Citizenship and Rights of Religious Minorities in India: A Study of the National Commission for Minorities

A Thesis
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DECLARATION

I hereby declare that the work reported in this thesis entitled "Citizenship and Rights of Religious Minorities in India: A Study of the National Commission for Minorities", is entirely original and has been carried out by me at the Centre of Political Studies, Jawaharlal Nehru University, New Delhi under the supervision of Prof. Anupama Roy. I further declare that this thesis or any part of it has not been submitted for any degree/diploma or any other academic award in any other University/Institution.

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We recommend that this thesis be placed before the external examiners for evaluation.

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Dedicated to
My Family

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Contents

List of Abbreviations

ADE: Anti-Discrimination and Equality Bill

AIMPLB: All India Muslim Personal Law Board

AMU: Aligarh Muslim University

BJP: Bhartiya Janata Party

BPEA: Bombay Prevention of Excommunication Act 1949

CAD: Constituent Assembly Debates

EOC: Equal Opportunity Commission

DI: Diversity Index

DUSU: Delhi University Student Union

LSD: Lok Sabha Debates

MIM: Majlis-e-Ittehad-ul Muslimeen

NCM: National Commission for Minorities

NCMEI: National Commission for Minority Educational Institutions

NCMP: National Common Minimum Programme

NCW: National Commission for Women

NDA: National Democratic Alliance

NHRC: National Human Rights Commission

NCSCST: National Commission for Scheduled Castes and Scheduled Tribes

PAC: Provincial Armed Constabulary

POTA: Prevention of Terrorism Act

ML: Muslim League

MPL: Muslim Personal Law

TADA: Terrorist and Disruptive Activities (Prevention) Act

UAPA: Unlawful Activities (Prevention) Act

UPA: United Progressive Alliance

UCC: Uniform Civil Code

Introduction

Building a national civic identity, cutting across inscriptive identities based on caste, language, region and religion, was seen as integral to the nation-building project in India. These differences were considered to be both as sources of discrimination and also celebrated as a reflection of diversity. While the difference of caste is a source of discrimination, religious, linguistic and cultural differences are seen as an expression of diversity (Mahajan 1998: 83). In the background of colonial policy of separateness of communities and afterward partition of India, imagining a common citizenship and making it the foundation of a free nation was a daunting challenge (Rodrigues 2008). The constitution makers supplied theoretical backup required for the evolution of egalitarian citizenship in the society. The fundamental rights are basically to protect individuals and groups from arbitrary and prejudiced state action, but the Articles that abolish untouchability, disability in using public spaces and forced labour further provide guard against the action of other private citizens (Austin 1966: 64-65). The Indian constitution inspires to make every citizen equal and capable to claim his/her rights from the state and the society. Austin maintains that social revolution offered under the constitutional scheme of rights aimed at freeing all citizens from coercion by the state or society (ibid.: 65). The preamble reflects this aspiration which promises socio-economic and political justice, freedom of expression, belief and worship, and equality of status and opportunity. The constitution comprises provisions to prevent ascriptive identities to intervene in the process of citizens claiming their rights. To accomplish these promises the constitution prohibits discrimination on the ground of religion, caste, sex, race, and place of birth etc. It also contains several special provisions to empower socially disadvantaged and culturally different sections to enjoy the benefits arising from their citizenship status.

The promise of egalitarian citizenship and equal citizen-hood, however, has unfolded into socio-economic and political disparities among citizens. A large number of citizens experience inequality and discrimination in real life situations and indeed are found to be incapable to instigate struggle against inequality and discrimination even after 69 years of independence. Their socio-economic positioning and ascriptive identities intervene in

every step of their lives. A mixture of economic backwardness with ascriptive identity has generated hierarchical divisions among citizens. Upendra Baxi described hierarchical division of citizens based upon citizen's ability to enjoy their constitutionally given rights and ability to bargain with the state to affect policy outcomes vis. super citizens (who are above law e.g. politicians, business men), negotiating citizens, subject citizens, gendered citizens, insurgent and project affected citizens (2002). The capacity of these groups of citizens to exercise their rights differs significantly based upon their socio-economic position. Although, India's democracy has survived in midst of the speculations of dictatorship, anarchy and disintegration, axes of caste, class, gender, religion and language still constitute testing field of its democratic citizenship. Niraja Gopal Jayal argues that inauthenticity and unrepresentativeness are posing as serious drawbacks of Indian democracy in the presence of intermediaries and vote brokers. The conditions required for even formal-procedural democracy are not consolidated enough, thus allows the state to deviate from its own founding promises. In this context, chances of democratic negotiations are selectively available to different sections of citizens. For influential citizens negotiations are open and inclusionary, but remain closed for less influential and vulnerable categories of citizenry (Jayal 2001: 220-221).

In this framework, minority religious communities (called socio-religious categories by the Sachar Committee) need to be apprised as negotiating citizenry. Along with common fundamental rights available to all citizens, cultural and educational rights are extended to minorities for preservation and promotion their socio-cultural uniqueness. But the constitutional protection of religious minorities given in this scheme of 'rights' seems to be fall short in practice in the absence of a robust regime of laws which could facilitate the enjoyment and redressal of these rights. Nevertheless, the constitutional scheme of rights including cultural and educational rights of minorities has proved insufficient to protect them against discrimination and violence (Mohapatra 2010) making them unable to exercise their citizenship in meaningful ways as identity, nationality and citizenship are found to be closely interwoven with each other. And religious minorities' access to all the fundamental rights flow through their religious identity which is primary source of their discrimination and exclusion in society and polity. They suffer from discrimination and deprivation in their social, economic and political lives mostly because of their

socio-cultural uniqueness[1]; not being able to enjoy their citizenship rights at par with the citizens belonging to majority section.

Recognizing that mere existence of scheme of rights for protection weak and vulnerable sections would not sufficient; the state has come up with several autonomous institutions for the protecting, monitoring, safeguarding and forwarding the interests of women, children, scheduled castes, scheduled tribes, religious and linguistic minorities, and at risk labour classes like safai karamcharis etc. An all-encompassing institution, the National Human Rights Commission (NHRC) , for the protection of human rights crosses classes, castes, languages, religions, gender, and ages has also been established.

While a number of Committees and Commissions were constituted to explore the state of minorities in after independence, academic writings were also done, officially, state did not recognize religious and cultural identities as a source of socio-economic-educational backwardness and discrimination till late 1970s when the foundations for the Minorities Commission was laid down. The government Resolution, establishing the Minorities Commission, acknowledged that "despite the safeguards provided in the constitution and the laws in force, there persists amongst minorities a feeling of inequality and discrimination" (No. II-16012/2/77-NID (D) reprinted in Annual Report 1978: 14) and inaugurated the Minorities Commission as the first institutional mechanism to monitor enforcements of constitutional and legal safeguards made for minorities. However, this step may not be referred as major policy shift as far as religious minorities and state policy were concerned. It was merely a watchdog institution and meant to protect whatever was already available to minorities.

Before the Minorities Commission, the First Backward Classes Commission, popularly known as Kaka Kalelkar Commission (1955) documented socio-economic backwardness of minorities and identified caste groups among them, particularly among Muslims, Christians and Sikhs, and suggested their inclusion into the list of Other Backward

[1] For socio-economic conditions of all religious minorities are not equally poor. The Parsi, Jain, Buddhist, Sikh and Christian communities are slightly better off than Muslims and other social groups in terms of per capita income, purchasing power, literacy, access to health and housing facilities etc. (Preet 2008). But this phenomenon is not evenly distributed in all sections of these communities like neo-Buddhist, Christian Dalits, and SC Sikh etc. required especial policy attention. The largest minority, the Muslim community is socially and economically most backward and constitutes largest chunk of illiterate and poor sections, followed by Christian community. Ironically, these two communities are still out of the state preferential policies. For comparative socio-economic conditions of minorities, see Singh 1983, Sachar 2006, Misra 2007, Kundu 2014, and Sharif 2016.

Classes along with certain castes from Hindu community. But the Kaka Kalelkar Commission itself rejected the findings and recommendations of the Commission by arguing economic status and not caste as appropriate marker of backwardness and consequently subject of state preferential policies (1955).

The next major policy step was taken in form of creation of the Minorities Commission followed by two the Second Backward Classes Commission known as the Mandal Commission (1980), and the High Power Panel on Minorities, Scheduled Castes Scheduled Tribes and Other Weaker Sections known as the Gopal Singh Panel (1983) which recommended urgent policy attention towards deplorable condition of Muslims including reservations in III and IV grade employment, police and paramilitary along with a re-thinking on Presidential Order 1950 to encompass religious minority into Schedule Caste category. In place of implementing, the Mandal Commission report and releasing the Gopal Sign Report, PM Indira Gandhi formulated Prime Minister 15 Point Programme in 1983 without altering constitutional position on religious minorities as ineligible subject of the state preferential policies. The non-statutory and unbinding nature of this Programme made it merely an inclusive policy direction that was to cater to the material and security needs of minorities by allowancing loans, housing, education and directing communal violence preventive measures. The Mandal Commission recognized caste as legitimate criteria of backwardness and identified backward castes cross all religious communities to be included into the OBC list. It was implemented a decade later by the V. P. Singh government who also released the Gopal Singh Report simultaneously, however not implemented. The implementation of the Mandal Report brought religious minorities under the preview of state preferential policies though discursively.[2] Yet, religious community per se could not acquire legitimacy in the framework of state policy as proposed by the Gopal Singh Panel.

Since 1990s, the Indian state gradually began to recognize 'rights deprived' condition of religious minorities, again, without offering any significant transformation in state policy on religious communities, as a response, it has devised numerous schemes and provisions to bring them at par with better off sections of society. In its attempt to protect their constitutionally guaranteed freedoms and rights, it has set up several institutions such as the National Commission for Minorities (NCM 1992), the National Minority

[2] Abusaleh Shariff claimed that no authentic data is available to know the actual benefit reaching to Muslim minorities through OBC reservations (2016).

Development and Finance Corporation (NMDFC 1994), the Maulana Azad Educational Foundation (MAEF 1989), the National Commission for Minority Educational Institutions (NCMEI 2004) and a Ministry for Minority Affairs, was created in 2006. Working of institutions meant for accommodating diversity and protecting vulnerable sections reflects state's agenda towards minorities at large. These institutions are significant, because they act as mediator between minorities and the state. The NCM is the first such institutional initiative whose mandate responds to a large number of issues and problems faced by religious minorities. Its long historical existence and broad mandate compels a close analysis of this institution in the context of changing majority-minority relationship in the Indian political fields. Its creation, continued existence and working may reflect key features in the state policy towards religious minorities. This thesis located the NCM in the larger process of democratization as an 'institution of negotiation and recommendation' and as a 'mechanism for inclusion of minorities' into the national life as equal citizens. It has also appraised the ability ability of NCM to understand the nuances of minorities in time of communal violence, in context of threat on religious freedoms, cultural autonomy, and socio-economic backwardness, thus unraveling its own unique discourse on minorities.

