Affirmative actions for minorities in India: Constrains and possibilities

Mohd Sanjeer Alam[1]

1) Centre for the Study of Developing Societies (CSDS), India

PLEASE SCROLL DOWN FOR ARTICLE

Affirmative Actions for Minorities in India: Constrains and Possibilities

Mohd Sanjeer Alam
Centre for the Study of Developing
Societies (India)

Abstract

_____

India is one of the most socially fragmented and unequal societies of the world. At the same time, it has the distinction of having the longest history of most elaborative affirmative action programmes for alleviating socially structured inequalities. While the affirmative action programmes have wider coverage in terms of social groups, there is continuing demand by new social groups for getting acknowledged as 'disadvantaged' and inclusion in the system of affirmative action. While group based 'reservation' as the most vital instrument of social justice has long been under fire and grappling with several challenges, the social justice regime is faced with the charge that it has largely excluded nation's religious minorities. Of course, religion based affirmative action is faced with many constraints; nevertheless there are possibilities for it. This article discusses the constraints and possibilities of affirmative action for disadvantaged religious minorities, Muslims in particular.

_____

Keywords: Affirmative action, Disadvantage, Minority, Muslims, Equal Opportunity, Reservation, Social backwardness

Acciones Afirmativas para Minorías en la India: Limitaciones y Posibilidades

Mohd Sanjeer Alam
Centre for the Study of Developing
Societies (India)

Resumen

India es una de las sociedades más fragmentadas y desiguales del mundo. Al mismo tiempo, cuenta con la particularidad de presentar la trayectoria más larga en la elaboración de programas de acción afirmativa orientados a hacer frente a las desigualdades estructurales. Mientras que los programas de acción afirmativa tienen una amplia cobertura en relación a los grupos sociales, existe una demanda constante por parte de nuevos grupos para conseguir el reconocimiento como "desfavorecido" y su inclusión en el sistema de acción afirmativa. Mientras que el sistema de cuotas como instrumento para promover la justicia social ha estado en el punto de mira y ha tenido que lidiar con diversos desafíos, las políticas de justicia social se enfrentan a la acusación de que se ha excluido en gran medida a las minorías religiosas del país. Por supuesto, la acción afirmativa basada en la religión se enfrenta a muchos obstáculos; sin embargo, existen posibilidades para ello. Este artículo analiza las limitaciones y posibilidades de la acción afirmativa para minorías religiosas desfavorecidas, especialmente en el caso de las personas musulmanas.

Palabras clave: acción afirmativa, desigualdad, minoría, personas musulmanas, igualdad de oportuniddes, cuotas, rezago social.

I ndia is one of the most socially fragmented and unequal societies of the world. At the same time, it has also had the distinction of having the most elaborated and longest running affirmative action programmes for alleviating structured inequalities (Galanter, 1984).[1] In order to achieve greater socio-economic equality for historically disadvantaged social groups such as the Scheduled Castes (SCs) and the Scheduled Tribes (STs), there are fixed quotas for them (proportionate to their share in overall population) in educational institutions, public employment and political institutions (Parliament, State Legislative Assemblies and Local Bodies). In recent years, the system of reservation or quota has also been extended to Other Backward Classes (OBCs) whereby seats are reserved for them in public employment and institutions of higher education. However, there is continuing demand for reservation by new social groups. In many cases, the social groups struggling for reservation happen to be relatively prosperous and locally powerful.[2] The continuing demand for and dispute over getting acknowledged as 'disadvantaged' have raised many questions with regard to conceptualization of disadvantage and the rationale, form, capacity and implications of the existing affirmative action programmes. While group based 'reservation' as the most vital instrument of social justice has long been under fire and grappling with several challenges, the social justice regime is faced with the charge that it has largely excluded nation's minorities.

As per the constitutional provisions religion based affirmative action is proscribed, although some religious minorities, if not all, have long been projecting them as disadvantaged and excluded, and, therefore, demanding for their inclusion in the affirmative action programmes. Nevertheless, the issue got renewed vigour following the findings and recommendations of the two commissions appointed by the Government of India - (a) The National Commission for Religious and Linguistic Minorities (NCRLM) constituted in 2004 under the chairmanship of Justice Ranganth Misra; and (b) Prime Minister's High Level Committee to prepare 'A Report on the Social, Economic and Educational Status of Muslim Community of India' set up in 2005 under the chairmanship of Justice Rajinder Sachar (henceforward Sachar Committee Report). While the former recommended for reservation

for religious minorities as in the case SCs/STs/OBCs, the latter recommended for a range of affirmative measures (other than reservation) for disadvantaged religious minorities, Muslim minorities in particular.

But the idea of affirmative action for Muslims or for that matter any other religious group as a 'disadvantaged group' is beset with many fundamental challenges. These include but are not limited to: (a) legal/constitutional barriers to religion based affirmative action[3]; (b) complex intra – group differentiation and inequality; (c) finding a convincing way of measuring disadvantage in its all complexity; and (d) minimizing the impact of unintended policy consequences (social and political turmoil). Nevertheless, given the pathetic average socioeconomic conditions of the community, there is a compelling need for state intervention so as to enable them to have greater access to and participation in those opportunities availed by majority of people (Alam, 2010; 2014).

Against this backdrop the aim of this paper is threefold: (a) to understand the sociopolitical processes underlying affirmative action for religious minorities; (b) to interrogate various strands of debate on affirmative action for Muslims, and (b) to propose and critically examine various policy alternatives in order to enrich the ongoing debates and churning on affirmative action for Muslims.

The remainder of the paper is structured as follows. The following section briefly discusses as to constitutional position on minorities and how they are educationally and economically placed. Section 3 presents the contours of affirmative action debate on religious minorities. Section 4 discusses various models through which Muslim minorities may be benefited from existing affirmative action programmes. Section 5 concludes the discussion.

