



Government of India
National Advisory Council

28 April, 2011

1. The Twelfth meeting of the National Advisory Council was chaired by Smt. Sonia Gandhi on 28th April, 2011 at 2 Motilal Nehru Place, New Delhi.
2. Members who attended the meeting were Prof. M.S. Swaminathan, MP, MP, Prof Narendra Jadhav, Prof. Pramod Tandon, Dr. Jean Dreze, Dr N C Saxena, Shri Madhav Gadgil, Ms. Aruna Roy, Ms Anu Aga, Dr.A.K. Shiva Kumar, Shri Deep Joshi, Ms. Farah Naqvi, Shri Harsh Mander and Ms. Mirai Chatterjee.
3. Ms Farah Naqvi, Convener of the Working Group and Shri Harsh Mander, Member of the Working Group presented to the Council the Working Group's Draft '*Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011*.
4. Some of the key provisions of the Draft Bill as presented by the Working Group are as follows:
 - a. The focus of the draft Bill is the vulnerable groups of citizens, who are routinely subjected to violence or threats of violence in different forms because of 'who they are'. These consist largely of religious and linguistic minorities, Scheduled Castes and Scheduled Tribes.
 - b. The Constitution recognizes that vulnerable groups, defined in Article 15(1) require protection against discrimination on grounds only of religion, race, caste, sex, place of birth or any of them. The said Article recognizes that the groups mentioned above have been vulnerable to historical and contemporary forms of discrimination and hence need to be protected. The draft Bill aims to achieve these objects.
 - c. Accountability of public officials is at the heart of this Bill.
 - d. Failure of command responsibility has been made an offence to ensure accountability at the highest level. The offence of breach of command responsibility is extended to non-state actors also.
 - e. A major stumbling block in prosecuting public servants is the provision for getting sanction under S.196 and 197 of the Code of Criminal Procedure, 1973. The Bill provides that if there is failure by the State to respond within a period of thirty days from the date of application to the concerned government, sanction to prosecute will be deemed to be granted.

- f. The draft Bill provides for constitution of a National Authority and State Authorities as the primary monitoring and grievance redressal mechanisms. The principle behind this is not to supersede the existing law enforcement machinery, nor to disempower or paralyze the existing administrative and justice mechanisms, but rather to strengthen them and make them more accountable.
 - g. Certain new offences - sexual assault, enforced disappearances, torture, persecution, and enforced migration - have been defined as offences under this Draft Bill. Additionally, mass violence that is widespread or systematic in nature is also defined specifically as 'organized' communal and targeted violence.
 - h. The draft Bill seeks to strengthen the rights of the victim, through a series of new provisions – from the simple right to information at all stages, the right to get copies of all their statements, to the right to be heard in a court of law, right to adduce evidence, right to protection, right to appeal, and the right to file a complaint with the National Authority/State Authority if and when they are aggrieved by failure of the system to protect and secure for them justice and reparations.
 - i. The draft Bill casts legal duties on the State to provide rescue, relief, rehabilitation, compensation and restitution, to ensure that victims are restored to a situation better than which prevailed before they were affected by targeted violence.
5. The NAC agreed that the Draft '*Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011* be placed as Working Group draft in the public domain, within a week. Based on the feedback received the Working Group of NAC shall review the Draft Bill and place the final version for consideration before the NAC at its next meeting.
 6. Ms Mirai Chatterjee, Convener of the Working Group on Domestic Workers' Issues and Ms Farah Naqvi, member of the Working Group presented to the Council the Working Group's draft recommendations on essential elements that need to be part of the National Policy for Domestic Workers being formulated by the Government. NAC, after due consideration, recommends the following elements that need to be part of the National Policy for Domestic Workers:
 - A stated affirmation that the *right to earn a livelihood*, with dignity and respect, and *rights at work* to apply to all women and men who engage in economic activity, including domestic workers.
 - An affirmation of the equity of domestic workers with other wage workers, so that domestic workers are treated no less favourably than other wage workers.
 - A larger labour rights framework, where the State shall take effective measures to include domestic workers in the existing labour legislations and where such inclusion is not possible, or where such inclusion would not

amount to equivalent rights for Domestic Workers, due to the specific nature of their work, the National Policy shall place on the Central Government the obligation to design additional legislative mechanism/s to ensure that Domestic Workers rights as workers can be exercised comprehensively.

7. The NAC agreed that the National Policy should specify the elements that comprise the comprehensive exercise of Domestic Workers 'rights as workers', including:
 - i. Right to receive at least the minimum wages as applicable under the Minimum Wages Act, 1948 with periodicity of payment (at regular intervals but not less often than once a month)
 - ii. Right to remuneration without discrimination based on sex, as stipulated in the Equal Remuneration Act 1976
 - iii. Right to regulated conditions of work, including working within the defined normal hours of work with suitable daily and weekly rest (which shall be atleast 24 consecutive hours per seven days) periods
 - iv. Entitlement to paid annual leave and sick leaves
 - v. Coverage under social security as provided in the Unorganized Sector Social Security Act 2008, including maternity benefits
 - vi. Entitlement to a safe and healthy place to stay and sufficient food (if the worker stays in the home of the employer i.e. a live-in worker)
 - vii. Safe working environment and protection from accidents.
 - viii. Treatment with dignity and respect
 - ix. Protection against sexual harassment at the place of work.
 - x. Protection against forced labour or trafficking, by regulation and registration of recruitment agencies
 - xi. Recognition and registration as workers with the State Labour Departments.
 - xii. Right to establish their own organizations or to join the workers' organizations or trade unions or associations and engage in collective bargaining process
 - xiii. Access to schemes and benefits which are available or will be made available to other categories of workers
 - xiv. Steps to protect migrant domestic workers, including the provision of adequate pre-departure training, information, and written contracts specifying conditions of work, and complaint mechanisms

8. Shri Harsh Mander, Member presented a broad outline of a comprehensive anti-corruption strategy highlighting (i) *preventive* measures such as strengthening RTI and social audits, administrative and police reforms, electoral reforms, judicial reforms, pre-legislative consultations, transparent public appointments, independent grievance redressal systems; (ii) *punitive* measures such as independent Anti-Corruption agency and stringent punishments; and (iii) promotional measures. It was agreed in the NAC that

a Discussion Paper on the subject will be prepared by Shri Mander incorporating suggestions of other NAC members for consideration by NAC. The Council decided that the Working Group on Transparency, Accountability and Governance would work on '*Strengthening Implementation of RTI Act and Social Auditing for Prevention and Control of Corruption*'.

9. The next meeting of the NAC is scheduled to be held on 25 May, 2011.