The NCM receives complains from both individuals and organizations and from conservative sections to liberals. A large number of complaints are related with the issues of non-enforcement of laws related to minorities, biased state behavior for minority educational institutions, discrimination against minorities in getting admission, employment, promotion, transfer, disbursement of loans, allotment of land and houses. Complaints also point towards encroachment in the places of worship, graveyards, insult of religious texts, attacks on clergy by the members of other religious communities. Many complaints indicate harassment by police and inadequate compensation for riot victims etc. A close look at the nature of complains reveal that primarily there are two types of complains. The first type of complaints is against the state and state machinery and the second against the members of other religious communities. These grievances provide an appropriate venue to identify discontent of minorities to the state as well as they reflect socio-economic frustrations of minorities. Mixture of these problems ultimately harms their sense of 'association' to the nation. In fact, the incidences of violence, discrimination and harassment encroaches not only their group rights but also

badly infringe their basic individual rights. They are harassed for being different, to the extent that right to life and liberty, freedom of expression, profess and practice one's religion, equality of opportunity and equality before law become meaningless in many circumstances.

Context and Objectives of the Study

NCM is an institution which needs academic attention due to at least three reasons: **first**, this institution has been designed to look after the realization of the rights of approximately 20% of Indian population which itself is a significant portion of the entire population of the country which is diverse in its size, distribution and ways of life, includes 14.2% Muslims, 2.3% Christians, 1.7 % Sikhs, 0.6% Buddhists, 0.37% Jains and 0.02% Parsis as per 2011 census. **Secondly**, such an institution which deals with a huge and diverse population has not been sufficiently researched and explored. **Thirdly**, whatever studies have been done, they quickly labeled it as a 'weak institution' whose weakness lies in its structure and design without going much in a detailed enquiry of 'what led to the creation of a structurally weak institution for the protection of a significant part of population at the first place'. Therefore, this work goes beyond the 'design and performance' thesis to comprehend rationale of its creation. Hence, the **first objective** of this study to provide a comprehensive picture of minority protection in India with a close analysis of the NCM which would involve tracing those normative and pragmatic reasons present in the political discourse at the inception of the republic of India. This has led the study towards exploration of historical situations from colonial to independent India where provisions for the protection of the rights of religious minorities were discussed, debated and culminated into constitutional provisions. It traces ups and downs in the discourse on protective institutional arrangement for the protection of rights of religious minorities. **Secondly,** the exploration of the NCM as an explanatory variable may facilitate deeper understanding of the state's attitude towards religious minorities and their citizenship rights. It may reveal those complex ways in which questions of religion based difference, group rights and citizenship are raised and dealt in liberal democratic set up like India. The **third objective** of studying the NCM is to locate the sites of discrimination and unequal exercise of citizenship rights by religious minorities and their attempts to reclaim those rights as NCM receives lot of such complaints. The

fourth objective is to explore whether the NCM emerges as the flag bearer of rights of minorities on the basis of the discourse on rights of religious minorities evolved in the Commission itself. **Fifthly**, deeply anchored into the constitutional scheme of rights, this study investigates the normative logic of this scheme as available in the Constituent Assembly Debates which is under stress as evident from the minority discourse evolved in the NCM. To achieve the above stated objectives, I have chosen to work through the theoretical lenses of citizenship as philosophically citizenship stands as an emancipatory concept having possibilities of expansion and betterment of all individuals and groups in society.

The Study begun with certain research question on the nature of minority safeguards espoused by the nationalist leaders within the framework of citizenship (a) - What were the fault lines in the debates on citizenship and rights of religious minorities in the Constituent Assembly Debates? How a particular notion of citizenship and rights of religious minorities was subsequently adopted in the constitution? Whether the normative vocabulary of these rights in the constitution is strong enough to protect rights of religious minorities? The next set of questions sprouted from the assumption that when minorities were provided with the constitutional safeguards, (b)- What were the contexts of 1970s in which the need for supplementary institutional arrangement for the protection of minority rights reappeared in Indian politics which was debated in the Constituent Assembly but could not be adopted in the constitution? (c)- How does the National Commission for Minorities embody a framework of protection of rights of religious minorities? Does National Commission for Minorities become a 'flag bearer' of the minority discourse? Does the dominant understanding of rights of religious minorities reflect in the creation and functioning of the NCM? And lastly (d)- Does the National Commission for Minorities influence policy outcomes in the manner which enhances the effective protection of rights of religious minorities and subsequent affirmation of citizenship among religious minorities?

Hypothesis

There was a great deal of ferment and sensitivity with regard to rights of religious minorities in the national movement and in the Constituent Assembly. The normative

vocabulary envisaged in the Constituent Assembly is found to be not strong enough to envisage a resilient scheme of rights for religious minorities. The institutionalization of these rights in the constitution however led to mounting dissatisfaction among minorities which has intensified over the years. The inadequacy of normative vocabulary unfolded into discriminatory state practices towards minorities leading to their marginalization and consequent exclusion from the benefits of legal-formal citizenship status. This was the context in which need of supplementary institutional arrangement for the protection of legal and constitutional rights of religious minorities was appeared in Indian politics. But this context has not provided sufficient conditions for the effective and efficient working of the NCM. It also limits the manner in which the NCM articulates questions of rights of religious minorities. The NCM is the major attempt to respond to dissatisfaction among religious minorities have had mixed results.

Rationale of the Study and Limitations

Most of the studies done on the NCM have adopted structure centric approach, emphasized design and performance on evaluation mode. Structural issues affecting functioning of the Commission appeared most significant cause of its decimal performance along with the state apathy towards its recommendations (Mahmood 2001, 2016, Hasan 2009, Haque 2009, Najiullah 2011, Mohapatra 2010). Tahir Mahmood (2001, 2016) presented a vivid account of his tenure as a chairman of the Commission in this acclaimed book, *Minorities Commission: Minor Role in Major Affairs*. Being an internals' account, book deals with nitty-gritty of day to day working of the Commission and serves as a guidebook to begin with any analysis of this institution. As the title suggests, book presents an assessment of the Commission over its long historic existence under different chairmen. Mahmood seems to overstate the personal traits of the chairmen ignoring the fact that their activism is quite contingent upon government's response, making the study appear more like a personal critique. He has not apprised the issues of political consensus, normative reasoning as causes of problematic appointment process and limited powers of the Commission though he critiqued them. Mahmood holds the lack of government's support and deliberate neglect as pertinent causes of the ineffectiveness of the NCM. He found both the Congress and the BJP have indulged in practices which proved detrimental for the NCM to emerge as an institution

safeguarding, protecting and promoting rights of minorities and their interests (2001: 51-71).

Zoya Hasan (2009) places the NCM into broader theoretical and conceptual framework of state policy towards minorities. Hasan briefly discusses what impedes the Commission to perform its mandate; namely state apathy, absence of laws, lack of investigative powers and inadequacy of funds. Hasan has argued that the NCM is not able to effectively participate and advise in the process of socio-economic development of minorities as there a little room for development planning on minorities. She continued that the absence of national consensus regarding public policies on religious minorities tends to undermine the institutional efficacy of the NCM. Hasan precisely compared the National Commission of Scheduled Castes/Scheduled Tribes (NCSCS\/ST) to show how sound policy framework has facilitated the NCSC/ST and it targeted group to claim rights.[3] At the end Hasan concludes that mere existence of the NCM is a sign of importance of minority rights and their protection in democratic discourse of India (71-72).

Syed Najiullah (2011) has explored effects the existence of the Commission on the lives of Muslim minority in his book *Muslim Minorities and the National Commission for Minorities* and arrived at nearly similar inferences. Najiullah began with the assumption that the Commission could not positively integrated minority interests to the national interest. As far as upgrading educational and economic conditions of the Muslims were concerned, it could not validate its usefulness. Najiullah analyzed the effects of the Commission on Muslims comparing communal situation, employment, educational and economic status, of Muslims at the inception and after twenty years of the Commission existence, he reasoned that the Commission has failed to transform Muslim lives progressively. Grounding arguments in this assessment, Najiullah claimed that the Commission could not realize the expectations and failed to achieve 'twin goals of preserving secular traditions and promoting national integration' at the policy level (Najiullah 2011: 124). Thus, minority issue seems more closely associated with the problem of national integration and secularism in Najiullah thesis, and minority interests and rights do not appear as independent value to be protected.

[3] However, the NCSC/ST has also been criticized for its limited achievement and about the fact that its existence has benefited only a section of SC/ST population (Jayal 2006).

Bishnu Mohapatra (2010) makes a different argument by pointing out that NCM has succeeded, at least, in raising the problems of minorities and aggregating them for the purpose of policy making. The Commission has energized minority rights discourse by blending security concerns of minorities with their dignity associated with their economic welfare and identity. Mohapatra also pointed out government apathy in implementing recommendations made by the NCM and a need for a responsive state for protecting minority rights (2010: 232-233).

Niraja Gopal Jayal (2006) has made a brief comment on the NCM while investigating institutions, policies and politics managing and accommodating diversity in India. Jayal proposes the primary reason for the ineffectiveness of the NCM lies in structural problems, particularly in its lack of teeth and lack of credibility of its members and chairman in the eyes of minorities as they are government appointees (2006: 49-50). Thus, Jayal's analysis has attached immense importance to design and performance barring any detailed analysis of state policy towards minority by reflecting on the NCM.

The discussion of (in)effectiveness of any institution, as a matter of fact, is a debate on its powers and its efficiency in carrying out the stated mandate. So, the discourse on the NCM appears more as a discussion of its irrelevance, powerlessness, and ineffectiveness. There seems to be absence of focus on what it has introduced in the discourse on minorities which could be scrutinized for its (ir)relevan that might reflect deeper crisis of state policy towards minorities, only Zoya Hasan seems to take up this matter in a limited way. The focus only on performance and outcomes of the institution in terms of success or failure might lead to a slip in understanding the political contexts in which institutions operate and produce success or failures as outcomes. The NCM's irrelevance and tootlessness are not self-emanating but seems to be grounded in the weaknesses of broader political culture in the context of minorities in India. Therefore, this study focuses on what are the emerging themes in minority discourse or whether these are blocked, relegated or facilitated in the institutional context of the NCM and how this entire process takes place. By institutional context, I mean, a wholesome process in which minorities, exercising their active agency, or state bodies access the Commission that led the Commission to evolve certain responses to reach out to state agencies till the final outcome. In the other words, what are the issues that reach to the Commission, who

send them, what the NCM do in response and how the state finally deals with them, are the core concerns that this study deals with.[4]

This research is utilizing the NCM as a site to explore state of minorities' rights in a different way. The NCM is created to sympathize to minorities, to grab their fears and anxieties. Unlike the judiciary, the Commission shows more flexibility in dealing with cases of deprivation of rights and facilitating relief to the victim. It begins with sensitivity to the social positioning of minorities and their vulnerability, whereas the Judiciary works with procedural rigidity and committed to impart justice through the lenses of available laws and facts.[5] Nariman pointed out a crucial thing about the Judiciary that before 1990s "the Supreme Court functioned as a 'super minorities' commission'. The Court had upheld minority rights, almost at every occasion of infringement, against the actions and legislations of centre and state governments (2014: 42).[6] However, since BJP characterized the Congress policy towards minorities as appeasement, the very term 'minority' became unpopular. Since then, the Court's attitude towards minority rights was shifted from, as applauded by Upendra Baxi 'preferred freedom' to less protected rights (Baxi cited in ibid.: 46). Thus, the negligence of institutions such as the NCM may impede a deeper understanding of minorities in India as it may contain some more complex ways in which question of religious minorities, their rights and citizenship come up in liberal democratic discourse.

