

## **ANNEXURE 1**

**MEMORANDUM  
TO  
THE PARLIAMENTARY STANDING COMMITTEE ON HOME AFFAIRS  
ON GENDER-RELATED PROVISIONS OF  
COMMUNAL VIOLENCE (Prevention, Control & Rehabilitation of Victims) BILL, 2005**

**July 15, 2006**

**To,  
Honorable Members of the Parliamentary Standing Committee on Home Affairs**

We, as representatives of women's organizations, civil society groups, and as activists committed to women's rights, are writing to you to convey our concerns and suggestions with regard to the Communal Violence (Prevention, Control & Rehabilitation of Victims) Bill 2005, in specific reference to gender-based sexual violence.

At the outset, we are happy that a need has been felt to enact a law on communal violence, and we share the commitment of the Hon'ble Members of Parliament in taking the initiative towards this Bill and for inviting suggestions from members of civil society in order to make the Bill as comprehensive as possible.

A historic neglect has existed in making persons accountable for mass crimes against women in India. In the context of the Partition, gender-based violence against women, though individual in character, was mass in scale. However, justice for the crimes against women became impossible because many perpetrators were across the border, and the needs of women survivors came to be accorded a low priority. Mass crimes against women were also committed in the context of the anti-Sikh massacre in Delhi in 1984. The struggle for justice has extended beyond two decades, with little justice being meted out. Even sixteen years later, survivors of sexual violence hoped for justice when the Nanavati Commission was appointed in 2000. Five specific affidavits on sexual violence were filed. However, when the Government's Action Taken Report on the Sikh massacre was debated in Parliament in 2005, there was a suggestion by our Political leadership that the nation forgive these violations and move on. This only bestows impunity on all crimes and indeed contributes to the growing climate of impunity for perpetrators of these crimes, including mass crimes against women during communal violence. In 1992, subsequent to the destruction of Babri Masjid, communal violence erupted in many parts of the country, including in Mumbai and Surat, where again, women were targeted for specific kinds of brutalities. During the Gujarat carnage of 2002, gender-based violence and sexual violence was widespread. While there have been examples of women survivors' struggle for justice, the most recent being that of Bilkis Yakub Rasool, you would agree that for every woman survivor who speaks out, there are hundreds and thousands more who have suffered in silence and who have been unable to demand justice for the violations inflicted on them. Lack of political will to prosecute perpetrators,

inadequacy of laws and procedures to deal with mass crimes, lack of impartial investigation and prosecution of such crimes and a lack of sensitivity to victims' experiences and needs have been among some of the major hurdles in women's access to justice in the context of mass crimes.

Unfortunately, the Communal Violence (Prevention, Control & Rehabilitation of Victims) Bill 2005 does not acknowledge, address or remedy the major hurdles that have contributed to women's poor access to justice in the context of communal violence. The Bill has dealt with gender-based violence in general, and sexual violence in particular, in a callous and casual manner, despite the fact that gender-based violence has played a fundamental role as an engine for mobilizing hatred and destruction against religious minorities in recent times.

## RECOMMENDATIONS

In consonance with the provisions and spirit of the Indian Constitution, judgments and directives of the Supreme Court of India, recommendations of the Law Commission of India, provisions of international conventions that India has ratified as well as the generally-accepted standards of international human rights, we make the following recommendations:

- a. **Include new crimes within the Bill rather than work within the framework of the penal provision on rape.** Given the type of violence against women that has been documented in recent times in India, of sexual crimes such as public and mass acts of sexual violence including cutting off breasts and uterus, forced nudity, stripping and parading women naked, forcible pregnancy, exhibiting sexual organs in the presence of women and mutilation of women's genital organs, we submit that incorporating rape alone as a crime would be grossly inadequate and would not capture the various kinds of violence inflicted on women in communal situations.
  - **We therefore recommend inclusion of a new crime - Sexual Violence**
  - **And within the category of Sexual Violence, to redefine the crime of Rape**  
*(Please find suggested definitions in Annex A to this memorandum)*
- b. **In relation to the crime of RAPE, a new definition rather than the existing IPC definition to be used in the Bill.** This is because the present definition of 'rape' as stated in S. 375 of the Indian Penal Code has been inadequate to respond to crimes against women committed in recent incidents of communal violence. We reject the said definition, as it is grossly inadequate even to respond to sexual violence in 'normal, peacetime'. Women's organizations, National Commission for Women and the Law Commission of India have been debating revisions in the IPC definition of rape. A Draft Sexual Assault Bill that provides for an expanded definition of Rape is under consideration and debate.  
*(Please find suggested definitions in Annex A to this memorandum)*
- c. **Include genocide & crimes against humanity as crimes, in keeping with recent developments in international human rights standards and norms, and India's commitment under The Genocide Convention.** *(Please find suggested definition of crimes against humanity and genocide in Annex A to this memorandum. The definition of genocide has been taken verbatim from the UN Convention on the Prevention and Punishment of the Crime of Genocide, 1948 which India ratified in 1959)*