India's National Minorities

In India, the word 'minority' is quite loosely defined and continues to be debated. The Constitution speaks of religious and linguistic minorities. Article 30 of the Constitution speaks specifically about two categories of minorities – religious and linguistic. Religious communities, which are culturally distinct and numerically smaller than the Hindus at national level, are designated as a 'minority'. Seen thus, religious groups such as Muslims,

Christians, Sikhs, Jains, Buddhists and Parsis are recognized as national minorities.[4]

Although there is a legal/constitutional framework for protection of minority rights, some minority groups, if not all, are found to face severe socioeconomic disadvantages for various reasons. For example, religious minorities such as Parsis, Christians, Sikhs and Jains are much better on a variety of indicators of human development than the national average or Hindus (the majority community) taken as a whole. Thus, minority status per se is not linked to socioeconomic disadvantage and deprivation. However, the Muslims, the largest religious minority group (constituting about 14 percent of total population), have fallen behind others in the crucial sectors of life (Sachar, 2006; Alam, 2009a, 2009b, 2010; Shariff & Basant, 2010). And, therefore, the debate on affirmative action for minorities in the current context is largely confined to the Muslim community.

Debating Affirmative Action for Minorities

During the colonial rule, religious minorities enjoyed benefits of affirmative action in various spheres (Wright, 1997). After the colonial power gone, these privileges given to minorities were done away with. The Constitution of India did not provide for affirmative measures for religious minorities as it did for formerly 'depressed classes'. Nonetheless, the issue was intensely debated in the Constituent Assembly. In the Constituent Assembly Debates (CAD) meetings held between December 1946 and August 1947 reservation was seen as a possible solution to allay fears and apprehensions of minorities (Hasan, 2009; Tejani, 2013). For instance, the sub-committee on minority rights in its report (submitted to the Advisory Committee on Fundamental Rights on the 27th July 1947) had recommended for reservation for religious minorities such as Muslims, Christians and Sikhs in legislatures on the basis of joint electorates and in public employment in proportion to their share in overall population.[5] Accordingly, the Advisory Committee on Fundamental Rights recommended that seats for different recognized minorities as a rule would be reserved. However, the issue reopened following the report of a special sub-committee that had met in December 1948.[6] The report held that the situation in the country (following the Partition) had changed to such an extent that 'it was no longer appropriate in the context of Free India and of

present conditions that there should be reservation of seats for Muslims, Christians and Sikhs or any other religious community'. It further held that reservation for religious communities 'did lead to a certain degree of separatism'.[7] As a matter of fact, majority of members belonging to minorities held that political safeguards would not serve the interest for minorities. Thus, acting upon the report of the special sub-committee, the Advisory Committee overwhelmingly voted for the abolition of political safeguards for religious minorities.

The reservation for religious minorities in services reopened for discussion in the CA on the 14th October 1949. Moving amendment (No. 3163 of the list of amendments) for Article 296,[8] B.R Ambedkar proposed that '[t]he claims of members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State'.[9] Many members including Sardar Hukum Singh, Bhopindra Singh Mann and Naziruddin Ahmad (all belonging to religious minority communities) pointed out that the present resolution was reversal of earlier decision. Sardar Hukum Singh argued that it was nowhere suggested that all safeguards would go. The only decision that was agreed to was: "That the system of reservation for minorities other than Scheduled Castes in legislatures be abolished". Naziruddin Ahmed submitted:

> "It is absolutely clear on a perusal of the original report, the letter of Sardar Patel, the resolution moved by him and in the speeches in the Houses – that they all attempted reconsideration only of the reservation for minorities in the Legislatures. I may add that this was done with the fullest concurrence of the Muslim members of this House. I was one of those who thought that the reservation in Legislatures would not be good for minorities themselves; but with regard to consideration of their cases in making appointments, subject to efficiency was not reopened'.[10]

Sardar Hukum Singh made a powerful plea for restoring the original proposal that was already accepted by the House. He proposed that article 296 be substituted to read: "Subject to the provision of the next succeeding

article the claims of all minority communities shall be taken into consideration, consistently with the maintenance of administration, in the making appointments to services and posts in connection with the affairs of the Union or of a State for the time being specified in Part I of the First Schedule." When put to vote, his amendment was rejected by the House and that of Ambedkar voted to become part of the constitution. With this, reservation for minorities was wholly rolled back.

What explains change of mind of the members of constituent assembly? It is suggested that it was largely the partition and consequent communal violence that served a major blow on the scope of reservation for religious minorities. First, the Partition marked departure of 55 Muslims, leaving behind only 28 members in the constituent assembly. With this, the bargaining power of the members of the minority communities in the constituent assembly got diluted substantially. Secondly, the changed circumstances forced the members of minority communities to demonstrate their loyalty to India. As Wright Jr. (1997, p. 853) puts it: 'neither were Hindu representatives willing to continue this concession nor were the remaining Muslim committee members prepared to press for it'. Now on, the minority rights got increasingly framed under "secularism" and "undifferentiated citizenship" rather than "social justice". Many members of constituent assembly argued that in secular India political safeguard along religious lines would be antithetical to the ideals of secularism. For example, Krishnaswamy Bharti from Madras argued that "community should not be made the basis of civic right. In a secular State right to representation is only the right to represent a territory in which all communities live".[11] Other members namely Mahabir Tyagi also made similar points. In the given political circumstances, not only did these voices have wider appeal in the assembly, they were difficult to be countered.

A fresh opportunity for minorities to get included into the reservation system arose when the first Backward Classes Commission was set up in 1953 to identify 'backward classes' and widen the coverage of affirmative progrommes. The commission received representations from religious organizations. In their representations, Muslim organizations demanded that the Muslim community as a whole should be treated as backward. While the commission did not treat religious communities (minority religions) as a

whole as a backward class, it recognized some groups/sub-groups among them as 'backward classes'.[12] Like its predecessor, the second Backward Classes Commission constituted in 1979 (popularly known as Mandal Commission after its chairman B.P Mandal) also did not recognize religious groups as a whole as 'backward class'. Rather, it identified some groups among non-Hindus as socially and educationally backward classes based on the two criteria: (a) all untouchables converted to non-Hindu religions; and (b) such occupational communities which are known by the name of their traditional hereditary occupation and whose Hindu counterparts have been included in the list Hindu OBCs. Though the criteria for identifying OBCs among non-Hindus were short of careful thought and beset with methodological fallacies, the fact remains that a section of Muslims became part of the reservation system.