[4] While I was presenting a paper in Young Scholars Conference at JNU on the 'Absence of Political Consensus in State Action on Minority Specific Policies: Reflections from the Making of NCM' in March 2017, many issues surfaced during the discussion. One of the major points of contention was that why to study an irrelevant and toothless institution at the first place. Why not to look at some other sites like the Judiciary which has authority to protect rights of minorities. And why this study seems to suggest that religious minorities are victims of state negligence and gross injustice is done to them at policy level. This portion has tried to address these concerns. Unlike already existing studies on the NCM, this study tries to explain the phenomenon of tokenism attached to the Commission by reading its response to crucial minority questions. This reading suggests that pre-statutory and post statutory Minorities Commission do not actually fit in same explanatory framework. Their responses differ on minority question as 'problem of national integration' and as 'differentiated groups of citizens requiring protection'. These issues are dealt in detail in the chapters.

[5] The Judicial insensitivity to minorities and its majoritarian impulse have become well known. In a recent incident in Mumbai, the High Court granted bail to three men accused of murdering a Muslim man in their way back from a meeting organized by Hindu Rashtra Sena in Pune 2014. The Court reasoned that men were not murdered him out of personal enmity but they were provoked by religious feelings. In their return from the meeting, the accused noticed Mohsin (deceased), Riyaz and Wasim and attacked them. Wearing pastel green shirt sporting a beard and happened to be Muslim were Mohsin's only fault. (*Indian Express* 17 January, 2017).

[6] By, minority rights, Nariman meant only cultural and educational rights enshrined in the Article 29-30 of the constitution. His celebration of the "Supreme Court as super Minorities Commission" was restricted to the protection of educational rights only.

Methodology, Sources and Theoretical Approach to the Study

Methods, Empirical Sources, and Research Design

The framework of studying institutions, with certain modifications and innovations, has been borrowed from Pratap Bhanu Mehta and Devesh Kapur, who have described the importance of the study of institutions. Such studies could be done in two ways, first, as explanatory variable that account for certain outcomes of interest (e.g. peaceful replacement of government as a result of Election Commission's successful monitoring), and second, as institution themselves becoming objects of explanation of micro inducements of actors within institution to explain certain features of the institution itself (for instance, active role of judges in socio-political problems leading to judicial activism). They further suggest that institutions in their institutional capacity can themselves often shape the configuration of social forces (Mehta and Kapur 2005). Therefore, the NCM as an institution is analyzed in three ways; *firstly* as explanatory variable relevant for explaining the state of rights of religious minorities and their citizenship nuances. As the Commission is mandated to monitor and safeguard the constitutional and legal rights of minorities, chapters of the thesis deal with four sets of rights that are; equality and non-discrimination, freedom of religion, right to life, and cultural and educational rights of minorities. While dealing with these sets of rights, two things are done; (a) an account of the NCM's intervention showing its ability to facilitate minorities to claim their rights, (b) from this account a critical analysis of the NCM's response highlighting major point of the minority discourse evolved by it. *Secondly* explaining micro inducements of actors within institution which may explains ineffectiveness as key feature of the NCM. And *lastly*, understanding state's response to the NCM emphasizing the way in which minority claims are accommodated or subjected to ambiguous state policies in liberal democratic set up like India.

This study begins with the exploration of the discourse on citizenship and rights of religious minorities which has helped in setting yardsticks for analysis of the Indian citizenship. This led to the exploration of important milestones in the nationalist discourse on citizenship and rights of minorities, such as the Nehru Report (1928), the Round Table Conferences (1931-32), the Sapru Committee Report (1945) and the Cabinet Mission Plan (1946) etc. More emphasis has been placed on the Constituent

Assembly Debates (1946-1950) as it has been marked as the most important milestone in the institutionalization of citizenship and the regime of rights for all citizens including minorities. With the help of leading secondary literature, a reappraisal of philosophical arguments advanced on rights of minorities in the Constituent Assembly is traced to comprehend contraction of special provision such as political representation and socio-economic preferential policies in case of religious minorities. Parliamentary debates have also been explored to comprehend the nature of political consensus on minority specific policy like the Minorities Commission.

In order to capture diverse visions of rights of religious minorities, their limitations and enhancements in India; this research endeavour has examined reports of the major committees and commissions formed to look into the situation of minorities in post-independent India. An analysis of the Kaka Kalelkar Commission Report 1955, the Mandal Commission Report 1980, Gopal Singh Mishra Committee Report (1983), the Sachar Committee Report (2006), the Ranganath Misra Commission Report (2007) along with the reports produced on minorities by the NCM to show the discursive path to the debate on rights of minorities. These reports have given a new dimension to the minority's rights discourse and to some extent reframed the Indian discourse on differentiated citizenship by proposing religious community as a viable unit of the analysis for socio-economic development.

Rights of minorities like other rights are not only documented in the constitution, they are dispersed across various judicial pronouncements and policy initiatives of the government related to the minorities. Similarly limitations imposed upon these rights would also become visible from these sites.

This study has also taken into account Charters and Acts that are foundational bases of the NCM and other linked institutions such as the National Human Rights Commission, the National Commission for Women, the National Commission foe Scheduled Caste and the National Commission for Scheduled Tribes etc. for Instance, the Minorities Commission's Charter 1978, the NCM Act 1992, and the NHRC Act 1993 etc. These are important for understanding of institutional objectives and design of the NCM and help imagining the web of institutions in which the NCM functions.

Apart from using above stated primary sources of information, this research has relied on the complaints/ petition reaching the NCM to rebuild the situation of deprivation of

rights and process of redressal in the NCM through the analysis of these cases. I have employed purposive sampling while choosing representations/ petitions/ complaints which correspond to the theme of this work. For instance, when discrimination against minorities on the basis of their religious symbols or practices has to be analyzed, the cases where individuals/organizations registered their complaints with the NCM regarding discrimination in employment and promotion etc. due to sporting beard, wearing turban or hijab and carrying *kirpan* in their workplaces, or just for being minority were picked up. While attempting to find out the larger context in which minorities are disadvantaged in exercising their rights I kept interrogating the larger framework of rights provided by the constitution. Thus, the contents of complaints/representation are supplemented with scholarly studies available on those themes. I have also taken such petitions registered by organizations/ NGOs/ social activists which raised several questions pertinent to scheme of constitutional rights. Similarly, while exploring the role of NCM in curbing violence against minorities I have selected those prominent cases of violence in which NCM has played a very active role or surprisingly a marginal role, sent its investigation teams on the spot of the incident, sent summons to the authorities and asked them to reply some crucial question related to violent incident.

The NCM Archives: Reading the annual, special reports and monographs published by the Commission were found to be very crucial to this study because of the following reasons:

1-Official reports of the Commission are public document and can be accessed by anyone. Because of this the Commission designs it reports to reveal some information to public. In other words, if something is missing in the report it indicates that the Commission is trying to hide that from public gaze. Most of the other official documents, such as petition files or original representation papers cannot be easily accessed by the common people including researchers.[7] Yet whatever is there in the annual report cannot easily differ from what was contained in the original files as petitioners may question veracity of the differed account published in the report.

[7] This researcher tried to get files of petitions and representation from the NCM archives, a few files were given initially but taken back soon by saying that that these files have to go through destruction process. However, the files handed over to researcher were older than three years. Therefore, this research study has to rely on resources published in annual reports.

2-Annual reports consist of all activities of the Commission that it undertook during the entire financial year.

The reports of non-statutory Commission were referred with their title such as first annual report mentioning their year. To avoid confusion reports of statutory Commissions were referred as NCM report with their corresponding years.

Reading details of the cases

1-Reading content of the cases reveal nature of discrimination faced by minorities as aggrieved party shows evidences of discrimination which is otherwise very abstract and difficult to observe at individual levels in terms of their experiences.

2-The NCM has specified the guidelines to register a grievance with the NCM to ensure more urgent and genuine complaints could not get ignored (Annual Report 2006-07: 34).Therefore, the Commission aims to encourage complainants "to exhaust all other methods of redressal available to citizens of the country before reaching to the Commission" (ibid.). Because of this, most complaints reach only after exhausting other remedial measures. This situation mirrors the gap in the established measures of minority protection.

3-In cases where available remedies were not used by complainant and the complaint was turned down on this ground by the Commission; it is still significant how they perceive those remedies as well as reflects their perception about the Commission. However, refusal to such complaints depend upon the fact how the member/chairman look upon the utilization and availability of remedies.[8] Indeed, one of the petitioners I have conversed said that after pleading to the authorities concerned, he approached the NCM and the NCBC and his petition was promptly taken up by the NCM (2017).

4-Micro details of the cases/representations help rebuild the entire picture of discrimination and restoration of the constitutionally guaranteed equality. And also elucidate the role of the NCM to the restoration process.

[8] Farida Abudullah Khan, former member of the NCM, told the researcher in an informal conversation that the Commission generally encourages people to come forward with their complaints even if other remedies are available as there could be several practical situations in which minorities are not able to avail those available remedies such as police or local administration's intimidation.

5-While attending the cases many times the NCM is struck by 'no reply' from the state agencies and authorities concerned. Studying details of the cases might help understand; what are the issues on which state is reluctant to give reply.

However, files containing case information have to go through destruction process every three years. In this situation, one can get access to fewer cases which are cited in the Annual Reports of the Commission that too in a very precise manner. A case appearing in an Annual Report usually comprises name of the complainant, cause of complaint, Commissions' action, concern authorities/persons reply (if any) and final decision (if reached). On many occasions Commission could not reach any decision because respondent authorities/persons do not bother to send reply to the Commission. Moreover, petitioners also do not turn up for later proceeding on many occasions.

Interviews: On many occasions, interview supplements and fills the gaps existing in the formal official sources of information and real working of institutions. For this study I have interviewed key actors in the Commission such as the Chairperson, and the members who play decisive roles in determining the direction of the working of the Commission within a given mandate and powers. Their interviews have presented a vivid account of the situations that challenge Commission's ability to address problems faced by minorities. The interviews were semi-structured and were supplemented by free flowing conversations

Theoretical Approach

Social Identities and Rights: Citizenship between Promise of Encompassments and Reality of Closures

India, being a country of bewildering diversity presents a challenging case for the theorists and students of citizenship. For at least four reasons India makes an interesting case for studying different notions of citizenship. Firstly, as an independent and sovereign state, India began its career with universal guarantee of civil and political rights, at the same time, keeping aspirations for social rights and social justice at its heart. Secondly, here minority rights were granted at the inception of the republic whereas many groups in western world were struggling to be formally included into the terrain of citizenship at that time. Thirdly, India has developed a broad regime of differentiated policies much before the arrival of differentiated notion of citizenship on

the horizons of political philosophy. The Indian constitution formally and legally recognizes differentiated rights (though with different normative arguments and to varying degrees) and sets universalism as its highest aspiration. Fourthly, growing influence of cultural nationalism of 'Hindutva' has made it necessary to revisit constitutional norms of differentiation and their relevance in the context of increasing penetration of majoritarian tendencies in public life. Most importantly this study brings universally available common scheme of rights in the limelight to understand how group identity of religious minorities intervenes determining and circumscribing their access to this scheme. Before turning to the discussion on how religious minorities are subjected to differential and differentiated treatment by the state and society and what trends are surfacing to facilitate their inclusion and empowerment or exclusion and powerlessness as citizens, it is imperative to know how citizenship has been evolved as a concept and transcended to the level of momentum.