- d. **Recognize explicitly that genocide and crimes against humanity could be committed through gender-based violence and sexual violence.**
- e. **Include crimes against women that have been documented in other parts of the world. These include sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization.** Although occurrence of these crimes in India may not have been documented, these could occur in India in future. Prohibition of ex-post facto law (subjecting a person to a criminal law created after the commission of crime) is a basic and well-recognized principle of criminal law. Hence we strongly recommend that the crimes, whose suggested definitions are listed in Annex B to this memorandum, be included in the present Bill in forethought so as to enable the state to make persons accountable for such crimes, if and when they are committed in India in future.
- f. **Develop evidentiary standards appropriate to the context of a communally charged and violent situation for proving sexual violence.** This is particularly in view of the fact that in situations of communal violence, women's access to police stations (for lodging FIR), government hospitals (for medical examinations) and the confidence / ability to pursue legal procedures is substantially reduced during the period of the violence and till the return to a safe and non hostile environment for the survivors of the violence. Hence, appropriate evidentiary and procedural standards are imperative and should include the following:
- All investigation should be conducted in a gender-sensitive manner;
  - Medical evidence should not be insisted upon as a corroborative evidence;
  - Uncorroborated victim's testimony could form the basis for conviction provided it inspires the confidence of the court;
  - Delay in lodging an FIR should not impact the case in any manner;
  - Consent to sexual act as a defense to the perpetrator should be specifically excluded
  - Admission of evidence of prior or subsequent sexual conduct of a victim of sexual violence should be explicitly prohibited
  - Sexual violence in a communal situation should be equated to custodial rape as mob exercises complete control and is in a position of authority. Hence, the Bill should provide for enhanced punishment and also shift the burden of proof from the victim to the perpetrator
- g. **Incorporate the principle of command and superior responsibility.** These are well-established principles in international law standards, which pin criminal liability to the person, civilian or military, under whose command the crimes occurred.  
*(Please find suggested definitions in Annex C to this memorandum).*
- h. **Incorporate comprehensive provisions on protection of victims and witnesses, in consonance with recent Supreme Court judgments and directives.** Such provisions should respond to safety, physical and psychological well-being, dignity and privacy of victims and witnesses, particularly in cases of sexual or gender violence. The provisions should include medical assistance, counseling and psychological support, protection of the identity of victims and witnesses, ensuring a congenial atmosphere in the open court for the woman to give her testimony (while providing her with the option of an in camera trial), and stringent punishment for persons who intimidate / coerce a woman to give a false testimony.
- i. **Include concept of 'Reparations', which is broader than the concept of 'compensation' or 'relief'.** The Bill must cease to use the language of voluntary aid (assistance, aid, and relief),

and instead use the language of obligation and entitlement (reparation). No specific assessment of impact of gender-based and sexual violence on each individual can or should be made for purpose of reparations. Each category of crimes within sexual violence should be treated as a single category of crimes for the purpose of reparation.

*(Please find suggested definition of Reparation in Annex C to this memorandum).*

- j. **Include a generic non-discrimination clause to the end of the Bill that could read as follows:** “The application and interpretation of this law must be consistent with the provisions and spirit of the Indian Constitution, internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender, age, race, colour, caste, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.”
  