The inclusion of some groups/sub-groups, however, did not satisfy the community elites. The demands for reservation for the entire community continued. In 1994, the Association for Promoting Education and Employment of Muslims (APEEM) convened a conference in New Delhi. This conference was of immense importance because the then Minister of Welfare in the Union Cabinet, Sitaram Keshri, not only attended the conference but also advocated separate quota for Muslims in educational institutions and public employment. This implied that the Conference had been convened with the tacit support of the Congress (Wright, 1997). The APEEM has continued to buttress demands of reservation for Muslims in its successive conferences (Alam, 2009a, 2009b).

The idea of affirmative action for Muslims received wider attention following the reports of the two commissions set up by the UPA (United Progressive Alliance) government in 2004. The Prime minister's High Power Panel, popularly known as Sachar Committee, analyzed socioeconomic status of the Muslim community vis-à-vis others. [13] Based on its findings on certain indicators of educational and economic attainment social groups can be vertically arranged as follows: forward caste Hindus at the top, followed by Hindu OBCs as well as upper caste/class Muslims; distantly followed by SCs/STs, and the Muslim OBCs being at the bottom. While the primary mandate of the Sachar Committee was to map the levels of deprivation among Muslims and diagnose the problem, it also highlighted

the areas of intervention and suggested multifarious measures (minus reservation) to overcome various kinds of deprivations among Muslims.

The 'National Commission on Religious and Linguistic Minorities' (NCRLM) appointed around the same time was, however, primarily mandated to find out solutions to socioeconomic problems facing the Muslim community. Its mandate included: (a) suggest criteria for identification of socially and economically backward sections among religious and linguistic minorities; (b) recommend measures for welfare of socially and economically backward sections among religious and linguistic minorities, including reservation in education and government employment; and (c) to suggest the necessary constitutional, legal and administrative modalities required for the implementation of its recommendations. Accordingly, the NCRLM in its report (2007) recommended reservation for Muslims. We will discuss its proposals with regard to reservation for minorities in greater detail in the following section; suffice here to say that it gave some legitimacy to the demands of reservation for Muslims.

Alternative Models of Affirmative Action for Minorities: Constraints and Possibilities

In India, much of the discourse on affirmative action is focussed on reservation. Nevertheless, there are many important ways through which group based disadvantages can be substantively redressed. In fact, many of them appear to be more capable of combating group based disadvantages than reservation. In what follows is a critical discussion on a wide array of approaches or models that might contribute to or could be useful in thinking about social equity for disadvantaged minorities such as Muslims.

Quota Approach

It is probably the most popular as well as contentious form of affirmative action. The popularity of quota or reservation lies in the fact that it is an outcome oriented policy approach, for it involves fixed amount of budgetary allocation and/or a fixed proportion of seats in educational institutions and

public employment reserved for the disadvantaged group. This form of affirmative action is particularly effective in the societies that are deeply divided along religious, ethnic or linguistic axes and characterized by deep institutional and structural barriers to social equality. Since a quota for the disadvantaged group in question is "fixed", it helps disadvantaged groups overcome prejudices against them in the system of distributive benefits and the wider society as well.

The most distinctive aspect of affirmative action in India is fixed quota for the target groups - the Scheduled Castes (SCs), the Scheduled Tribes (STs) and the Other Backward Classes (OBCs). As far as inclusion of Muslims in the reservation policy is concerned, some sub-groups among them are identified as OBCs. However, it is often claimed that Muslims have not received a fair deal in the reservation policy. While there is a demand for a fixed quota for the entire Muslim community, it has several strands. There are many who argue that relative backwardness of Muslims is more a matter of inter-group diversity than intra-group disparity, for Muslims as a whole are victim of invidious discrimination that has pushed them to the level of SCs/STs. (Akhtar & Ahmad 2003; Hasan, 2005). The nub of these arguments is that the identity based biases run so deep in the system that not only are affirmative actions necessary, but no affirmative action policy other than 'fixed quota' is ever likely to work.

Such arguments have, however, come under attack from within the community itself. Some sections of Muslims argue that class and caste categories should be retained while considering Muslims for affirmative action (Engineer, 2004). It is argued that like Hindus, Muslims are also characterised by internal differentiations in terms of caste-like groupings. Though Islam prohibits caste and class distinctions among Muslims, in practice the Muslim community is not immune from caste-like hierarchies (Ahmad, 1978; Karanath, 2007). More recent converts, the majority of whom were lower caste Hindus, are not seen as socio-economic equals within the community (Ali, 2001; Mondal, 2003). This implies that all Muslims are not backward, nor do all of them require affirmative action. The basis of affirmative action in the form of reservation for Muslims should, therefore, be linked to social and economic stratification within the community. The underlying assumption is that the benefits of reservation

should go to those within the Muslim community whose social and economic status is no different from Hindu lower castes. Extending benefits of reservation to the entire community would only benefit the upper crust of the community who can advance in life on their own, while those who really need reservations would be left untouched. Hence, it will defeat the avowed purpose of the policy aimed at uplifting the deprived sections within the community. This argument is particularly advanced by the Pasmanda (backward) Muslims Organizations (Jenkins, 2003).

The official proposal for extending reservation to the entire Muslim community is put forward by the NCLRM (2007). There are basically two proposals. One, the entire Muslim community may be declared 'backward' within the meaning of that term in Article 16 (4) of the Constitution - *notably without qualifying the word 'backward' with the words 'socially' and 'educationally'* and that reservation could be given over and above existing 49.5 percent. The commission suggested 15 percent reservation for minorities, subdivided into 10 percent for Muslims and 5 percent for other minorities. The second proposal is, in fact, placed as an alternative in case there is any difficulty in implementing the first proposal. According to this proposal, subject to minor adjustment inter se in accordance with population of various minorities in various states/UTs, a sub quota of 8.4 for minorities (internally sub-divided into 6 percent for Muslims and 2.4 percent for other minorities) within the 27 percent OBC quota should be carved out on the ground that minorities account for 8.4 percent of the total OBC population.[14] However, both the proposals appear to be faced with legal/constitutional problems. As far as the first proposal is concerned, recognising the entire Muslim community as 'backward' for the purpose of reservation involves amendments in the constitution for (a) extending reservation to Muslims as a backward class' and (b) removing the ceiling of 50 percent.[15] On the second proposal, it has been argued that the inclusion of groups in the category of OBC is based on the twin criteria of 'social' and 'educational' backwardness. As stated earlier, since Indian Muslims comprise of multitude of sub-groups and many of them are of high social origin, the idea of inclusion of the entire Muslim community is not in the fitness of constitutional provisions.

