proceedings in terms of sub-section (1).

(3) Any officer or authority of the State Government or the Central Government who suffers an injury or is killed in the discharge of his duty while acting under the provisions of this Act shall be given special compensation or *ex gratia* relief at double the rate of such compensation or *ex gratia* relief as is admissible in respect of other Government servants on duty in terms of the existing rules or guidelines framed by the State Government or the Central Government, as the case may be.

CHAPTER XIII

MISCELLANEOUS

Prohibition against discrimination.

58. While providing compensation and relief to the victims of communal violence,—

(a) there shall be no discrimination on the ground of sex, caste, community, descent or religion; and

(b) uniformity of assistance irrespective of caste, community or religion is maintained.

Application of other laws not barred.

59. Save as otherwise provided, the provisions of this Act shall be in addition to, and not in derogation of, any other laws for the time being in force except to the extent the provisions of other laws are inconsistent with the provisions of this Act.

Power of Central Government to make rules.

60. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the travelling and other allowances payable to the Members of the National Council under sub-section (1) of section 46;

(b) any other matter which is required to be, or may be, prescribed by the Central Government.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

61. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power of State Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the term of members appointed under clauses (g) and (h) of section 39;

(b) the procedure to be followed by the State Council while performing its functions under sub-section (2) of section 40;

(c) the number of members of the District Council and such other Departments which may be represented by the district level officers in the District Council under clause (d) of sub-section (2) of section 42;

(d) the terms and conditions of appointment of members under clauses (e) and (f) of sub-section (2) of section 42;

(e) the other purposes for which the State Fund shall be applied under clause (c) of sub-section (2) of section 49;

(f) any other matter which is required to be, or may be prescribed.

(3) Every notification, rule and Scheme made under this Act shall be laid, as soon as may be after it is made, before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

62. In the Representation of the People Act, 1951, in section 8, in sub-section (2), after clause (c), the following clause shall be inserted, namely:—

Amendment of section 8 of Act 43 of 1951.

“(ca) Any provision of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Act, 2005.”.

THE SCHEDULE

[See Clause (l) of sub-section (l) of section 2]

1. Offences under the following provisions of the Indian Penal Code (45 of 1860):—

Sections 120B, 143, 144, 145, 147, 148, 150, 151, 152, 153, 153A, 153B, 154, 155, 156, 157, 158, 160, 295, 295A, 296, 297, 298, 302, 303, 304, 307, 308, 323, 324, 325, 326, 327 to 335, 341 to 348, 352, 353, 354, 355 to 358, 363 to 369, 376, 379, 380, 383, 384 to 387, 392, 402, 411, 412, 426, 427, 431, 435, 436, 440, 447 to 462, 504 to 506 and 509.

2. Offences under the following provisions of the Arms Act, 1959 (54 of 1959):—

Sections 25, 26, 27, 28 to 30.

3. Offences under the following provisions of the Explosives Act, 1884 :—

Sections 6(3), 8(2) and 9B.

4. Offences under the following provisions of the Prevention of Damage to Public Property Act, 1984 (3 of 1984) —Sections 3 and 4.

5. Offence under the following provisions of the Places of Worship (Special Provisions) Act, 1991 (42 of 1991)—Section 6.

6. Offences under the following provisions of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988) —Section 7.

STATEMENT OF OBJECTS AND REASONS

Communal violence threatens the secular fabric, unity, integrity and internal security of a nation. With a view to empowering the State Governments and the Central Government to take effective measures to provide for the prevention and control of communal violence and to rehabilitate the victims of such violence, for speedy investigation and trial of offences including imposition of enhanced punishments, than those provided in the Indian Penal Code, on persons involved in communal violence and for matters connected therewith, it has been decided to enact a law by Parliament.

2. The Bill, *inter alia*, seeks to—

(i) provide for declaration of certain areas as communally disturbed areas by the State Governments;

(ii) lay down measures for prevention of acts leading to communal violence;

(iii) enhance punishments for offences relating to communal violence and for certain other offences;

(iv) make provisions for speedy investigation and trial of offences through Special Courts;

(v) make institutional arrangements for relief and rehabilitation measures for victims of communal violence;

(vi) make provisions for compensation to the victims of communal violence and provide for special powers to the Central Government in certain cases;

(vii) provide for constitution of a National Communal Disturbance Relief and Rehabilitation Council, State Communal Disturbance Relief and Rehabilitation Council and District Communal Disturbance Relief and Rehabilitation Council; and

(viii) prohibit any discrimination in providing compensation and relief to the victims of communal violence on grounds of sex, caste, community or religion.