- k. **Include specific provisions for participation of human rights groups, women’s rights groups, and NGOs in helping survivors of communal violence and of gender-based attacks in accessing their right to reparation and in ensuring access to the criminal justice system.**

## **GENERAL CRITIQUE OF THE BILL**

In addition to the specific recommendations that we have made with regard to sexual violence, we endorse the overall critique of the Bill that has been expressed to you by other members of civil society and non-governmental organizations, including the following:

- a) The Bill empowers the state and its agencies rather than the victim and civil society; there exists the possibility of expanded state powers being further used to harass and intimidate minorities.
- b) The Bill has no focus on state accountability; the Bill is unwilling to recognize acts of omission and commission by the state agencies and build into the Bill mechanisms of accountability in relation to that.
- c) The non-mandatory nature of power of state government to declare a place as “communally disturbed” dilutes state accountability for communal violence;
- d) The basis for such a declaration is very restrictive – limited to death and destruction of property. It does not take into account the use of sexual violence. It also fails to recognise a whole range of discriminatory and communal acts, including social and economic boycott.
- e) The Bill fails to provide for specific provisions which can make inroads into the complete impunity that state agencies enjoy for misdeeds of omission and commission, because of the requirement of prior sanction from the government for prosecution. Therefore, State agencies will continue to enjoy immunity even after the passing of the Bill, thus nullifying the Bill’s own stated commitment to the principle of State accountability.
- f) The presumption that the public officials acted in good faith in the light of their proven complicity repeatedly in situations of communal violence is incomprehensible
- g) Victims’ right to rescue, relief and rehabilitation have been diluted and made heavily bureaucratic
- h) Measures for protection of victims and witnesses have been dealt with in a perfunctory way
- i) The Bill fails to create new offences and new procedures, although existing substantive and procedural laws have proved inadequate time and again in providing justice for victims of communal violence.

We sincerely hope that the suggestions and recommendations made by us will be taken into consideration and incorporated into the amended version of the Bill.

Yours sincerely,

(On behalf of Women Groups, Civil Society Groups and Concerned Citizens  
Listed in Annex D)

**ANNEX A**  
**SUGGESTED DEFINITIONS OF CRIMES THAT HAVE BEEN DOCUMENTED IN INDIA**

	<b>Crime</b>	<b>Definition</b>
1.	Sexual violence	The perpetrator committed an act of a sexual nature against one or more women or caused such woman or women to engage in an act of a sexual nature of force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a woman incapable of giving genuine consent. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Crimes of sexual violence include (but are not limited to) rape, forced nudity, exposure of male sexual organs in front of women, parading women naked in public, enforced sterilization, forced pregnancy, mutilation of reproductive organs, sexual slavery, enforced prostitution and gender-based persecution.
3.	Rape	<ul style="list-style-type: none"> <li>▪ The perpetrator invaded the body of a woman by conduct resulting in penetration, however slight, of any part of the body of the woman or of the perpetrator with a sexual organ, or of the anal or genital opening of the woman with any object or any other part of the body.</li> <li>▪ The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such woman or another person, or by taking advantage of a coercive environment, or the invasion was committed against a woman incapable of giving genuine consent.</li> </ul> <p>Note: It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.</p>
4.	Gender-based persecution	“Persecution” on the basis of gender means the intentional and severe deprivation of fundamental rights contrary to international law on the basis of gender.
5.	Genocide	<p>The following five acts, if committed with the intention to destroy all or part of a national, ethnical (linguistic &amp; cultural), racial or religious group, may constitute genocide:</p> <ul style="list-style-type: none"> <li>➤ Killing members of the group</li> <li>➤ Causing serious bodily or mental harm to the members of the group.</li> <li>➤ Deliberately inflicting on a group, conditions of life calculated to bring about its physical destruction.</li> <li>➤ Imposing measures intended to prevent births within a group;</li> <li>➤ Forcibly transferring children of a group to another group.</li> </ul> <p><i>Note: Encouragement to, assistance in and attempts to commit genocide are also acts of genocide.</i></p>
6.	Crimes	Crimes against humanity means any of the following acts when committed as part

	against humanity	of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder, extermination, enslavement, imprisonment or other severe deprivation of physical liberty, torture, sexual violence, gender-based violence, enforced disappearance of persons and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health.
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**ANNEX B**  
**SUGGESTED DEFINITIONS OF CRIMES AGAINST WOMEN THAT HAVE BEEN**  
**DOCUMENTED IN OTHER PARTS OF THE WORLD & THAT COULD OCCUR IN INDIA**  
**IN FUTURE**