One may, of course, argue that if objective position of Muslims as a whole is no different from officially recognized backward classes, the constitution should be amended to recognize them as 'backward classes'. After all, the constitution has been amended for similar purposes on many occasions. For example, it has been amended to grant the status of the Scheduled Caste to members of Sikh and Buddhist communities in 1956 and 1990 respectively. On the face of it, this argument has some merits. However, arguments such as these should not be made in isolation from larger social and political consequences. For one, if past experience is any guide, reservation has been an overly emotive and divisive issue. Attempts of increasing the quantum of reservation have met with violent resistance and political backlash (Kumar, 1992; Shah, 1991; Weiner, 1983). The extension of reservation to Muslims would not only be opposed at political and societal levels,[16] the reactions would be even more violent than in the case of OBCs. In other words, pressing for reservation for the entire Muslim community in the current socio-political clime may further isolate the community from the wider society. Secondly, as we have noted, the opposition to the idea of reservation for the entire Muslim community is also likely to come from within the community itself. In other words, considering all Muslims for reservation may also create many problems within the community itself.

In view of above complexities a pertinent question that arises: is there any scope under the existing legal/constitutional framework and political conditions to maximize the benefits of reservation for eligible Muslims? There are two issues to be looked into in this regard. It is often claimed (a) that the method used by the Mandal Commission to identify OBCs among Muslims is flawed, leaving many genuinely deserving sub-groups among Muslims out of the OBC category; (b) that Muslim OBCs are far more disadvantaged than their counterpart among Hindus and as a result the former are unable to compete with the latter and thus much less likely to benefit from reservation earmarked for OBCs as a whole.

Let us take up the first claim first. As per the NSSO (68th round) estimates, Muslim OBCs account for 7 percent of total population. In other words, half the Muslims (13.4 percent of total population) are placed in the OBC category. However, sociologists and anthropologists have suggested

that about 80-90 percent of Muslims are descendents of converts who belonged to 'untouchables' and lower caste Hindus (Mondal, 2003). It thus points to the fact that the Muslim communities who are socially and educationally backward like their counterparts following other religions have not been properly identified. To put slightly differently, there is scope for identifying many more Muslim communities as socially and educationally backward classes and place them in the OBC list. Of late, this exercise has been done in a number of states including West Bengal and Andhra Pradesh. It has not faced hurdles of any sort – legal or political. In brief, identification and inclusion of more Muslim communities in both central and state lists of OBCs is possible without any fetters. If identification problem is overcome it will substantially increase Muslims' share in the reservation policy.

With regard to the claim of not being able to appropriate benefits of reservation, it is not the Muslim OBCs who are particularly faced with this problem. As a matter of fact, a large number of communities have complained that they are unable to compete with relatively advanced communities within the OBCs, and therefore not benefiting from the reservation regime. Acting upon such complaints, many states have created sub-quotas within the 27 per cent quota. This also includes a sub-quota for OBC Muslims. For example, Kerala has divided OBC into eight categories and accordingly has eight sub-quotas. There is one sub-quota for Muslim OBCs. Similarly, Karnataka has a sub-quota of 4 per cent for Muslim OBCs. Recently, Andhra Pradesh has added the category 'E' in the existing fourfold classification of OBCs to devise a sub-quota of 4 per cent for Muslim OBCs (Krishnan 2012). Such classifications and sub-quotas have stood judicial scrutiny. Nor have they been subjected to political controversies. In brief, sub-quotas for most backward communities including Muslims (OBCs) are legally appropriate, judicially sustainable and politically non- contentious. Thus, if a comprehensive system for sub-quotas based on differential levels of backwardness/deprivation at the central and state level (where sub-quotas are not available) is done, it will benefit the most backward communities including Muslims identified as OBCs.

Spatial Approach

The spatial approach is rather a process oriented policy. It is most suited in the context where ethnicity based deprivation is coterminous with backwardness of region. Nigeria offers the best example of this model of affirmative action. This approach envisages undertaking of various ameliorative schemes for the development of the backward region, leading to betterment of the local communities inhabiting the given region. A distinctive feature of this approach is that spatiality masks both ethnicity and class as the basis of selection of beneficiaries, a major critique of the 'quota' approach. As the coverage of this form of affirmative action is broad based, programmes undertaken are socially and politically least contentious. However, such an approach may not yield desired or desirable results for various reasons. For one, disadvantaged groups are often poor in human and social capital. In such events, developmental initiatives may bypass the intended beneficiaries even in areas where they are in greater numbers. Second, biased bureaucracy or policy implementing agencies may distribute funds or tailor schemes in such a manner that ends up benefiting the well off groups/individuals.

How far does this approach suit affirmative action for Muslim minorities? In order to be able to answer this question, we need first of all to look at spatial demography of Muslims. In 2001, Muslims with a population of 138 millions accounted for about 13.4 percent of total population in the country (Census of India 2001). Unlike other minority communities, Muslims are unevenly distributed across the length and breadth of the country. At the national level, the proportion of Muslims varies from 66.9 percent in Jammu and Kashmir and 30.9 percent in Assam to 5.5 percent in Tamil Nadu. Of the total Muslim population in the country, over half (53 percent) lives in just four states namely Assam, Bihar, Uttar Pradesh and West Bengal. The southern four states – Andhra Pradesh, Karnataka, Kerala and Tamil Nadu – together account for one-sixth of total Muslim population in the country. At the sub-national level, while there is hardly a district that does not have Muslim population, there are 20 districts (out of 594 districts in 2001) across states where Muslims form the majority community. There are another 38 districts that have substantial Muslim population, accounting

for over a quarter of total population but below 50 percent. The spatial distribution of Muslims does suggest that there are some clusters of Muslims and therefore spatial approach may be applicable as well as useful in designing affirmative action for Muslims. Let us now take a brief look at different aspects of spatial approach including coverage, efficacy and quantum of benefits.