3. The Notes on clauses explain in detail the various provisions contained in the Bill.

4. The Bill seeks to achieve the above objects.

SHIVRAJ V. PATIL.

NEW DELHI;

The 26th November, 2005.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117(3) OF THE CONSTITUTION OF INDIA

(Copy of letter No. 11034/20/2004-NI-I(Vol-V) dated the 29th November, 2005 from Shri Shivraj Vishwanath Patil, Minister of Home Affairs to the Secretary-General, Rajya Sabha).

'The President having been informed of the subject matter of the proposed "The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005", recommends to the House the consideration of the Bill under Article 117(3) of the Constitution.'

Notes on clauses

Clause 1.— This clause provides for the short title of the proposed legislation, the area of its operation and its commencement. The proposed legislation will not be applicable to the State of Jammu and Kashmir. As certain preparatory steps are required to be taken before the proposed legislation is brought into force, it is proposed to empower the Central Government to bring it into force on such date as it may appoint by notification in the Official Gazette. The Central Government may notify different dates for different provisions of the Bill. However, the power to bring Chapters II to VI (both inclusive) of the Bill is proposed to be vested in the State Government.

Clause 2.— This clause contains definitions of certain words and expressions used in the Bill. These definitions include the definitions of “communally disturbed area”, “communal violence”, “competent authority”, “relief and rehabilitation”, “scheduled offence”, “State Fund” and “Unified Command”. It has also been provided that the expressions used in the Explosives Act, 1884 or the Arms Act, 1959 shall be applicable to the interpretation of the words used in the proposed legislation and not defined therein but defined in those Acts. The expression “communal violence” means any act of omission or commission which constitutes a scheduled offence and which is punishable under sub-clause (1) of clause 19 of the proposed legislation.

Clause 3.— This clause deals with the powers of the State Government to declare an area to be a communally disturbed area in certain circumstances.

Clause 4.— This clause lays down the measures to be taken by the State Government to prevent and control communal violence in a communally disturbed area.

Clause 5.— This clause lays down the powers of District Magistrate to take preventive measures in case of a situation which has arisen causing apprehension of breach of peace and creation of discord between members of different groups, castes or communities.

Clauses 6 to 10.— These clauses describe the powers of the competent authority to take preventive measures in a notified communally disturbed area.

Clauses 11 to 15.—These clauses provide for the punishment for various offences like loitering near prohibited places in violation of orders, being in possession of arms, etc., without licences, for assisting offenders, for giving financial aid for the commission of certain offences and for threatening witnesses.

Clause 16.— This clause provides for the punishment for the driver, owner or any person in charge of goods transport vehicle for carrying more persons than authorized.

Clause 17.— This clause provides for punishment for public servants acting in *mala fide* manner and for failure to discharge their duties through wilful commissions or omissions.

Clause 18.— This clause provides for the punishment for violation of orders under section 144 of the Code of Criminal Procedure, 1973 in a communally disturbed area.

Clause 19.— This clause prescribes the criterion for communal offence and enhanced punishment for committing communal violence.

Clause 20.— This clause provides that the scheduled offences shall be cognizable offences for the purposes of the proposed legislation.

Clause 21.— This clause provides for declaration of certain places to be police stations.

Clause 22.— This clause empowers the State Government to constitute a Review Committee headed by an officer of the level of Inspector General of Police to review cases of scheduled offences where the trial ends in acquittal and to issue orders for filing of appeals, wherever required. The Committee is required to submit a report on its findings and the action taken in each case to the Director General of Police.

Clause 23.— This clause provides for the constitution of one or more Special Investigation Teams by the State Government in case the State Government comes to the conclusion that the investigation of offences committed in a communally disturbed area were not carried out properly in a fair and impartial manner.

Clause 24.— This clause provides that the State Government shall, by notification in the Official Gazette, establish one or more special courts for the trial of scheduled offences committed during the period of disturbance.