1.	Sexual slavery	<ul style="list-style-type: none"> <li>▪ The perpetrator* exercised any or all of the powers attaching to the right of ownership over one or more women, such as by purchasing, selling, lending or bartering such a woman or women, or by imposing on them a similar deprivation of liberty.**</li> <li>▪ The perpetrator caused such woman or women to engage in one or more acts of sexual nature. <ul style="list-style-type: none"> <li>* Given the complex nature of this crime, it is recognized that its commission could involve more than one perpetrator or as a part of a common criminal purpose.</li> <li>** It is understood that such deprivation of liberty may, in some circumstance, include exacting forced labour or otherwise reducing a person to servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described includes trafficking in women and girl children.</li> </ul> </li> </ul>
2.	Enforced prostitution	<ul style="list-style-type: none"> <li>▪ The perpetrator caused one or more women to engage in one or more acts of sexual nature by force, or by threat of forced or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such woman or women or another person, or by taking advantage of a coercive environment or such woman's or women's capacity to give genuine consent.</li> <li>▪ The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.</li> </ul>
3.	Forced pregnancy	<p>The perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of law.</p>
4.	Enforced sterilization	<ul style="list-style-type: none"> <li>▪ The perpetrator deprived one or more women of biological reproductive capacity.*</li> <li>▪ The conduct was neither justified by the medical or hospital treatment of the woman or women concerned nor carried out with their genuine consent.** <ul style="list-style-type: none"> <li>* The deprivation is not intended to include birth-control measures, which have a non-permanent effect in practice.</li> <li>** It is understood that “genuine consent” does not include consent obtained through deception.</li> </ul> </li> </ul>



**ANNEX C**  
**SUGGESTED DEFINITION OF CONCEPTS**

<b>Concept</b>	<b>Definition</b>
Command or Superior Responsibility	<p>Both in the context of military and civilian authority, the military commander or person effectively acting as a military commander and/or civilian superior shall be criminally responsible for crimes committed by forces / subordinates under his or her effective command / authority and control, as a result of his or her failure to exercise control properly over such forces / subordinates, where</p> <ul style="list-style-type: none"> <li>a) The civilian and/or military commander / superior either knew, or consciously disregarded information which clearly indicated, that the forces / subordinates were committing or about to commit such crimes;</li> <li>b) The crimes concerned activities that were within the effective responsibility and control of the civilian and/or military commander / superior; and</li> <li>c) The military commander / 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.</li> </ul> <p>Thus, in the event of failure to prevent a mass crime, everyone in the chain of command right from the Police Constable to the Chief Minister of a State can be held accountable</p>
Reparation	<p>The terminology of Reparation in international law is understood as the effort to repair damages suffered by victims as a result of State failure and normally includes <b>restitution</b> (restoration of victims to the circumstances before the violation), <b>compensation</b> (provision of any assessable damages, both material and emotional, for the physical, psychological, direct and indirect harm suffered by the victim), <b>rehabilitation</b> (provision of medical, psychological, legal and social services including education and training on the means to develop new livelihoods) and <b>satisfaction</b> (a public acknowledgement of the wrong and promises of non-repetition with steps to restore the confidence and relationship between and within communities and the State</p>

# ANNEXURE 2

## PRESS COVERAGE OF THE ISSUE THROUGH CIVIL SOCIETY INITIATIVES

THE TIMES OF INDIA, MUMBAI THURSDAY, JULY 5, 2007

**TIMES CITY** THE TIMES OF INDIA, MUMBAI THURSDAY, JULY 5, 2007

### Communal violence bill dangerous: Activists

**TIMES NEWS NETWORK**

Mumbai: The city's human rights activists are up in arms against the National Bill on Communal Violence, which is likely to be introduced in the monsoon session of the Parliament this year. With the experience of the role of the police in the 1992-93 riots behind them, activists said a bill, which strengthens the hands of the state machinery, could be dangerous.

"As seen in the past, most riots are not only abetted, but are triggered by the state and police. If further power is given to these people, the possibility of justice will be reduced," said criminal lawyer and activist Shakeel Ahmed, who is still fighting the cas-

es for some of Mumbai's riot victims. He was addressing a press conference in Mumbai on Wednesday. "Offences of several culpable officers and others in power have been brought to light with enough proof that they were instrumental in planning communal riots, but nothing has been done to penalise them," he added.

According to the activists, the bill neither takes into consideration the rights of victims, witnesses and survivors of the riots, nor does it give protection to them. Moreover, it fails to acknowledge sexual violence as a tool to mobilise hatred among several communities, they said.