In India, the spatial approach in the context of religious minorities has been in existence since 1987. Partly as a follow up to the Gopal Singh Committee Report, the Government of India prepared a list of 41 minority concentration districts (having 20 per cent or more population of minorities in a district based on 1971 census) for focused attention of the government to implement developmental and welfare schemes. In 2008-09, the Government of India revamped this approach to launch area development initiatives, also known as 'multi-sectoral development programme' (MsDP). This programme was launched in 90 minority concentrated districts (MCD) (based on 25 percent or more minority population as per 2001 census). However, the MsDP progrommes came under attack for several reasons such as inadequate coverage, flawed design and poor implementation. .

In terms of coverage, MCDs contained only 37 percent of minority population. As far as Muslims are concerned, they accounted for 30 percent of total population in the MCDs and 40 percent of total Muslim population the country. Thus, majority of Muslims lived outside the MCDs, and therefore left out of the MsDP programme. The MsDP also had serious design, content and implementation problems. It was designed as an umbrella programme to intensify developmental activities in the MCDs. Since the district was made unit of planning, funding and implementation in absence of clear guidance as to where in the districts the projects were to be carried out, the schemes ended up benefiting non-minority population. On content, the schemes launched under MsDP were not only very few but also did not promise far reaching changes in the lives of minorities. For instance, these schemes basically related to housing (Indira Awas Yojna), construction of primary schools, more specifically construction of additional classrooms, skill development initiatives etc. Again, in absence of clear guidelines on selection of activities, bulk of spending was reported to have been directed towards construction of houses (Khan & Parvati, 2013).

Realizing that district is too big a unit for planning, the government has now switched to sub-district as a unit of planning, funding and implementation of projects. A total of 710 minority concentration blocks (with 25 percent or more minority population) in 155 backward districts have been identified. Moreover, in selected sub-districts (blocks), as the new guidelines suggest, the villages having higher minority population would be given priority for creation of village level infrastructure/assets. With this, part of the coverage problem seems to have been addressed. Over 60 percent of Muslim population is now covered by minority concentrated blocks (MCBs).

However, the problems with regard to content and implementation remain. To make this approach contributing significantly to address developmental deficits in minority concentrated areas, there is a need to enlarge the bouquet of schemes and remove the institutional bottlenecks. On the front of education, for example, the focus should shift from construction of primary and upper primary schools to construction of secondary schools, colleges and technical institutes (other than ITIs). In each of the identified block schools matching the quality of Kendriya or Navodaya Vidyalay need to be opened up. On the economic front, funds exclusively for up-scaling home based enterprises may be made available on easy terms and conditions. There should also be focus on creating durable assets and sustainable employment opportunities. The list is too long to be presented here.

However, no amount of well intentioned schemes/programme can achieve anything unless they get implemented on the ground in true spirit of the schemes; and policies cannot get implemented unless the structures of implementation are simplified. Currently, the schemes launched under area initiative programme are jointly funded by the central and state governments. At a given point of time, different states have different parties in power which are differentially sensitive to the issues facing the minority communities and therefore policies aimed at benefiting minorities can be differentially successful across states.[17] Moreover, there are multiple layers of planning and approval of activities. This offers ample scope to bureaucracy for delaying approval and implementing projects. In other

words, this approach to affirmative action despite having huge potentials may prove a damp squib.

In sum, if carefully designed and effectively implemented, the spatial approach can greatly help address developmental deficits among Muslims along with others living in backward or under developed areas/regions.

Sectoral Approach

The sectoral approach involves identification of sectors for state intervention which may largely benefit the disadvantaged/targeted groups. Like spatial approach, the basis of selection of intended beneficiaries is not 'group' based on ascriptive characteristics, for its explicit aim is to bail out the entire sector identified for government intervention. And yet, this approach can be used to benefit individuals without making explicit reference to their ethnic or religious identity. An ideal context in which sectoral approach can be useful is the one where the disadvantaged group in question displays higher concentration in the given sectors of economy or occupations.

A major advantage of sectoral approach is that it is inclusive by design and thus not prone to legal and political controversies. For example, if a particular kind of enterprise is chosen for investment or for weeding out problems facing it, the entire sector gets benefitted. Although it is possible that a particular social group has disproportionate presence in that enterprise, it does not have exclusive claims on the benefits out of state intervention. Hence, such policies enjoy greater acceptance.

As far as application of this approach for addressing disadvantages faced by Muslims is concerned, it sounds great as a large number of Muslims are artisans and run home based enterprises. There are certain enterprises or occupation in which Muslim workers are disproportionately engaged. These enterprises include carpentry, butchery, weaving, lock and brass making, carpet and perfume making, leather work etc. Many of these enterprises face the problems of raw materials, financial capital, spatial segregation, lack of availability of appropriate modern technology and exploitation by big traders and so on. The onset of globalization and liberalization accompanied by unbridled powers of traders has further worsened the conditions of those employed in these occupations (Harris-White, 2003; Ahmad, 2013; Jamil, 2014). Thus, a policy package that provides for up-scaling and modernizing

small scale enterprises by making capital available; up-skilling manpower (to use technology) by providing training; putting in place a mechanism to do away with exploitation by traders and so on may help a large number of Muslims and may have multiplier positive effects on their lives.

In India, sector based schemes have been in existence for some time. For instance, the Ministry of Cotton Textile has launched a number of schemes for handloom and handicraft sector. The handloom sector alone employs over 65 lakh persons.[18] The government has identified about 470 handloom clusters for development of the handloom sector. In 2008-09, Comprehensive Handloom Sector Development Scheme was introduced by the Ministry of Cotton Textile for development of two Mega Handloom Clusters – Varansi (Uttar Pradesh) and Sivsagar (Assam). There are also schemes for other small scale enterprises launched by Ministry of Small Scale Industries.

On the face of it, sectoral approach may greatly help members of the Muslim community as the size of artisan class among them is disproportionately large. However, there are no studies to show how different schemes for traditional and marginal occupations work and impact the lives of those engaged in such occupations on the ground. Since most of such schemes are financed and implemented within the federal framework, that is, both central and state governments being responsible for financing, the efficacy of such schemes is likely to be variable across states depending on commitment of the state governments towards the welfare of people engaged in marginal occupations. Also, it is possible that the targeted groups may be used as the front but benefits of government schemes are actually cornered by others. In Malaysia, this kind of arrangement is known as 'Ali-Baba' enterprises (Sowell, 2004). In this case, Ali is someone who belongs to the targeted groups (the native Bhumiputras) and in whose name the enterprise/firm is registered. But actual control of the firm/enterprise is in the hand of 'Baba' who is someone outside the targeted group.