Citizenship has been seen as an ever evolving concept. It has escalated along with the expansion of nation-state as a concept and as a reality as the nation-state is the primary point where citizenship could be imagined and practiced. State is the central to any discussion on citizenship because state is only and primary distributor of citizenship even when the idea of 'global citizenship' has been fast becoming a reality. Conceptually, citizenship is a unique combination of egalitarian and exclusionary practices. In the initial phase of its evolution, the nature of citizenship was quite exclusionary as it was granted on the basis of certain qualifications such as gender, race, language, culture, religion, and property etc. Slowly and gradually it became more and more inclusive by shedding the narrow grounds of its qualification. The citizenship discourse engages a good amount of intellectual exercise pertaining to democracy, equality and justice. After the formal declaration of its *return* (Kymlicka and Norman 1994), it has become so fashionable a term that everyone wants to capture its one or the other shade.

Like most philosophical thoughts, the first idea of citizenship owned to classical Greece and Rome. Two classical models of citizenship evolved in Greece and Rome respectively, set the terms of the debate for later periods. At the onset of its evolution, citizenship was a restricted privilege and responsibility of few. In the city-states in ancient Greece, for example, citizenship was bestowed only on small section of population excluding women, children, slaves, and resident aliens. Though exclusionary

and very restricted in nature, Greek notion of citizenship had the essence of civic republicanism entrusting citizens with the responsibility of active participation in political life. Aristotle described the attributes of citizens as ‘all who share the civic life of ruling and being ruled in turn’ (Bellamy 2008: 29, Roy 2008: 134). Under the Roman Empire the base of citizenship was broaden to include more sections of population due to the need to keep large and heterogeneous empire integrated, in this process it had also initiated a graded version of citizenship with passive notion in which citizenship was considered a legal-status (Roy: ibid.). In this graded version of citizenship, there were two types of citizens; first, citizens who enjoyed certain rights and participated in political life of the state and second kind of citizens were those who had legal status of citizen, but were not allowed to participate in political life of the state. The Greek notion of citizenship as ‘active participation of citizens in political life’ inspired citizenship theorist who emphasize centrality of citizen’s political participation as defining element of citizenship. On the other hand, Roman model of citizenship motivated some theorist to stress ‘equality of citizens under law’ that is ‘equality of legal status’ as key feature of citizenship (ibid.). These two models of citizenship later developed as ‘Active’ and ‘Passive’ notions of citizenship and attached to civic-republicanism and liberal individualism respectively.

During medieval and early modern periods, the notion of citizenship as active participation in political life was undermined by a passive notion of only claims of rights from state without attached duties. Jean Bodin defined a citizen as ‘one who enjoys common liberty and protection of the authority’. Machiavelli, Rousseau and Montesquieu owned credit to revive the virtues of civic republicanism by emphasizing the need for active participatory virtuous citizens for the successful working of modern state. The French revolution of 1789 revolted against passive notion of citizenship and established a system of horizontal rights against hierarchical privileges. Citizen as a ‘free and autonomous and rational individual’ emerged from the French revolution which added modern liberal individualism to citizenship in form of civic participation. This understanding of citizenship is closely linked with the dawn of nationalism which paved way for more democratic distribution of citizenship based on self-determination and self-consciousness of ‘nation’ or ‘people as united entity’. With the emergence of capitalism, the existing feudal socio-economic system which restrained individual autonomy was dismantled. Individual citizen, surfaced from this background had equal rights and

mobility across social classes. This framework of citizenship replaced localized civil society by an all-encompassing political community.

In its modern avatar citizenship is usually assumed as inherently egalitarian and universal (Marshal 1950) that reaches out to the people and sections of society which have been earlier excluded. It is often described as 'momentum concept' (Hoffman 2004), having the ability to extend its boundaries by admitting ever-increasing number of individuals and groups into its folds. Citizenship has also been a deeply contested terrain over the questions; such as who could be included in the realm of citizenship and on what terms. T. H. Marshal has defined citizenship as 'full membership of a political community' with consequent entitlements of civil, political and social rights. Different sections of society, thus, struggle to get full membership of a political community to get citizenship entitlements in form of equal rights. Equality, however, is premise and promise of citizenship, but equal civil and political rights do not give assurance of substantive social and economic equality. Marshal himself questioned whether this "basic equality, when enriched in substance and embodied in the formal rights of citizenship, is consistence with the inequalities of social class" (Marshal (1950) 1992:7).

This kind of 'universality of citizenship', established by the liberal state masks individual differences based upon religion, language, caste, class, gender and race etc. and creates a category of 'faceless abstract individual citizen' (Young 1989, Chandhoke 1999). However, citizenship practices reveal that the promise of universal equal citizenship unfolds with inequality and injustice to different sections of society which are formally included in the domain of citizenship (Young 1989).

The difficulty with the ideal of universal citizenship is that the 'individual' is considered as primary reference point of citizenship who bargains his rights with the state through 'his' membership in the state. It places individual out of his context and 'mask' his social situation (Young 1989, Kymlicka 2002). Whereas multiculturalists and communitarians attempted to remove the mask from individual's face and make his/her face visible that is visualizing his social situation and special needs arising from that situation. Hence they recognize individual's social situation and consequently view individual's group affiliation as a basis of his/her inclusion or exclusion from the citizenship of a nation-state.

The liberal notion of citizenship has also been severally criticized by the Marxists and the Feminists. Marxists argue that the liberal state being an agent of the bourgeoisie is unable to deliver the promise of equal citizenship as it applies equal standards and laws on unequal people (hierarchical location of people in socio-economic structure) and ignores their needs and unequal social context that can produce only inequality of its content, and alienated, isolated and egoist individuals. Feminists, on the other hand, regard universal and uniform liberal citizenship as gender blind and patriarchal which creates a difference between public and private space. Public space is essentially defined as masculine and private space as feminine placing women in isolated domestic sphere. Thus, the rights and privileges available in public space is not available to women neither they are able to participate in life of political community. Feminists and Post-colonial theorists have pushed the understanding of citizenship beyond the legal rights associated with state citizenship to show a wide range and unexpected ways in which individual encounter and engage with the state as a member of society (Young 1989, Lister 2003).

On occasions, universal equal citizenship is extended to the minority[9] groups such as women, blacks, ethnic, linguistic and religious minorities formally, but they find themselves excluded from common citizenship which gives effective equality and a sense of belongingness. The basis for their feeling of exclusion does not only come from their socio-economic status or unavailability of citizenship rights but also because of being different from the majority of the citizens (Will Kymlicka and Wayne Norman 1994: 370). For instance, sexual minorities[10] (Lesbian, Gay, Bisexuals, and transgenders) are formally included in the citizenship domain but usually they experience discrimination from the state (for example, section 377 of Indian Panel Code does not recognize rights of gay / lesbian group even criminalize them). As a consequence of these debates so many 'grey areas' in the realm of citizenship practices have been identified which have engendered the demands of substantive equality of citizenship.

[9] It is difficult to get a universally acceptable definition of a minority. According to Francisco Capotorti minority is-

> a group numerically inferior to the rest of the population of a state, in non-dominant position whose members being nationals of the state possess ethnic, religious or linguistic characteristics differing from those of rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, tradition, religion or language (1979: 5-6)

[10]On April 16, 2014 the Indian Supreme Court granted recognition to transgenders as third gender. The court directed the government to treat them as socially and economically backward entitled to quotas like Other Backward Classes in educational Institutions and for public appointments.

This new discourse of exclusion and inclusion has generated renewed interest in citizenship studies.

As a result, these debates have taken 'group' within its ambit and made it as a vantage point for citizenship studies. Community or group membership which has been earlier perceived to be a criterion for discrimination and exclusion from citizenship of a nation-state is now well recognized for the purpose of claiming citizenship rights and differentiated treatment. Now an individual bargains with the state in discursive terms as he/she claims citizenship rights through the membership of the group to which the individual belongs. It has been argued that 'common and uniform individual rights' of citizenship may not accommodate the special needs of 'minority groups and cultures' of individuals who fall within the domain of these groups (Young 1989, Kymlicka 1994, Chandhoke 1999). Therefore the idea of 'differentiated citizenship' (Young 1989) is advocated as a way to integrate these groups into common citizenship without compromising their identity and culture. The rationale behind 'differentiation' is that the culturally excluded and disadvantaged groups often have distinctive needs which can only be accommodated with the group differentiated policies. However recognition of such disadvantages and provisions of group differentiated policies might result in new identity and loyalty crisis for citizens; raising questions such as how one may decide one's preference between cultural community and nation-state in case of their conflicting claims. James Holston raises some crucial questions on the practicability of the difference specific citizenship; particularly difficultly in drawing criteria to determine which social difference is indeed worth protection. Majority cultural tyranny due to obsession for virtue of their own culture, multiplicity of legal systems generates numerous slippery slopes in identification of minority cultures in need of protection. He argues that in place of just evaluating the worth of citizenship as difference blind and difference specific; it's worth investigating how citizenship problematizes the legalization and equalization of differences and struggles with the problem of justice as its key outcome (2008 :31-32).

While resting their argument on Ruth Lister's dialectical model of citizenship,[11] Nira Yuval-Davis and Pnina Werbner suggest that this dialectical logic can be understood as operating through the logic of encompassment. This logic of encompassment resolves the apparent tensions posed by the critical theory of citizenship between abstract individualism and difference which progressively enhance democratic space (2005:1-10). However, when logic of encompassment translates into practice it unfolds into paradox of closures at every emancipatory moment. Simultaneous closures with emancipation mark as a breach of differentiated universalism attained by the logic of encompassment (Roy 2005: 6-7). As a result, the dialectical encompassment revolves to encapsulate further differences produced by the paradox of encompassment. Attainment of universalism remains the highest goal to be achieved through differentiation (ibid.).

The other complex issue that surfaces in differentiated citizenship is individual freedom and his right to remain in the group. Individuals are subjected to harsh group regulations and non-confirmation to those regulations might result in loss of their group membership. The quest of individual to celebrate membership of his/her group freely and be safe from the arbitrary clutches of group by claiming rights as individual, is pushing internal as well as external boundaries of citizenship. Individual's desire to enjoy both his/her group membership and individual rights demanding more flexibility and cultural enrichment of citizenship clauses.

Citizenship as ever growing concept faces challenge to encompass a number of different population groups into its folds; it bears external predicaments due to globalization, (il)legal (im)migration, and statelessness, internally it faces challenge to accommodate differently positioned individuals and groups/communities on equal terms (marginalized minorities, women, elderly, and persons with disability etc. (Roy 2005:13). Moreover, the uncertainty and contradictory nature of component elements of citizenship makes it difficult to outline a precise notion of citizenship. The questions remain puzzling: whether arenas of "politics or state activities" are rightful domain for citizenship to operate against the "spheres of culture, economy, and society" (ibid.). Thus, citizenship registers its presence in each area of human activity making it difficult to establish a definite vantage point from where citizenship practices may be regulated. "Whether

[11] Ruth Lister's dialectical model of citizenship stresses on 'differentiated universalism' as conciliation between false dichotomies of communitarian responsibilities versus liberal rights, masculine rationality versus feminine care, identity verses difference etc. (Lister 2003).

rights or duties" are defining component of citizenship (ibid.) signifying comparative stress on passive or active notions of individual's activity. And whether "individual or community" is primarily subject for citizenship considerations, and nation or global civil society are legitimate units of citizen membership (ibid.).