"The bill does not have any provisions for the prevention



**CAUSE FOR CONCERN:** The communal violence bill is likely to be introduced in the monsoon session of the Parliament

of riots. It comes to the fore only after the riots," said Justice Hosbet Suresh. "But with the state government given undue power, the bill is not going to help the purpose."

The activists have been urging the Centre to recon-

sider the draft of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill. They have recommended a preamble that focuses on the rights of victims, and acknowledges the role of state agencies in perpetrating communal violence. According to them, preventive measures should be taken: avoid hate propaganda, communalisation and other such divisive factors.

They have suggested that the bill be drafted after taking into account the experiences of those affected by communal violence and the process should be transparent and open to public, with advice from jurists, activists, academicians and legal experts.

toareporter@timesgroup.com

### Riot survivors, activists oppose communal violence bill

Sweta Ramamjan-Dixit  
Mumbai, August 15

IT WAS touted as a legislation that would ensure incidents like the 1992-93 Mumbai riots and the Gujarat carnage did not occur again.

However, the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2006, has met with strong opposition from activists, non-governmental organisations and survivors of the 1992-93 riots who believe the bill confers more power upon the state instead of protecting victims of communal riots.

Concerned that the bill could be introduced in Parliament in the ongoing monsoon session, NGOs are trying to mobilise public opinion against the bill being passed in its present form.

A public meeting organised by the Women's Research and Action Group (WRAG) at Kherwadi on Wednesday was part of the campaign against the bill.

Lawyer Yusuf Muechala said the biggest fear was that it would give rise to a situation similar to that in the northeast where the Armed Forces Special Powers Act, 1958, allows the armed forces to shoot on suspicion in a disturbed area.

"The Bill gives more powers to the state without making it answerable for failure to use power



KUNAL PATIL/HT

Activist Khateon Sheikh speaks at a public meeting against the Communal Violence Bill organised in Kherwadi on Wednesday.

and abuse of power," he said.

"The police will enter our homes and beat us up," Razak Sheikh, a member of the non-governmental organisation Saathi and a riot survivor, said at the meeting.

The Communal Violence Bill, which was introduced in Parliament in 2006, empowers the state to declare an area as communally sensitive. The district magistrate

and other competent authorities can order a deposit of arms and ammunition and have the power to search and seize.

"This bill is not for victims of riots or the common man. It is for those who cause communal violence," said Somya Una, a lawyer specialising in gender and human rights issues.

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# Communal Violence Bill 2005 is rejected in its entirety

BY A STAFF REPORTER, MUMBAI

COMMUNALISM and communal violence is not new to India. India has seen it all, right from the birth of the nation and the ghastly riots that took place during India's partition to the Gujarat riots in the late 1960s to the Babri Masjid riots and the consequent 92-93 riots in Mumbai to the Godhra riots.

Communal violence has plagued India over the years and a need to have a legislation that would not only prevent the occurrence of communal violence in India but also provide for adequate punitive and rehabilitative measures has risen out of it.

The UPA government in May 2004 promised to enact a 'comprehensive legislation' on communal violence that would empower the citizens in times of struggle and drafted the Communal Violence Bill 2005 that is going to be presented in the next session of Parliament. The Bill, drafted by the Government without any real consultative process involving civil society, however, is believed to be flawed as a lot of major issues affecting a 'communally disturbed area' are not taken into consideration.

A public meeting therefore, was organised on Wednesday at Portuguese Church, Dadar to publicly reject the Communal Violence Bill 2005 and ask the Central Government to set up a Drafting Committee to formulate an entirely new Bill that would take into consideration the requirements of the society.

The Communal Violence Bill 2005 goes against its first major claim when it gives greater powers to the State Government as against the promised empowerment of the citizens in the times of struggle. This strengthens the shield of protection over the State Government, its political leaders and its officials for their acts of omission and commission in these crimes making the citizens more weak and vulnerable as the powers can be misused against vulnerable groups.

The Bill is based on draconian laws such as TADA, POTA, AFSPA and Disturbed Areas Act and Acts from the Indian Penal Code that are meant for individual crimes and are not really suited for mass criminal acts like communal violence.

Minority groups are usually targeted and held responsible for the riots whether they have inflicted them or not. A victim of communal violence who belongs to such a minority group said at the meeting, "If the police themselves are not ready to take the complaints from us, then what is the use of law?"