Anti- Discrimination Structures

In multi-ethnic/multicultural societies, the minority groups based on ethnicity, region, religion, language, national origin etc., tend to have feelings of being discriminated against by the state agencies as well as the

wider society. They often attribute their deprivations to invidious discrimination practised against them. In order to address the problem of discrimination - actual or perceived - many democratic and multi-ethnic countries - the United States of America, Canada, United Kingdom, Brazil, South Africa to name a few - have enacted anti-discrimination laws and created anti-discrimination or equal opportunity authorities. For example, the United States of America passed Equal Opportunity Act in 1972 and created Equal Employment Opportunity Commission to prohibit discrimination in employment and workplace. In 2010, the United Kingdom (UK) passed Equality Act 2010 to replace all previous anti-discrimination laws with a single Act. The Act aims to prohibit discrimination on the basis of race, religion, gender, sexual orientation, marital status and age. Without giving the whole list of countries with equal opportunity structures, suffice it to say that such measures are in existence and have proved useful to combat discrimination and problems of under- representation of disadvantaged groups in critical sectors of life such as employment and educational institutions. As Borooah (2010, p. 33) puts it, 'not only do EO policies attempt to eliminate discrimination bias by making it illegal, EO builds non-discriminatory policies into the fabric of the human resource management of organizations...'. These efforts are said to have made substantial impact on the lives of the minority groups often prone to discrimination (Khaitan, 2008).

India is a multi-ethnic and multicultural country. As a matter of fact, almost all social groups, big or small, perceive themselves as potential victims of illegitimate discrimination. However, such feelings are more pervasive among historically marginalized groups and religious minorities. Whether or not a group is actually discriminated against, the feeling of discriminatory treatment itself causes a lot of damages. To illustrate, if a social group is gripped by the perception that its members are not going to get good jobs despite having appropriate qualification because of biased labour market, it may not invest in education and apply for jobs available in the labour market. In economic literature, this is called 'discouragement effect'. In brief, this traps the social group having perception of being discriminated against into the vicious cycle of lower investment in human capital (because education may not be seen as a passport to public

employment), under-skilled manpower, lower level of economic mobility (because of lack of education), and lower level of income (because of being positioned at lower rungs of economic structures), and lower investment in human capital (because of lower income). It is thus absolutely necessary to create equal opportunity structures armed with statutory powers to deal with complaints of discrimination in a fixed time frame.

The first attempt towards creating Equal Opportunity Commission (EOC) was initiated by the UPA (United Progressive Alliance) government as a follow up to the recommendations of Sachar Committee (2005). The government appointed an Expert Group in 2008 to 'examine and determine the structure of an Equal Opportunity Commission'. Underlining the importance of Equal Opportunity Commission, the expert group observed: "Perhaps equal opportunity situations would have been different had the Government set up Equal Opportunity Commission immediately after the enactment of the Constitution".[19]

Given that EOCs in other countries have been very effective in weeding out discrimination in hiring processes and in distribution of state resources, this is not an exaggerated statement. The Commission envisaged an EOC that would be 'autonomous of the government of the day and be capable of responding quickly and effectively to any challenge it is faced with'; would entail multifarious functions – advisory/consultative, policy intervention, investigative and grievance redressal; would cover disadvantaged groups based on an open ended list of irrelevant personal characteristics; and would have jurisdiction over both public and private sectors. This makes the design of EOC not only morally better but also promises to positively affect the lives of disadvantaged groups/individuals far more than any other welfare measures can for the following reasons. First, since the principal reason for under-representation of disadvantaged groups including Muslims in various structures of opportunities is seen to lie in systemic discrimination against them, an effective EOC will not only help them redress their grievances sooner than later, it may instil confidence among them and thereby dilute the tendency (among disadvantaged groups/individuals) of withdrawing from competition for positions. Second, the jurisdiction of EOC is not just limited to jobs and educational institutions and that too in the public sector as in the case of reservation, but may also extend to unfair treatment in private sectors

and a wide variety of other areas such as housing, institutional credit lending and so on. In other words, anti-discrimination measures including EOC can bring about far reaching changes in the lives of far more people across groups than reservation does or can.

Nevertheless, constitution of EOC like bodies is faced with two major, though not insurmountable, difficulties. One, there are many commissions dealing with issues of different groups with some functions similar to those proposed for EOC. In other words, there is scope of overlapping spheres of mandate and jurisdictions between EOC and other commissions or statutory bodies like Commissions for Scheduled Castes and Scheduled Tribes, Women's Commissions, Minority Commissions and so on. One way out of this impasse is to merge different bodies/structures/commissions into a single Equal Opportunity Commission or to take out some powers/functions (relevant to EOC) of different commissions and assign them to EOC. But this is not an easy task to do. This is precisely the reason why the EOC Bill could not be introduced in the Parliament. There were differences of opinions within the government. One argument was that since EOC as proposed by the Expert Group would stand in conflict with other existing statutory commissions, it should cover religious minorities only. Others argued that EOC for minorities only would render it meaningless. It will be seen as another instrument of minority appeasement. Second, even an effectively functioning EOC may end up dealing with limited number of complaints. Given the pervasiveness of discriminatory feelings across social groups, the EOC will be flooded with the complaints of discrimination which in turn may seriously impair its ability to dispose of the cases in the given time frame. In such a situation, to have an EOC may mean like any other commissions that hardly serve the purpose for which they were created.

In sum, given the pervasiveness of discrimination the EOC can be an effective instrument of addressing social inequities, provided that it is designed in much better ways than the one proposed by the government, that is, for minorities only.