Clauses 25 to 33.— These clauses lay down the various administrative and procedural aspects in relation to the Special Courts to facilitate speedy trial of offences and awarding of punishment to the guilty. These aspects include – (i) composition and appointment of Judges of Special Courts; (ii) place of sitting of Special Courts; (iii) jurisdiction of Special Courts; (iv) powers of Special Courts with respect to other offences; (v) appointment of Public Prosecutors; (vi) procedure and powers of Special Courts; (vi) power of Supreme Court to transfer cases; (vii) protection of witnesses; and (viii) power to transfer cases to regular courts.

Clauses 34 to 36.— These clauses lay down the procedure for imposing certain restrictions on movement of persons in communally disturbed areas and dealing with appeals against such restrictions imposed.

Clause 37.— This clause provides for abolition of certain Special Courts when a notified area ceases to be a communally disturbed area.

Clauses 38 to 48.— These clauses provide for establishment of institutional arrangements for relief and rehabilitation measures through constitution of State Communal Disturbance Relief and Rehabilitation Council, its composition and functions (Clauses 38 to 40), State Plan for promotion of communal harmony and prevention of communal violence (clause 41); constitution of District Councils, their composition and functions (clauses 42-44); constitution of National Council and its composition (clause 45), terms and conditions of members of the National Council (clause 46), the powers and functions of the National Council (clause 47) and submission of Report by the National Council to the Central Government (clause 48).

Clauses 49 to 51.— These clauses provide for the establishment of funds for relief and rehabilitation which include establishing- (i) State Fund, purpose and submission of annual report to the National Council (Clause 49); (ii) Scheme for grant of relief or immediate relief (clause 50) and establishment of District Fund (clause 51).

Clause 52.— This clause lays down that the District Councils shall function under State Council.

Clause 53.— This clause lays down the modalities for payment of compensation to victims as per the orders of the Special Courts.

Clause 54.— This clause provides for the payment of immediate compensation to the victims of communal violence through the District Council.

Clauses 55 and 56.— These clauses lay down the Special powers of the Central Government to deal with communal violence in certain cases.

Clause 57.— This clause lays down the power, duties and immunities of officers and for protection of action taken in good faith as well as grant of special compensation or *ex-gratia* relief at double the rates admissible for officer or authority who suffers an injury or death in the discharge of his duties while acting under the provisions of the proposed legislation.

Clause 58.— This clause imposes prohibition against discrimination on grounds of sex, caste, community, descent or religion while providing compensation or relief to the victims of communal violence.

Clause 59.— This clause provides that the application of other laws are not barred and the provisions of the proposed legislation shall be in addition to and not in derogation of any other law for the time being in force.

Clause 60.— This clause empowers the Central Government to make rules for carrying out the provisions of the proposed legislation. These rules, *inter alia*, relate to the travelling and other allowances payable to the members of the National Council.

Clause 61.— This clause empowers the State Government to make rules for carrying out the provisions of the proposed legislation. These rules may, in particular, relate to the terms of members of the State Council (clause 39), procedure to be followed by the State Council (clause 40), composition of the District Council and terms and conditions of its members (clause 42), other purposes for which the State Fund shall be applied (clause 49).

Clause 62.— This clause seeks to insert a new clause (ca) in sub-section (2) of section 8 of the Representation of People Act, 1951 so as to lay down that any person convicted for the contravention of the provisions of the proposed legislation shall incur disqualification under the said section 8.

The Schedule to the proposed legislation enumerates the various offences which shall be the scheduled offences for the purposes of the proposed legislation.

FINANCIAL MEMORANDUM

Sub- clause (1) of clause 45 of the Bill provides that the Central Government shall, by notification, constitute, with effect from such date as it may specify in such notification, a council to be known as the National Communal Disturbance Relief and Rehabilitation Council, consisting of not more than eleven members, to exercise the powers conferred on, and to perform the functions assigned to, it by or under the proposed legislation. Sub-clause (1) of clause 46 lays down that every Member of the National Council (other than the *ex officio* Members) shall hold office for a term of four years from the date of their appointment. Sub-clause (2) of the said clause provides that the travelling and other allowances payable to the Members of the National Council (other than the *ex officio* Members) shall be such as may be prescribed by the Central Government.

2. Sub-clause (1) of clause 49 of the Bill, *inter alia*, stipulates that every State Government shall establish a Fund to be called the State Communal Disturbance Relief and Rehabilitation Fund and there shall be credited thereto all moneys received from the Central Government. In case the Central Government decides to contribute to the State Communal Disturbance Relief and Rehabilitation Fund expenditure from the Consolidated Fund of India would be involved.