The Bill indeed does not acknowledge the role of State Government in perpetuating communal violence and it fails to make the state agents like the Police accountable for not taking adequate steps to stop the process of communalisation and mobbing communal hatred that precede communal violence.

The Bill does not give adequate protection to victims, witnesses and survivors.

# Riot law is not right

Among other things, it offers protection to politicians though they could be the masterminds

**Manoj R Nair** writes on the multiple communities in Mumbai



One of the promises made in the UPA government manifesto was the framing of a law to prevent communal violence. The legislation was supposed to generate confidence among citizens who have the scars of communal riots.

But last week, a few survivors of the 1992-93 riots, accompanied by social activists met at a hall in Bandra to reject the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill 2005. The meeting ended with a statement that they rejected the bill in its present form even while endorsing the need for a law on communal violence.

The bill was scheduled to be presented during the next session of Parliament. The legislation will probably come up for discussion in the winter session of Parliament now. Some features of the new law include enhanced punishment for perpetrators of communal violence and compensation for victims from the aggressors. Apart from provisions for such probes if investigation officers fail to file charge sheets within a stipulated time, the bill also seeks establishment of special investigation agencies from undisturbed areas. Another significant feature is the inclusion of the Central Disturbance Relief and Rehabilitation



A few survivors of the 1992-93 riots, accompanied by social activists rejected the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill 2005.

of the state government," she says.

Shabana Shaikh, a resident of Neopada in Bandra East, one of the government colonies in the wake of the December 1992 riot, has a reason for agreeing with Zaidi. One of the participants at last week's meet, she says that she reached two men from her locality during the evening of December 6, 1992. "One of the men was my neighbour and he had just returned from work. We heard people shouting on the street and he stepped out to find out what was happening. He was shot dead," says Shaikh.

After incidents like this, we were afraid of going in the police chowky to complain about a crime. We did not expect any help from the police," she adds.

The campaigners have asked for including a new bill with the help of civil society including jurists, academicians and citizens such as Shaikh. The bill will also today gives the state more power. This will make the writ, weaker and the potential, more powerful. There is very little awareness about the bill. The survivor community is totally in the dark about the bill," says Shaikh.

"We need a law with structure. The citizens are there in abundance in the bill which assumes that they will not care for it. We know that this is not true," says Zaidi.

21-AUG-2007  
MUMBAI MIRROR

## **ANNEXURE 3**

PUBLIC STATEMENT RELEASED AT THE

### **NATIONAL CONSULTATION ON**

#### **The Communal Violence (Prevention, Control & Rehabilitation of Victims) Bill, 2005**

**June 16, 2007, New Delhi**

The completion of three years of the UPA Government is an opportune moment to take stock of what the Government has achieved in terms of justice for communal crimes. The demand for a law on communal violence emerged from a brutal record of recurring violence in our country, the increasing occurrence of gender-based crimes in communal conflagrations, and complete impunity for mass crimes. The reasons are many - lack of political will to prosecute perpetrators, State complicity in communal crimes, lack of impartial investigation, and lack of sensitivity to victim's experiences. But there is also, crucially, the glaring inadequacy of the law. Today, despite huge strides in international jurisprudence, India continues to lack an adequate domestic legal framework, which would allow survivors of communal violence to seek and to secure justice.

The UPA Government's Common Minimum Programme (CMP) had promised to give the citizens of this country a 'comprehensive legislation' to fill this legal vacuum. We were promised a legislation that would strengthen the hands of the citizens in the struggle against communalism, and allow us to prosecute for mass crimes committed with political complicity and intent. While the country does need a strong law on communal violence, this present Bill is totally misconceived. What we have before us today is a dangerous piece of legislation called the Communal Violence (Prevention, Control & Rehabilitation of Victims) Bill 2005, which will not only fail to secure justice for communal crimes, but will actually strengthen the shield of protection enjoyed by the State, its political leaders and its officials for their acts of omission and commission in these crimes. It is a Bill, which conceives of communal violence as a 'one time' event rather than as a long-term politically motivated process, and seeks to prevent it only by giving greater powers to (often communally tainted) State governments. Further, it continues to perpetuate the silence around gender-based crimes.