Conclusion

India is one of most unequal societies of the world. Inequalities are manifested in terms of caste, tribe, gender, religion and region and so on. These axes of inequalities are, however, not mutually exclusive. They tend to get nested in complex ways. Nonetheless, religion is a major axis of persistent inequalities. Given that the Muslim communities are faced with several forms of disadvantages relative to other socio-religious communities, and that India has the most elaborated affirmative action programmes for disadvantaged groups, there is a strong case of affirmative action for Muslims. However, designing affirmative action for Muslims or for that matter any other disadvantaged minority group should be based on sound reason and criteria to convey right messages to the beneficiary group as well as the wider society. So, affirmative action policy for Muslims needs to factor in the followings: (a) that the nature and degrees of disadvantages facing Muslims vary across space and also in terms of social origin, that is, their relative backwardness is multi-layered; (b) that the existing constitutional provisions put some limitations to adoption of affirmative measures for Muslims similar to other disadvantage groups; and (c) the political class is sharply divided on different forms of affirmative action, if not on the idea of 'affirmative action' for minorities *per se*. It thus suggests that a single set of measures will be inadequate to remove complex and multi-layered disadvantages facing the Muslims. To put slightly differently, there is a need is to follow what may be called a "mixed approach" or a "multilateral approach". For example, at one level initiatives may be taken to proper identification of backward classes among Muslims. At another level, spatial and sectoral approaches either combined or separately can be better designed and implemented to benefit Muslims along with other deprived groups to tackle developmental deficits thereof. At the other level, anti-discrimination measures such as EOC may be put in place. Taken together, these measures can be reasonably expected not only to help addressing grievances of Muslims and other marginalized groups but also to bring about substantive transformation in their lives.

Notes

[1] *Affirmative action* is a nebulous term used to refer to deliberate undertaking of positive steps or policies aimed to make progress towards achieving substantive rather than formal equality of opportunity for those groups currently underrepresented in crucial sectors of life and/or in significant positions in the structures of opportunities (Mullen 1988; Brest and Oshige, 1995). In India, policies that can be described as affirmative action were introduced by the British regime in the very beginning of the 20th century for religious minorities and depressed classes. In the first quarter of the 20th century, middle castes were given benefits of reservation in public employment in the Madras Presidency and some of the independently ruled areas of southern and western India.

[2] For instance, the Jats, the Marathas and the Patels are land owning and relatively prosperous communities and yet demanding for reservation. Out of political expediency, the state governments carved out quotas for them but such quotas could not stand judicial scrutiny and were summarily struck down by the courts. On the other hand, the *Gujjars,* traditionally a pastoral community of north and central India, have been agitating for some time to be included in the list of STs. They claim that they are tribes and have wrongly been placed in the list of OBCs.

[3] For example, the Andhra Pradesh Government introduced a quota of 5 per cent for Muslims in educational institutions as well as public employment for Muslims. It was challenged in the court and eventually the Andhra Pradesh High court struck it down.

[4] Also see National Commission for Minorities Act 1992; Report of the National Commission for Religious and Linguistic Minorities, Ministry of Minority Affairs, Government of India, 2007.

[5] Also see CAD (26 May 1949:321).

[6] The members of the sub-committee comprised J.L Nehru, Rajendra Prasad, K.M Munshi and B.R Ambedkar and Sardar Patel. Sardar Patel, on 11 May 1949, laid down the report of this sub-committee before the Advisory Committee on Fundamental Rights.

[7] On this see, *CAD*, Vol. VIII, 25 May 1949: 311, Appendix A

[8] Article 296 in the Draft Constitution originally contained: "In the all India and provincial services the claims of all minorities shall be kept in view in making appointments to these services consistently with the consideration of efficiency in administration".

[9] CAD, Vol. X, 14 October 1949, p. 229

[10] CAD, Vol. X, 14 October 1949, p. 229

[11] See CAD, Vol. VII, 8 November 1948, p.323.

[12] The First Backward Classes Commission (1953-55) held that "it would be not fair or just to list all Muslims as socially and educationally backward. Officially, Muslims do not recognize any caste. It must be said to the credit of Islam it did not compromise its position in the matter of untouchables. There are certain professions, however, that are regarded as inferior even by the Muslims. The sense of high and low has gradually permeated Muslim society and there are a number of communities amongst them that are suffering from social inferiority and consequent educational backwardness. We have recognized this deterioration that has overcome Muslim society today and added the names of such backward communities found

among them in the list of Other Backward Classes". Government of India (1955): Report of the Backward Classes Commission (Vol.1), p. 27.

[13] The mandate given to the committee broadly included: (a) to 'obtain relevant information from departments/agencies of Central & State Governments and also conduct an intensive literature survey to identify published data, articles and research on relative social, economic and educational statistics of Muslims in India at the State, regional and district levels…', (b) to 'consolidate, collate and analyze the above information/literature to identify areas of intervention by Government to address relevant issues relating to the social, economic and educational status of the Muslim community'. Also see, Notification No. 850/3/C/3/05 – Pol. Government of India, New Delhi.

[14] Report of National Commission on Religious and Linguistic Minorities (2007), Government of India, p. 153.

[15] Although there is no constitutional limit to quantum of reservation, successive rulings of the Supreme Court beginning with Balaji Vs State of Mysore (1963) fixed a ceiling of 50 percent for all reservation taken together.

[16] For example, when the government of Andhra Pradesh announced a 5 per cent reservation for Muslims in the state in educational institutions and jobs in 2004, it raised political storms. The BJP described this reservation as 'anti-national' and announced to launch rigorous campaign against it. On July 18, Venkiah Naidu, a senior member of the BJP, told the reporters that 'the decision of to give 5 per cent of reservation to Muslims in education and jobs is dangerous, divisive and against national interest.'

[17] For example, the Gujarat government refused to distribute scholarships initiated by Ministry of Minority Affairs to the minority students until the Gujarat High Court directed it to implement the scheme. Other BJP ruled states such as Chhattisgarh and Goa have also been reluctant to distribute scholarship to minority students,

[18] See Ministry of Textiles, Government of India (also see, http://texmin.nic.in/policy/policy_scheme.htmhttp://texmin.nic.in)

[19] Report of the Expert Group 'Equal Opportunity Commission: What, Why and How?' (2008), p. xvii. Government of India.

References

Ahmad, I. (ed.) (1978). *Caste and Social Stratification among Muslims*. New Delhi: Manohar

Ahmad, Z. (2013). Marginal Occupations and Modernizing Cities: Muslim Butchers in Urban India. *Economic and Political Weekly*, *48*(32), 121-30

Akhtar, S., & N. Ahmad (2003). Reservation for Muslims: A Need of Hour, in S.N. Singh, (ed.) *Muslims in India* (pp. 37-66). New Delhi: Anmol Publications

Alam, M. S. (2009a). Backwards Logic. *Indian Express,* February 6.