Minority Rights as Measures of Differentiation

Though availability of formal equality of citizenship is prerequisite for individuals and groups to enjoy citizenship entitlements, it is not a sufficient condition to enable them to attain full membership in substantive sense and does not ensure equal access to socio-economic resources of the state. Individual/groups may have different experiences with citizenship pertaining to their capacity to benefit from of entitlements in forms of rights, state sponsored welfare programs, and performance of duties arising from citizenship obligations and a feeling of proximity to the political community (Mitra 2010: 47). This difference in the capacity to benefit from the citizenship entitlements is deep-seated in social positioning of individuals and groups. There is a significant difference between majority and minority communities to be benefited from their citizenship status and their claims of proximity to the nation.

In general minority groups are outvoted and outmaneuvered on the issues that matter for them (Kymlicka 1989) because of their numerical inferiority. Universal citizenship subsumes minority problems, concerns and aspirations under the regime of universal equal laws which undoubtedly reflect majority culture. Fairly a reasonable number of group claims involve matters not covered by universal citizenship. Therefore, they should be protected through special legal and constitutional measures above and beyond common rights of citizenship i.e. group differentiated citizenship (Chandhoke, 2002: 208). In order to ensure substantive equality among individual citizens and groups, special provisions for disadvantaged and vulnerable sections of the society are considered essential with the help of which they may get full benefits of citizenship status. Differentiated citizenship confers particular set of rights (read as minority rights) to the vulnerable groups to protect them from arbitrary assimilative schemes of majority group and to enhance their inclusion in the political community. As a consequence, the question of minority rights has come to the forefront of the citizenship studies as

measures of differentiation and protection of minorities. For instance, minority rights in the case of religious minorities in India raise several questions on the expediency of these provisions in improving their lives in substantive sense as they are merely aimed at identity thrust of religious minorities. Moreover right wing organizations are seeing these rights as hurdles in mainstreaming (which means assimilation for them) of religious minorities in the national life.

A debate over minority rights is primarily considered as a debate between liberalism (primacy of autonomous individual) and communitarianism (primacy of community). Liberals advocate moral primacy of individual to the community as individual constitutes the community and community is worthwhile only because it contributes in the wellbeing of individual. If individual finds cultural practices of the community worthless, there is no point to preserve such community practices. Contrarily, communitarians reject the perception of 'autonomous individual' and primacy of individual to the community. They argue that the people are embedded in particular social roles and relationships, and are products of social practices around them. They disagree with the claim that the interest of community can be reduced to the interest of individual. Thus, privileging individual autonomy is viewed as detrimental to the community. As a consequence, communitarians view minority rights as suitable way of protecting communities form eroding effects of individual autonomy. Unlike majorities, ethno-cultural minorities are more entitled to this kind of protection as they are more vulnerable and have a distinct collective way of life (Kymlicka 2001: 198-219). At this stage, defense of minority rights endures a critique of liberal individualism. Advancing from this position, the debate over minority rights is reformulated within the realm of liberalism itself. It suggests that minority rights are not contrary to the spirit of liberalism and some kinds of minority rights are indeed helpful in enhancing liberal values. For example, minority rights are consistent with liberal culturalism when they protect the freedom of individuals within group and when they promote inter group equality (Kymlicka 2001). Therefore, citizenship as a concept can mediate the debate between liberals and communitarians as it is intimately linked to liberal ideas of individual rights and entitlements on one hand, and to communitarian ideas of membership in and attachment to a particular community on the other (Kymlicka 2002: 284).

On the basis of equality of treatment as well as cultural diversity, minority rights are seen as 'devices' that further the essential values of liberal democracy (Mahajan 1998: 59).

Group rights can be conceptualized as 'conditional rights for individual rights' (Chandhoke 2002: 228); as realization of individual rights are contingent upon the existence of group to which individual belongs. However, when group or community is considered as a bearer of rights, it tends to suppress civil rights of individuals in name of preservation of community (Mahajan 1998, Kymlicka 2002, Chandhoke 2002, Eisenberg and Spinner-Halev 2005). Because of the need to shield groups/communities from the pressures of assimilation into majority culture, weaker sections like women, lower castes, dissenting individuals etc. are denied access to their civil rights by the community. These difficulties have generated a necessity to examine implications of differentiated citizenship and minority rights more minutely.

These questions remain perplexing; whether differentiated citizenship has successfully reduced suppression and exclusion of minorities, what could be the limits of differentiation after which minorities might be fully incorporated into the domain of citizenship. Linked with issue of differentiation is the problem of identifying groups or communities who would be entitled of differentiated minority rights. In other words, which group or community may be entitled to have minority rights and what may be the basis of such identification. A number of criteria are used to define 'what constitute a minority'. When loose standards are adopted to define a minority, a number of groups begin to claim minority status to get differentiated treatment (as concessions) in form of minority rights.

Further, the measures that were aimed at preserving and promoting cultural diversity have themselves created new minorities who suffer from unresolved problems. For instance, reorganization of states on the basis of language addressed plight of linguistic minorities which subsequently has created new majorities and minorities in newly created states. Linked with this is the insensibility of recognized minorities to the plight of internal minorities and vulnerable like women and smaller groups etc. In addition to this minority rights strengthen community identity as any attempt to change unjust community laws (personal laws) would be seen as interference of majority in the affairs of minority (Mahajan 1998: 107-108).

Minorities Status, Majoritarianism and Problem of National Integration in India

In India, minority question had been evolved within the framework of national unity and national integration. The national movement and subsequent debates in the Constituent Assembly were informed by the concerns of minorities. Although, the nationalist leaders believed that colonial policies of pampering minorities had increased communal divide, offered special measures (reservations, separate electorate etc.) to minorities to hold India together. ensure their inseparability from the united India. While the Congress agreed to give special safeguards to minorities, it never departed from its commitment to universal equality. After Muslim League succeeded in its attempt to bifurcate a separate state from India for Muslims, the concerns for national integration and national unity only grew. In the initial proceedings of the Constituent Assembly held before partition, agreed to grant special measures of political representation, and socio-economic welfare to minorities (Tejani 2007, Ansari, 1999). But post-partition Assembly withdrew these special measures on the account that they could be inimical to national unity and national integration (Tejani 2007) and other core values of national movements like democracy, secularism and development (Bajpai 2008). Thus, the Assembly withdrew political and socio-economic safeguards and granted only cultural and educational rights that too in ambiguous manner (Ansari 1999, Bajpai 2011).

The Indian constitution does not define 'minority' or elaborates a process of identification of minority groups. But many groups and communities have been demarcated as 'minority' in pre and post independent India; religious, linguistic, cultural, racial, tribal and caste minorities. Due to this ambiguity, the question what are groups that constitute minority category, surfaces again and again. After independence, the Supreme Court decided the criteria to determine constituents of minority category from time to time for the purpose of Article 29-30. However, the judgments have not delineated clear cut definition of minority. Even the Resolution establishing the Minorities Commission did not prescribe any criteria for identification of minority groups nor plainly described who minorities were. Until 1992, the Commission discretionally treated Muslim, Christian, Sikh, Buddhist, and Parsi as minorities at national level based on inferences drawn from uneven judicial decisions.

At present six religious communities are notified as minorities under the NCM Act 1992. These are Muslim, Christian, Sikh, Bodh, Jain and Parsi. Parsis, a minuscule community,

was on the minority list since the inception of the first the Minorities Commission though Jain community pressed for long to get minority status only recently they are recognized as minority at the national level.[12] Several state governments were already recognized the Jain community as minority community. The controversy on who can be a minority re-emerged with the Minister of Minority Affair, Najma Heptullah's remark that "Muslims were not minorities by any stretch of the imagination and instead Parsis with their dwindling population qualified for the tag" (The Times of India: May 28, 2014), on her first day in office. According to Heptullah, Muslims are actually too many in numbers to be called minority, it's Parsis who need special attention because they are at the risk of extinction and whose survival as community needed to be ensured (The Indian Express: 28 May 2014). This remark brought back the old debate 'who are minorities in India and how they are identified' apart from the speculations about National Democratic Alliance's (NDA) policy orientation towards religious minorities particularly Muslims. In interviews with the researcher, former chairmen and members of the Commission regarded numerical disadvantage coupled with vulnerability and socio-economic deprivation as the key signs of a minority though the Commission has to follow the dictates of the government and the Judiciary in this matter. The vulnerability may include fears of assimilation.[13]

There are allegations that minority question in India has been reduced to 'Muslim' question and who are appeased by the state. Muslims constitute the largest minority community and also the most backward among all socio-religious categories; socially, economically and politically, brought it to the forefront of 'minority question'. However, Sikh, Christian, Jain, Buddhist and Parsi communities also suffer disadvantages; particularly the weaker sections within these communities showing the signs of vulnerability, this issue is addressed in detail in chapter three. Like Muslims, Sikhs and Christians are also the worst victims of communally targeted violence and ruthless state security practices through anti detention laws. Sikh, Buddhist and Jain communities struggle against assimilative drive of majoritarian tendencies which even found place in the constitution for the sake of amelioration and social reforms pertaining to caste

[12] Jains are included in the national level list of minority communities in January 2014 by the incumbent UPA government.

[13] the chairmen and members were Interviewed between March 2016 to January 2018.

practices. Explanation II of Article 25 (b) included the Sikh, Jain and Buddhist religions in the construction of 'Hindu' and directed the state to infer Hindu institutions accordingly.

Najma Heptulla justified minority-hood for Parsis but did not made any comment regarding pressing demand of minority status of Bahai community who is like Parsi community a minuscule minority and whose existence like Parsis is under the threat of disappearance, who like Jains pressed for minority status. The declining population of Jains might need state sponsored schemes like 'Jiyo Parsi' to sustain their existence. In this context it is interesting to keep in mind that fertility rate and population growth of Muslim community has been perceived threatening by Hindu right wing. These contradictions generate the necessity to re-look at the ways and process through which minority as category was crystalized during the nation movement, the issue addressed in the chapter one.

Dipankar Gupta found that the practice of listing minorities hampers the process of secularization as listing tend to rigidify the identity of listed groups and simultaneously leave out de-notified groups without statutory protection making them vulnerable to majoritarian hunt.[14] Gupta argues that the tendency to add onto minority list is 'blind towards the process of minoritization…which can easily nullify at one stroke the most elaborate categorizations of this kind. Instead of making comprehensive inventory, greater attention should be paid to minoritization' (1999: 48-50). In absence of protection for de-listed group, Gupta says, 'anybody could become the next minority under the process of minoritization as it has no permanent or official favorites (ibid.: 48). Gupta reasoned that it would be better to get out of this framework and consider protecting cultural rights and communities on different ground i.e. citizenship. Using notion of abstract citizenship Gupta argued 'protecting the dignity of individual as a citizen', harshness of minoritization could be alleviated (ibid. 54). However, one may ask whether minority groups were in better position when there was no minority list as was the case before 1992 or withering minority list today would facilitate process of secularization automatically. In India, registering on minority list offers any group cultural and educational rights to preserve and nurture their uniqueness that is in any case cherished as 'enrichment of human race'. What emerges from Gupta's discussion was how to

[14] Gupta made a distinction between secularism and secularization as an ideology and as a process respectively.

protect all citizens against majoritarian tendencies. The demand of groups to be listed as minority has been perceived as problematic to national integration by them even by the Judiciary.