It is a travesty that a Bill of such fundamental importance in addressing the challenges posed to the secular character of our society and polity, was drafted by the Government without any real consultative process involving civil society. At this National Consultation on the Communal Violence (Prevention, Control & Rehabilitation of Victims) Bill 2005, we the undersigned, reject this Bill in its entirety. The assumptions of the Bill are so flawed that it cannot be remedied by amending a few components. We therefore reject this Bill and ask the Central Government to forthwith set up a Drafting Committee to formulate an entirely new bill on communal violence, with the active participation of civil society through an open, transparent, and public process. Eminent jurists, civil society activists, academics and legal experts who have engaged on the ground and in court rooms with communal crimes must be part of such a process. A statute which is sincere about addressing gaps in criminal jurisprudence, must base itself on the experiences of victims of communal violence over the last 60 years, the recommendations of various Commissions of Enquiries and international covenants to which India is a signatory.

Endorsed by:

1. Justice A M Ahmadi, former Chief Justice, Supreme Court
2. Justice Hosbet Suresh, former Judge, Mumbai High Court
3. Justice K K Usha, former Judge, Kerala High Court
4. Justice Rajinder Sachar, former Chief Justice, Delhi High Court
5. Justice Sardar Ali Khan, former Judge, AP High Court
6. Professor K.N. Panikker, former VC, Shree Shankaracharya University, Kerala
7. Harsh Mander, Social Activist (Aman Biradari)
8. Professor Rooprekha Verma, former VC Lucknow University
9. Colin Gonzalves, Supreme Court Advocate, Delhi
10. Dr. Ram Puniyani, Social Activist, Mumbai
11. Professor Kamal Mitra Chenoy, JNU, Delhi
12. Anil Chaudhary, PEACE, Delhi
13. John Dayal, Senior Journalist & Social Activist, Delhi
14. V.N. Rai, IPS, Lucknow
15. K.S. Subramanian, former IPS, Delhi
16. P.J.G Nampoothiri, former NHRC Spl Rapporteur, Gujarat
17. Dr. Abdul Salam
18. Zafar A. Haq, FFCL, Delhi
19. M. Hilal, FFCL, Delhi
20. Abid Shah
21. Uma Chakravarti, Feminist Historian, Delhi University
22. Hanif Lakdawala, Sanchetna, Gujarat
23. Prasad Chacko, Action Aid, Gujarat
24. Kavita Srivastava, Social Activist, Rajasthan
25. Mehak Sethi, Lawyers Collective, Delhi
26. Ajay Madiwale, HRLN, Delhi
27. Avinash Kumar, Oxfam, Gujarat
28. Ravindra, Lawyers Collective, Delhi
29. Sophia Khan, Safar, Gujarat
30. Vrinda Grover, Advocate, Delhi
31. Usha Ramanathan, Senior Law Researcher, Delhi
32. Madhu Mehra, Partners for Law in Development, Delhi
33. Dr. Pratixa Baxi, JNU, Delhi
34. Zakia Johar, Action Aid, Gujarat
35. Niti Saxena, AALI, Lucknow
36. Saumya Uma, WRAG, Mumbai
37. N.B.Sarojini, SAMA, Delhi
38. Soma K.P
39. K.A. Salim
40. Sharafudheen M.K.
41. Jahnvi Andharia, Anandi, Gujarat
42. Gauhar Raza, Anhad, Delhi
43. Anjali Shenoy
44. Asmita Asawari
45. Shabnam Hashmi, Anhad, Delhi
46. Gagan Sethi, Janvikas, Gujarat
47. Farah Naqvi, Delhi

## **ANNEXURE 4**

### **EXCERPTS FROM THE CONCLUDING COMMENTS OF CEDAW COMMITTEE ON INDIA, 2 FEBRUARY 2007**

24. The Committee is concerned that the proposed Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005, does not include sexual and gender-based crimes against women perpetrated during communal violence or create a system of reparations for victims of such crimes, as these elements are not covered effectively by the Indian Penal Code or other relevant legislation. In addition, the Committee remains concerned that this Bill does not adequately address abuse of power by State officials in failing to take action or being complicit in communal violence.

25. The Committee welcomes the State party's statement that recommendations from this Committee will be considered for inclusion in the proposed Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005, and recommends the incorporation into the Bill of: sexual and gender-based crimes, including mass crimes against women perpetrated during communal violence; a comprehensive system of reparations for victims of such crimes; and gender-sensitive victim-centred procedural and evidentiary rules. The Committee further recommends that inaction or complicity of State officials in communal violence be urgently addressed under this legislation.