3. Sub-clause (1) of clause 50 of the Bill provides that every State Government shall prepare a Scheme for providing funds for the purpose of grant of immediate compensation to the victims or their dependents in the event of loss of life or injury, as the case may be, or to those who have suffered loss or damage to property or loss of means of livelihood or as a result of an offence under the provisions of the proposed legislation. Clause 51 provides that every State Government shall establish a Fund to be called the Victims Assistance Fund in each district and placed the same at the disposal of the District Council and there shall be credited thereto, *inter alia*, all monies received from the State Government. Since the Central Government being the Government in respect of the Union territories, some expenditure on this account may have to be borne by the Central Government.

4. As involvement of expenditure depends mainly on the occurrence of communal violence, it is difficult to make an estimate of the expenditure, both recurring and non-recurring, from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 60 of the Bill provides that the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the matters in respect of which such rules may be made under the proposed legislation. These matters relate to the travelling and other allowances payable to the Members of the National Council as well as any other matter which are required to be, or may be, prescribed by the Central Government.

2. Clause 50 of the Bill seeks to empower the State Governments to make, by notification, schemes for providing funds for the purpose of grant of immediate compensation to the victims or their dependents of communal violence.

3. Sub-clause (1) of clause 61 of the Bill empowers the State Governments to make rules to carry out the purposes of the proposed legislation. Such rules may, *inter alia*, provide for the term of members of the State Council appointed under clause 39, the procedure to be followed by the State Council while performing its functions under sub-clause (2) of clause 40, the number of members of the District Communal Disturbance Relief and Rehabilitation Council and such other Departments which may be represented by the district level officers in the District Communal Disturbance Relief and Rehabilitation Council under clause (d) of sub-clause (2) of clause 42, the terms and conditions of appointment of members of the District Communal Disturbance Relief and Rehabilitation Council under clauses (e) and (f) of sub-clause (2) of clause 42, the other purposes for which the State Communal Disturbance Relief and Rehabilitation Fund shall be applied under paragraph (c) of sub-clause (2) of clause 49 and any other matter which is required to be, or may be prescribed.

4. The rules made by the Central Government under the Bill are required to be laid before Parliament and the rules and schemes made by the State Government are required to be laid before the State Legislature.

5. The matters in respect of which rules or scheme may be made are matters of procedure or administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACT FROM THE REPRESENTATION OF THE PEOPLE ACT, 1951

(41 OF 1951)

* * * * *

8. (1) * * * *

(2) A person convicted for the contravention of—

* * * * *

Disqualification
on conviction
from certain
offences.

Bill No. CXV of 2005

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

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

CLAUSES

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

CHAPTER II

DECLARATION OF CERTAIN AREAS AS COMMUNALLY DISTURBED AREAS

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

CHAPTER III

PREVENTION OF ACTS LEADING TO COMMUNAL VIOLENCE

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

CHAPTER IV

ENHANCED PUNISHMENT FOR COMMUNAL VIOLENCE

CLAUSES

19. Punishment for committing communal violence.

CHAPTER V

INVESTIGATION

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

CHAPTER VI

SPECIAL COURTS

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

CHAPTER VII

INSTITUTIONAL ARRANGEMENTS FOR RELIEF AND REHABILITATION

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

CHAPTER VIII

NATIONAL COUNCIL

45. National Communal Disturbance Relief and Rehabilitation Council.

CLAUSES

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

CHAPTER IX

FUNDS FOR RELIEF AND REHABILITATION

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

CHAPTER X

COMPENSATION TO VICTIMS

53. Compensation to victims.
54. Immediate compensation.

CHAPTER XI

SPECIAL POWERS OF THE CENTRAL GOVERNMENT TO DEAL WITH COMMUNAL

VIOLENCE IN CERTAIN CASES

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

CHAPTER XII

POWERS, DUTIES AND IMMUNITIES OF THE OFFICERS

57. Protection of action taken in good faith.

CHAPTER XIII

MISCELLANEOUS

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

THE SCHEDULE.

RAJYA SABHA

A

BILL

to empower the State Governments and the Central Government to take measures to provide for the prevention and control of communal violence which threatens the secular fabric, unity, integrity and internal security of the Nation and rehabilitation of victims of such violence and for matters connected therewith or incidental thereto.

(Shri Shivraj Vishwanath Patil, Minister of Home Affairs)