Certain religious and linguistic minorities are identified as minority, but several smaller communities and group keep agitating to be recognized as official minorities such as Arya Samajis who are considered as only a sect under Hindu religion, till recently the Jains were also received similar treatment. Uncertainty regarding which group is a minority, has been instructive in the demands of minority status from the Jain community. Judiciary appears to be inflicted by majoritarian anxieties and recognized Jains as minority in certain cases but technically places it within the Hindu folds for some legal purposes, and rejecting their claim of minority status completely, rehabilitating them within Hindu folds in other cases (Sethi 2016 : 57). The Supreme Court reprimanded the Minorities Commission for over entertaining demands of communities who wished to be declared as minority. The Court said that

> On considering the general functions of the Commission enumerated under section 9 which are only illustrative and not exhaustive, the Commission cannot be said to have transgressed its authority in entertaining representation, demands and counter- demands of members of Jain community for the status of 'minority'. Keeping in view the provisions of the Act, the recommendation made by the Commission in favour of the Jains is in the nature of advice and can have no binding effect. The power under section 2(c) of the Act vests in the Central Government which alone, on its own assessment, has to accept or reject the claim of status of minority by a community…The Commission instead of encouraging claims from different communities for being added to a list of notified minorities under the Act, should suggest ways and means to help create social conditions where the list of notified minorities is gradually reduced and done away with altogether. (Bal Patil & Anr vs Union of India & Ors on 8 August, 2005).

When Jain community was finally notified as minority by the central government, the Court did not reacted in the same way and not emphasized the need of withering away of 'the list of notified minorities'. The functions enumerated in section 9 of the NCM Act enables the Commission to address minority grievances for that it may utilize its advisory and recommendatory functions well. The Court's accusations that the Commission transgressed its limits then appear untenable. Several such demands of smaller minority groups such as Bahais, Arya Samajis, Sadharan Bahmo Samajis,

Lingayats, Tingao Ragwang Chapriak etc. were rejected by the Commission.[15] On the one hand, this remark sanctions absolute authority to the central government in determining minority claims and allowed the governments to utilize the provision for political gains. The other ramification suggests that the Court itself is unwilling to recognize identity assertion of minorities and wants their assimilation.

Structure of the Thesis and Arguments in Chapters

A common theme runs through all the chapters; that is, the problems in the institutionalization of rights of religious minorities in the constitution and their uneven unfolding in post-independent social, political and economic fields. Interestingly, the NCM deals with the weaknesses and inadequacies of the framework of protection of minorities and their rights. Each of the chapters captures the working of a set of rights given to minority citizens and analyses what are the aspects that the Minorities Commission brings to it. The close analysis of the working of Commission with the rights of religious minorities highlights some inherent problem in the framework of protection of religious minorities in India. While the Commission is criticized for its inactiveness and ineffectiveness, it is more a reflection of what is wrong at the larger policy framework. Therefore the limited success of the Commission cannot be attributed to the Commission alone, democratic process; electoral politics, explicit and implicit majoritarian trends, absence of political will, judicial restraints all have contributed significantly in weakening of the Commission and the other minority oriented policies. Every chapter has one broad argument concerning one set of constitutional rights and major deficit in their scheme which makes it difficult for minorities to claim those rights, for instance, right to equality and non-discrimination gets circumscribed in the absence of preferential policies and anti-discrimination law based on religious identities. From third chapter onwards, an appraisal of the Commission's intervention as facilitating agent, negotiating and recommendatory body was also processed along with the tracing of central deficits in scheme of rights. These chapters reflect shifting terms of

[15] From time and again, claims of minority status of these communities were referred to the Commission by the central government. In post *Bal Patil* scenario, the Commission though examined the such claims but refused to recommend minority status to any community citing lack of data as specific cause foe rejection of fresh demands of minority status. Till now, the Minorities Commission recommended minority status only for Jain community at national level and emphasized the need to recognize Hindus as minority in states where they are outnumbered like in Jammu and Kashmir, Punjab, Lakshadweep, Meghalaya, Mizoram, and Nagaland (Annual Report 1996-97).

Commission's engagement with minorities and their rights, revealing differences between non-statutory and statutory Commissions.

The chapter one focuses on the manner in which the discourse on rights has evolved in India in relation to groups, particularly, to religious minorities during the colonial and post-colonial times. In India, one of the important debates in nationalist discourse was on the idea of citizenship and minority concerns. This debate began quite early on the face of national movement and aspirations for future polity. This discourse met with important milestones in the Nehru Report, the Round Table Conference, the Sapru Committee Report and the Cabinet Mission Plan, reaching its highpoint in the Constituent Assembly. As the differences among the citizens on the basis of their group affiliation were well recognized in the final version of constitution, but the benefits in form of group rights given to these recognized differences differ noticeably (Rodrigues 2008), the roots of this differential treatment to different groups are found in the formative process of the constitution. With the goal of creating 'basis for social and political unity' (Austin 1966: 180), the Constituent Assembly choose universalistic notion of citizenship in which group rights were entertained within 'limited multicultural' approach (Bajpai 2011: 48). The Constituent Assembly as final architect of citizenship and minority rights for future India is seen as a major shift from earlier positions in nationalist discourse on the issues of group rights of minorities. It has institutionalized public reason on common and specific rights that has been prevailing at that time. The group rights discourse as progressed in the nationalist perception during the national movement and as culminated in the Constituent Assembly had forwarded varied levels of justificatory basses making some rights more privileged in comparison with others and subjected to better justificatory bases (Bajpai 2000, 2011). The thrust of keeping Hindu community integrated and numerical Hindu majority intact was deeply embedded in the sympathetic treatment of the claims of depressed classes (Tejani 2007: 199-233) and the anxiety for national integration and national unity caused withdrawal of differentiated safeguards for religious minorities. Extensive political rights as available to religious minorities under colonial rule were flattened, and differentiated rights were compressed to mean only cultural and educational rights at the end of Constituent Assembly Debates (Jha 2003, Bajpai 2011: 48-67).

As outcome of the long debate on right of minorities, the constitution of free India carried a common charter of liberty, equality and fraternity for all citizens along with special provisions for protection of cultural identity of minorities and other preferential rights for SCs/STs. However, unfolding of this charter in post-colonial India has not been same for all sections of citizens. Thus, the unresolved issues in the institutionalization of rights of religious minorities during the Constituent Assembly Debates have significantly determined the ways in which minorities came to exercise and experience their citizenship in post-independent India. As a pre-requisite of universal citizenship, secularism was adopted to ensure equality and non-discrimination among citizens. Independence unfolded with stark reality of partition further alienating minorities, particularly Muslims who were looked upon with suspicion labeled as 'traitors'. Successive governments have adopted an ambiguous policy towards religious minorities, particularly towards Muslims and Christians. Governments have showed a great degree of reluctance towards adopting cogent policy measures towards the alleviation of their socio-economic backwardness. The rise of majoritarianism added further troubles for minorities in claiming their equal citizen-hood, however paradoxically creating space for egalitarian discourse on minorities. Emergence of 'citizen politics' as reflected in recommendations made by the Gopal Singh Panel (1983), the Sachar Committee (2006), Ranganath Misra Commission (2007) and Post-Sachar Evaluation Committee (2014) that address issues of 'policy exclusion' and generated a new hope for minorities to become equal citizens.

Establishing a lineage between alternative reasoning of rights of minorities and dissatisfaction with the outcomes of CA and working of these rights in independent India shows, this chapter prepares a ground for understanding persistent tensions in public reason on right of minorities. The NCM might be studied in this framework that bears the same public reason.

Chapter two traces the evolution of the National Commission for Minorities from colonial India to the present position. In this chapter, historical overview of the circumstances leading to the formation of the Minorities Commission by the first non-Congress Government at the centre is discussed at the first instance. Moreover an account of those political currents which help according a statutory status to Minorities Commission by the Congress-led Government was given. Primary sources like Parliamentary Debates and documents published by the Government of India have been

used to re-construct normative reasoning behind extension of statuary status of the NCM. With the help of the NCM Act 1992 and other related legislations, attempts have been made to elaborate organizational structure, function and working of the Commission. This chapter also highlights the predicaments in working of the Commission along with its placement in larger 'web of institutions' entrusted with similar overlapping mandates such as the NHRC.

This debate around the making of the NCM reflects the ambivalent nature of contestation when it comes to create any minority specific policy. In this connection, Mohapartra observed that the contending political parties have not yet achieved minimum level of consensus on minority policy (2010: 232). The deficiency at the level of political consensus is one of the reasons for making any offer of the special provision for religious minorities controversial (ibid.). Any move towards minority specific policies immediately becomes controversial and perceived as prominent threat to the national unity, integrity and security. The reason behind granting constitutional status to the NCSCST and not extending the same to the Minorities Commission seems also to be rooted in political consensus achieved for protection and the welfare of the SCs/STs in the Constituent Assembly and not accumulated in case of religious minorities. This consensus is reflected in strong legal and constitutional basis to preferential policies and later enactment of non-discrimination laws covering these groups such as SCs/STs Prevention of Atrocities Act 1989 etc. Contrarily, 'religious community' emerged as a reluctant category in the Constituent Assembly which made it difficult to legislate preferentially and protective institutional mechanism around religious communities, this is particularly so in case of Muslims and Christians minorities. Absence of legitimacy for religious communities and presence of legitimacy for historically disadvantaged groups in the Constituent Assembly become the source of state policies in post independent India. The arguments advanced there still hold validity in the political fields after independence. Institutional response like the NCM to fill this gap has been trapped in legitimacy-illegitimacy debate of religious community as subject of state policy considerations. The chapter also presents an overview of the Commission in terms of institutional design and how the design itself has been circumscribed by the lack of political consensus and will of political actors.

Right of freedom to profess, practice and propagate religion is most basic right available to citizens to opt religion and religious identity of their own choice. Like all other citizens, religious minorities derive strength of their religious identity from these clauses. The third chapter brings out the complexities and tension inherited in religious freedom when it is interpreted as individual or group rights. Freedom to *practice* religion was kept open to state intervention in favour of enacting laws for social welfare and social reform; the question of reform in Muslim personal laws as unfolded in Shah Bano controversy elaborates the tense and complicated relationship between individual and group right particularly in the context of minority anxiety. The controversy reached to the level where it appeared impossible to save both community autonomy and right of women citizens. Similarly, freedom to *propagate* religion remained under majoritarian scanners since the constitution has been promulgated. Thee sense of crisis over conversion and free propagation was heightened after the Meenakshipuram conversions. The conversion laws undermines the agency in individual to make informed choices and The decade of 1980 witnessed worst ever contestation over freedom to *practice* religion erupted into disaster in Shah Bano case leading to the passage of Muslim Women (Protection of Rights on Divorce) Bill 1986. And freedom of *conscience* and *propagation* religion by minorities came under threat in the context of attempts to enact anti-conversion Acts and conversions happened in Meenakshipuram. The community's right to manage its own affairs in the matter of religion is also examined as it is unfolded in the controversy around Bohra Community.