Alam, M. S. (2009b). Is Relative Size of Minority Linked to Underdevelopment?. *Economic and Political Weekly, 44*(48), 17-21. Retrieved from http://www.jstor.org/stable/25663829

Alam, M. S. (2010). Social Exclusion of Muslims in India and Deficient Debates about Affirmative Action. *South Asia Research*, *30*(1), 43-65. doi: 10.1177/026272800903000103

Alam, M. S. (2014). Affirmative Action for Muslims: Arguments, Contentious and Alternatives. *Studies in Indian Politics*, *2*(2), 215-229. doi: 10.1177/2321023014551877

Ali, M (2013). Post- Sachar Reservation Politics', *Economic and Political Weekly*, *48*(39), 13-15. Retrieved from http://www.cbgaindia.org/wp-content/uploads/2016/05/Post-Sachar-Reservation-Politics-1.pdf

Ali, Zaheer (2006). The Quota Trap. *Economic and Political Weekly*, *41*(52), 5304-5306.

Ali, Anwar (2001). *Maswat Ki Jung* [in Urdu]. New Delhi: Vani Prakashan.

Borooah, V.K. (2010). Social Exclusion and Job Reservation in India. *Economic and Political Weekly, 45*(52), 31-35. Retrieved from http://www.jstor.org/stable/27917960

Brest, P., & Oshige, M. (1995) Affirmative Action for Whom? *Stanford Law Review*, *47*(5), 855-900. Retrieved from http://www.jstor.org/stable/1229177

Engineer, A. A. (2004). Reservation for Muslims. Economic and Political Weekly, *39* (36), 3984 – 85.

Galanter, M. (1984). *Competing Inequalities: Law and the Backward Classes in India*. New Delhi: Oxford University Press

Galanter, M. (1978). Who Are the Other Backward Classes? An Introduction to a Constitutional Puzzle. *Economic and Political Weekly, 13*(43/44), 1812-1828. Retrieved from http://www.jstor.org/stable/4367065

Jamil, G. (2014). The Capitalist Logic of Spatial Segregation: A Study of Muslims in Delhi, *Economic and Political Weekly*, *49*(3), 52-58. Retrieved from http://www.epw.in/journal/2014/3/special-articles/capitalist-logic-spatial-segregation.html

Jenkins, Laura D. (2003). *Identity and Identification in India: Defining the Disadvantaged.* London: Routledge Curzon

Harris-White, B. (2003). *India Working*, Cambridge: Cambridge University Press

Hasan, Z. (2005). Reservation for Muslims, *Seminar*, No. 549. Retrieved from http://www.india-seminar.com/2005/549/549 zoya hassan.htm

Hasan, Z. (2009). *Politics of Inclusion: Caste, Minorities and Affirmative Action.* New Delhi: Oxford University Press

Karanath, D (2007). 'Caste among Indian Muslims' in A.H Ansari (Ed.), Basic Problems of OBC and Dalit Muslims, New Delhi: Serial Publications

Khan, J. A., & Parvati, P. (2013). Government's Commitment towards Development of Muslims: A Post- Sachar Assessment of Uttar Pradesh and Haryana', in Z. Hasan & M. Hasan (eds) *India: Social Development Report*, New Delhi: Oxford University Press

Krishnan, P. S. (2012). Reservation for Muslims in India: A Step for Inclusive Development. *Economic and Political Weekly*, *47*(33), 60-65. Retrieved from http://www.epw.in/journal/2012/33/special-articles/reservations-muslims-india.html

Kumar, D. (1992). Affirmative Action Debate in India. *Asian Survey*, 32(3), 290-302. Retrieved from http://www.jstor.org/stable/2644940

Khaitan, T. (2008). Transcending Reservation: A Paradigm Shift in the Debate of Equality. *Economic and Political Weekly*, *20*(8), 8-12. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1412503

Mondel, S.R (2003). Social Structure, OBC and Muslims, *Economic and Political Weekly*, *38* (46), 4892-97

Mullen, T. (1988). Affirmative Action. In S. Mclean & N. Burrows (eds.) *The Legal Relevance of Gender* (pp. 244-66). Atlantic Highlands: Humanities Press International.

Report of the National Commission on Religious and Linguistic Minorities (2007), Government of India

Report of the Backward Class Commission (1953), Manager, Government of India Press, Shimla

Report of the Backward Class Commission (1980), Government of India, *Gov*ernment Press, Delhi

Report of the Expert Group 'Equal Opportunity Commission: What, Why and How?', Government of India, New delhi

Sachar Committee Report (2006). Government of India, Cabinet Secretariat, New Delhi

Shah, G. (1991). Social Backwardness and Politics of Reservation. *Economic and Political Weekly*, *26*(11/12), 601 – 610. Retrieved from http://www.jstor.org/stable/4397417

Shariff, Abusaleh & Rakesh Basant (Eds.) (2010): *Handbook of Indian Muslims: Empirical and Policy Perspectives*, New Delhi: Oxford University Press

Sowell, T. (2004). *Affirmative Action Around the World*. Yale: Yale University Press

Tejani, S. (2013). Between Inequality and Identity: The Indian Constituent Assembly and Religious Difference, 1946-50´. *South Asia Research, 33*(3), 205-221. doi: 10.1177/0262728013504675

Tierney, W. G. (1997). The Parameters of Affirmative Action: Equity and Excellence in the Academy. *Review of Educational Research, 67*(2), 165-96. doi: 10.3102/00346543067002165

Weiner, M. (1983). Political Consequences of Preferential Policies: A Comparative Perspective. *Comparative Politics*, *16*(1), 35-52. Retrieved from http://www.jstor.org/stable/421594

Weisskopf, Th. E. (2004). *Affirmative Action in the United States and India: A Comparative Perspective*. London: Routledge.

Wright, Th. P. Jr. (1997). A New Demand for Muslim Reservation in India. *Asian Survey*, *37*(9), 852-8. Retrieved from http://www.jstor.org/stable/2645702

Md. Sanjeer Alam, Assistant profesor at Centre for the Study of Developing Societies, New Delhi.

Contact Address: Centre for the Study of Developing Societies (CSDS)

29, Rajpur Road, Delhi – 110054

Email : sanjeer@csds.in