This chapter has shown that that acclaimed minority rights; right to propagate religion and to maintain cultural autonomy are under pressure to comply with majoritarian norms. On the other hand individual's religious freedom is also not spared by the majoritarian tendencies. The Commission has interpreted religious freedom of conscience and free profession of religion as individual's freedom. Most of the discourse on anti-conversion legislations was centered on individual's right and one's ability to choose a religion. On the other hand, Commission's stand of personal laws reflects anxiety for national integration. The discourse evolved by the Commission, was not appeared to be informed by the nuances of the debate happened in the CA.

In the chapter four, analysis has been made to comprehend the problems of minorities with reference to their constitutional rights of equality and non-discrimination. Increasing attacks on rights of minorities have raised the questions as to how able are

minorities in India to claim and enjoy their constitutionally given rights? And, whether the rights given to minorities in the Constitution are enough to safeguard them? This chapter takes up non-discrimination and equality as basis rights to exercise equal citizen-hood and emphasizes state discrimination in offering preferential policies and the absence of non-discrimination laws as a major cause for the limited use of these clauses for religious minorities.

The first site explored in this chapter is the constitutionally embedded discrimination viz. a viz. preferential policies toward weaker sections of society including religious minorities and what responses the Commission formulated. Through its entertainment of Dalit Muslim, Dalit Christian and Neo-Buddhist's representation regarding exclusion from SC category, the Commission framed its response to this issue. Pre-statutory Commission found to less informed and less enthusiastic about their inclusion in SC category. But the statutory Commission categorically advocated their inclusion into SC list on the argument rooted in justice. The chapter also deals with cases of covert discrimination on the occurring on the ground of religion that reached to the NCM. Although the Commission has appeared to perform well in facilitating minorities to reclaim their rights by using it quasi-judicial powers, it is limited in absence of investigating agency and anti-discrimination laws. Lastly the chapter traces the progress on the line of anti-discrimination law. In view of non-availability of the same it recognized the presence of NCM for redressal in such cases.

Chapter five deals with overt cases of violation of the most basic right that is right to life in situations of communally motivated violence; be it mob threatening to a member of minority community over their religious or cultural practices or open instances of violence, generating fear and insecurity among minorities. For the purpose of this chapter, four types of cases are being analysed- (a) where riots/pogroms raptured lives and living conditions and state is implicated; Sikh riots-1984, Gujarat riots-2002, Muzaffarnagar riots-2013, (b) where individuals were subjected to violence and his life was threatened by some section of population and the NCM took cognizance of the matter, (c) where state's punitive and preventive organ such as Police or PAC are the prime violators of peace in the lives of minorities, and (d) where individuals were framed under detention laws and after wastage of many precious years of life, finally

found innocent. These cases are explored in a limited way as to comprehend how NCM formulated its response towards them and how effective these responses proved.

The chapter has argued that there are deficits in legal mechanisms to ensure security of minorities. Presence of laws such as anti-conversion laws and cow protection laws supplied some kind of legitimacy to self-appointed protectors of majority community to launch minority witch hunt. On the other hand, absence of concrete law on communally targeted violence allows perpetrators to go free seriously hampering minorities claim over justice. The Commission in each case of violence figured differently depending upon who were constituted the Commission then. Pre-statutory commission worked in close association with the Congress party could not raise pertinent issues of protecting lives of Sikh minorities. Similarly its response to Babri Masjid-Ramjanamboomi movement and consequent riots was not appreciable as the Commission appeared obsessed with the idea of national unity and integration disregarding minorities claim over justice as equal citizens. Post-statutory Commission differed significantly in its approach towards cases of violence; it appeared to justice centric and conscious of state complicity in violence.

The chapter six deals with educational rights of minorities, which are believed to be the most vocal expression of the India's commitment to pluralism and diversity. These rights were framed to protect minorities from the cultural hegemony of majority on one hand and to preserve and promote linguistic, cultural and religious diversity on the other. Articles 29 and Article 30 deal with cultural and educational rights of linguistic, cultural and religious minorities. While the demands of special provisions for political representation of religious and cultural minorities were withdrawn in the last phase of the Constituent Assembly deliberations, group rights for preservation, protection and promotion of religious, cultural and linguistic minorities were included in the chapter of fundamental rights of constitution (Jha 2008: 344-345).

However, the working of these rights as intervened by the state and interpreted by the judiciary, has not been very encouraging and witnessed gradual dilution (Mahmood 2007: 20, Nariman 2014, Wilson 2007). Article 15 and 29 (1) and (2) are used to refute the provision of article 30 (1) reducing it to the position of fundamental right guaranteed under Article 19 (1) (g) a right to occupation, that is to run a minority educational institution (Nariman 2014: 44). The working educational safeguards to minorities have been disappointing as the state has extended only shabby treatment to them. Tahir

Mahmood maintained that constitutional provisions for vulnerable sections like scheduled castes and scheduled tribes are usually supported with further legislations and policy interventions. Whereas minority rights, that are special constitutional assurances to minorities against majority assimilative tendencies, could not be expanded with supportive legislations, rather encountered erosion through routine state practices (2007: 20). Unlike all other sets of rights, the Minorities has been consistently sided with a broader interpretation of Article 29 and 30. The reason for this consistent support seems to be lying in comparatively strong normative vocabulary forwarded in the Constituent Assembly.

This thesis is an attempt to capture the visions of rights of minorities as equal citizen as offered by the constitution in the context of majoritarian takeover of public spaces and public reasoning. It has examined, through the NCM, inadequacy of constitutional scheme of rights as far as the protection of religious minorities is concerned. It has also appraised the emphatic ability of NCM to understand the nuances of minorities in time of communal violence and socio-economic backwardness and its institutional strength in advancing the cause of peaceful co-existence of different communities in general and protection and development of minority communities in particular. Thus, the thesis unravels minority discourse evolved in the Commission showing that it emphasized minority protection within the frames of national integration and unity rather than in justice, equality and citizenship.

Chapter I

Evolution of Citizenship and Rights of Religious Minorities in India: Tracing Trajectory of Group Rights

The conception of Indian citizenship has largely been formulated in the background of colonial experiences and freedom movement. Then, citizenship was a 'privilege of few' educated, propertied, and enfranchised classes (Austin 1966: 180-81), though civil and political rights claims of these few privileged citizens were not always entertained as they might become potential threat to the structure of colonial state (Jayal 2013: 21). Despite the fact that citizenship was limited on these grounds, citizenship under colonial rule had some remarkable features including measures of differentiation. From the late 19th century, India had been experimenting and experiencing, what is now called 'differentiated policies' for groups and communities under colonial rule. Colonial rulers had been engaged with community as primary recipients of rights and adopted differentiated policies with the aim to manage Empire (Bajpai 2011, Hasan 2009).The earliest experiment with differentiated representation happened in 1880s when separate electorate in local government and communal representation in the bureaucracy was introduced in Punjab (Jayal 2011, Bajpai 2011, 32). At the beginning of the 20th century, the debate on Constitutional reforms revolved around the question of political representation, which, in the view of colonial rulers should reflect inherent social landscapes of caste and religion. By this time, minority representation or more precisely Muslim question significantly shaped the Constitutional reforms (Tejani 2007: 201); however, other minority groups were also struggling to secure their representation including Depressed Classes[1].

The chapter has focused on the manner in which the discourse on rights was evolved in India in relation to groups, particularly, to religious minorities during the colonial and post-colonial times. While differences among the citizens on the basis of their group affiliation were well recognized in the final version of Constitution, the benefits in form

[1] The term Depressed Classes was introduced by the colonial state to describe the people who were outside the folds of Hindu Varna System organized in four Varnas; Bahman, Kshatriy, Vaishy, and Shudra. People falling under Depressed Classes had to face numerous forms of injustices and were not treated as equal human beings by the upper castes.

of group rights given to these recognized differences differ noticeably (Rodrigues 2008). The roots of this differential treatment to different groups may be found in the formative process of the Constitution. With the goal of creating 'basis for social and political unity' (Austin 1966: 180), the Constituent Assembly chose universalistic notion of citizenship in which group rights were entertained within 'limited multicultural' approach (Bajpai 2011: 48).

The group rights discourse as progressed in the nationalist perception during the national movement and as articulated in the Constituent Assembly had forwarded varied levels of justificatory bases. Some group rights became more privileged in comparison to others and subjected to better justificatory bases. For instance, the group rights of Scheduled Caste and Scheduled Tribes received sympathetic treatment in the Constituent Assembly and became well protected under the Constitutional scheme of rights. On the other hand, similar claims of religious minorities were met with hostility in the Assembly, were regarded as communal and divisive making their justificatory basis very weak and could not become a part of the Constitutional scheme of rights (Bajpai 2000, 2011). The thrust of keeping the Hindu community integrated and numerical Hindu majority intact was deeply embedded in the sympathetic treatment of the claims of the Depressed Classes (Tejani 2007: 199-233). Extensive political rights available to religious minorities under colonial rule were flattened, and differentiated rights were compressed to mean only cultural and educational rights at the end of Constituent Assembly Debates (henceforth CAD) (Jha 2003, Bajpai 2011: 48-67).

As an outcome of the long debate on rights of minorities, the Constitution of free India carried a common charter of liberty, equality and fraternity for all citizens along with special provisions for the protection of the cultural identity of minorities and other preferential rights for SCs/STs. The chapter has elaborated how unfolding of this charter in post-colonial India has not been same for all sections of citizens. Thus, the unresolved issues in the institutionalization of rights of religious minorities during the Constituent Assembly have greatly determined the ways in which minorities came to exercise and experience their citizenship in post-independent India.

This chapter is broadly divided into four sections, further divided in several sub-sections. The first section of this chapter discusses the emergences and crystallization of minority as a category during the national movement and at different stages of Constitutional

development. It traces the ways in which concerns of minorities and Depressed Classes were considered at same point of time and later their ways departed in the trajectory of group rights. This section further locates the trajectory of differentiated rights targeting minorities during the CAD. The third section concentrates on unfolding of rights of minorities as agreed in the Constituent Assembly in the context of the post-colonial state practices. The last section analyses emerging challenges to minorities' citizenship along with advent of promising 'citizen's politics'.

I

Politics of Identification of Minority Groups and Crystallization of 'Minority' Category during the National Movement

Surender S. Jodhka provides insight into majority-minority power relations, how and why minorities are produced. Jodhka has pointed out that 'minority' and 'majority' are relational categories; more than numbers, they refer to the relations of power and domination, prejudice and exclusion (2009: 12), of a given society. Origin of modern nation-states is often found to be linked to particular ethnic or linguistic ties which remain very crucial element in national identity even if the nation-state perceive themselves as secular (ibid). Therefore, even secular states have a tendency of producing their own 'majorities' and 'minorities' through classificatory categories for enumerating populations. That is to say they reconstitute their population in accordance with the given interests and ideas of the dominant ethnic group (ibid). The Indian diversity inhibits almost all possible kinds of minorities depending upon their perception of community threat; their place of living, and on their ability to exercise power and status. Caste, tribal, linguistics and religious groupings are self-defined minorities. All of them share one or the other kind of sense of vulnerability; fear of erosion of group identity, socio-economic and political subordination, and sense of being discriminated from state and society (Weiner 1997: 461-62). To be recognized as minority, according to Weiner, implies that the group desires some corrective or remedial measures for protection and amelioration of its situation, making the act of asserting 'minority' identity more a political act (ibid.). To Weiner, construction of minority identity involves the activities of groups themselves, be it perception of victimhood, subordination, deprivation, and

perceived threat to identity. However, as Jodhka has pointed out minorities are made and produced in the process of identifying and consolidating the mainstream of the nation, it does not seem to be an act of self-perception and self-definition alone. Majority, in order to glorify its culture and to accommodate its cultural symbols as national and mainstream symbols, also affect power alignment of minority groups. In India, identification of minority groups has unique history. The self-definition or self-perception of minority-ness of Depressed Classes was suppressed to consolidate the majority Hindu identity whereas minority identity of Muslim community was recognized and reinforced (Tejani 2007).

Minorities as groups to be represented in gradually evolving colonial policy of inclusive governance were identified by the policies of enumeration through census. The 1872 census listed religious identity of Indian, afterward census exercises went on to record numerous Caste groups facing untouchability into a single category Depressed Classes generating bases for their political mobilization later (Bajpai 2011: 32). The colonial rulers responded to the minority question through the policy of separate electorate for Muslims and other minority groups to be represented in the legislative Assemblies. Communal representation not only ensured representation of different social interests but proved a potential leveller exposing communities, previously not introduced, in the ways of liberal democracy (Tejani 2007). The identity of Depressed Classes as distinct minority group was crystalized in this background (Bajpai 2011: 32). The Government of India Act 1909 recognized separate electorates for the election to the provincial legislature which was later expanded under Montague-Chelmsford Reforms 1919[2], Government of India Act 1935[3] and the Cabinet Mission Scheme of 1946 to include more and more groups. Interestingly, by this time, minority question became synonymous to Muslim question which was at the heart of representation reforms and other minority religious communities, Christians, Sikhs, Jains and Buddhists remained marginal in colonial discourse of minorities. Minority was then a cluster of different kind of vulnerable sections based on different set of characteristics; Muslims, Sikh, Christians, Buddhists, and Jains were numerically smaller religious communities,

[2] Along with the Muslims separate electorate was granted to Sikhs, Anglo-Indians, Indian Christians, and Europeans. Moreover, seats were reserved for non-Brahmins and Depressed Classes were made part of representative institutions through the provision of nomination (Bajpai 2011: 34).

[3] Government of India Act 1935 recognized 13 communities for the purpose of special representation (Bajpai 2011: 35).

Depressed Classes were vulnerable Caste groups experiencing and living worst forms of socio-economic and religious discrimination, tribals were backward and away from the wave of modernity and technological advancements, women being largest vulnerable group exist across caste, class, race and religion groupings, Anglo-Indians and other cultural minorities etc. were also there. The colonial quest for reflecting social landscape, however, was filled with controversial elements, both from the side of colonial state and from the sections of the national movement representing diverse socio-economic communities and groups. The nationalist leaders attempted to alter power equations of society in different ways. Muslim leaders, in their struggle to resist majoritarian rule and to ensure sufficient Muslim presence in the legislative bodies demanded separate electorate from the beginning, whereas the Congress opposed separate electorate till the Lucknow Pact 1916. Similarly, the leaders of Depressed Classes claimed respectful place in society and demanded separate electorate under the leadership of Dr. Ambedkar.

Although, identification of a group or community as 'minority' does not appear a careful and deliberate process in India at the first glance, a closer examination of usage of minority Category during the national movement in which minority communities were identified, suggests certain amount of deliberation in determining the constituents of Category the 'minority'. Indeed, the consequent product of this movement, that is, the Constitution, has not defined the minority anywhere in its text. Nevertheless, crucial documents produced by the leaders of the national movement, such as the Nehru Report (1928), the Round Table Conferences (1930-32), the Poona Pact (1932), and the Sapru Report (1945) etc., provide some insight into this matter. Their inspirations reflected the future configuration of power relations in the society as related to different sets of groups and communities. There was a huge difference in the ways in which minority as a category was used initially and groups and communities which were finally brought under this label. In the initial phase of the national movement, minority as category was a cluster of groups and communities which needed special attention because of one or the other reason. These were numerically inferior religious, cultural and linguistic communities, and vulnerable sections like women, untouchables, tribals and Anglo-Indians (Jha 2002, 2003, Tejani 2007, 2013). This understanding of minority category was inherited from colonial usages. British included disadvantaged sections of society in the list of minority who needed certain special safeguards and special provisions.

Shabnum Tejani argues that the Depressed Classes campaign to secure Constitutional recognition crystalized the idea of majority and minority at the same time when the Nehru Report was hardening the understanding of nationalism and communalism (2007: 199). Earlier, the colonial state had recognized outcaste status to Depressed Classes and had classified them as non-Hindus under 1911 census. But the Hindu upper Castes resisted this classification which resulted in their remaining presence within the broad Hindu category (ibid.). Attempts were made to embrace Depressed Classes into Hindu fold, contrarily the claims of religious minorities were considered communal and divisive.

The Indian National Congress drafted the Constitution of India Bill, 1895, raising the demand for the guarantee of fundamental rights for the first time. Thereafter, this demand consistently refigured in the several resolutions passed by the Congress. The next major landmark came in 1928 in the form of the Motilal Nehru Committee which contrary to colonial belief, considered India as a cohesive nation and imagined it as 'an organic whole' and not as composed of diverse and autonomous elements like princes, linguistic or religious minorities. It proposed that India would be 'a secular state' and suggested replacement of separate electorates with joint electorate and safeguards for minorities in form of declaration of rights (Nehru Report 1928: 30-31). This report rejected all claims of separate electorate on the ground that they were 'bad for the growth of a national spirit' and particularly bad for minorities themselves and 'make the majority wholly independent of the minority' and 'under separate electorate, therefore, chances are that minority will always have to face hostile majority (ibid.). The Nehru Report's staunch opposition to compromise with the demands of separate electorate shaped much of how the questions of Depressed Classes and other minority community were resolved later (Tejani 2007: 212). This report was strongly opposed by Muslim community led by Mohammad Ali Jinnah and the Depressed Classes led by Dr. Ambedkar, both of them believed that Nehru report had not taken sufficient care of rights of their respective communities and denied rightful claims of representation. As a result Jinnah came forward with famous 14 points resolution in which he demanded federal set up skewed in favour of the provinces, separate electorate for Muslims, reservation for them in public employment, protection of Muslim culture, religion, language, personal laws, education, and charitable institutions (V. P. Menon 1957: 45). Dr. Ambedkar was

also disillusioned with the recommendations of the Report as far as rights of Depressed Classes were concerned. Despite the fact that the Report condemned the practice of untouchability, did not suggest any provision for special representation of the Depressed Classes except universal adult franchise which was expected to raise their status and increase their political power automatically. The Report suggested social and economic nurturing of the Depressed Classes to take their proper place in the community (Nehru Report 1928: 59-60).

Hindu leaders seemingly had some idea about the relevance of keeping the Depressed Classes within Hindu folds. If the Depressed Classes were recognized as a separate segment and placed under the minority label they would be further alienated from Hinduism, leading to a relational power shifting in which caste Hindus would not be in clear dominating position. And if they were made as an integral part of Hinduism, it would raise the numbers of the follower of Hinduism by 22% (untouchables constituted 22% of the Indian population as per 1911 census). As per 1921 census, Hindus were 65.9, Muslims were 24. 1, Buddhists (including Buddhists of Burma) were 4.6, tribal religions 2.8, Christians 1.2, Sikh were 1, Jains were 0.2, and other religions were constituted 0.2 % of Indian population (census details cited in Nehru Report 1928: 34). Hindus could be in majority only when they included Depressed Classes which as per 1911 census were 22%. That might be one of the reasons why many Hindu leaders including Gandhi feared the loss of absolute majority status. The Nehru Report compared population growth of Hindus and Muslim in censuses since 1881 to 1921 and found that Hindu population was gradually decreasing from 72% to 65.9% making total decline of 6.1 %, on the other hand the Muslim population registered continuing growth from 22.6 % to 24.1 in 1921 census reporting total increase of 3.1 % (ibid.: 34-35). The increase in Muslim population might not be alarming but the decline in the Hindu population was something that seemed to alarm Hindu leaders. The Nehru Report made a distinction between Muslim, non-Muslim religious minorities on the one hand and non-Brahman minorities on the other (ibid.: 50-58).Depressed Classes were considered non-Brahman minorities. After Nehru Report, Hindu leaders became more conscious towards keeping the Depressed Classes aligned with Hinduism; Gandhi himself took keen interest in ameliorating the condition of this class and named them *Harijan*, meaning children of

God. These reform movements further alienated Muslims which was expressed in the language of Hindu nationalism.

After the failure of Simon Commission in the context of Dandi March and civil disobedience, Prime Minister Ramsey Macdonald invited Indian leaders for Round Table Conferences in London. In the absence of Congress, the First Round Table Conference (1930-31) was represented by 89 members from different Indian social groups, communities and princely states and it largely remained inconclusive. While Sikh, Muslim, Christian leaders advocated separate electorate for their respective communities, Ambedkar demanded representation of Depressed Classes through separate electorate. Ambedkar argued in the conference that despite Depressed Classes being perceived as Hindus and inalienable constituent of Hindu community, they constitute a separate group (Tejani 2007: 214) because of the kind of treatment they received in the community. The Second Round Table was inaugurated in September 1931, significantly different from the first because of Gandhi's presence who participated as sole representative of the Congress in the conference as a result of Gandhi-Irwin Pact[4]. This conference was full of heated discussions as Gandhi was not ready to concede any community or group specific demand of separate representation expect Muslims and Sikhs in the background of Lucknow Pact. This position was resisted by the leaders representing Depressed Classes, Christians and Anglo-Indians and an informal session was organized to settle communal claims. But Gandhi was not convinced to extend recognition of minorities beyond Muslim and Sikhs (Tejani 2007: 215-216). The questions, whether 'Depressed Classes constituted a minority' or a 'subset of Hindu society', were the source of disagreement between Gandhi and Ambedkar. Ambedkar pointed out:

> It may be said that the Depressed Classes are Hindus and therefore need not to be recognized separately as [a] separate political entity. But in answer to that I say that the customs and manners of life in India and amongst the Hindus are such that Moslem, Sikh [and] Christians are notionally more near the Hindus then the Depressed Classes. They are all untouchables to Hindus; but we are untouchables and even unapproachables (Moonje quoted in ibid.: 217).

[4] The British government realized that the Round Table Conferences would be futile exercise in the absence of the Congress and Gandhi. To pursue them to join the Second Round Table Conference, Gandhi-Irwin Pact was signed in 1931. It was agreed that Civil Disobedience movement would be discontinued in exchange of release persons who were imprisoned for their participation in Civil Disobedience, Ordinances against the Congress would be scrapped and the Congress would participate in the Round Table Conferences.

Gandhi questioned Ambedkar's authority to be a spokesman of depresses classes as he claimed to receive correspondences from the Depressed Classes and Christians discarding special representation (ibid.).Christians also sought separate electorate on the ground that they were originally Hindu; but was treated as a separate cultural entity. A Christian representative, Panir Selvam pointed out the ambiguity in the Congress and Gandhi's responses to the claims of Christians and other minorities. Selvam reasoned that Hindus were also promised safeguards where they were in minority, as in the North West Provinces, Punjab, Sindh and Bengal, whereas Gandhi conceded to separate electorates only for Muslims and Sikh. Unravelling of this fact unmasked the ambiguity in the Gandhi's commitment of limiting separate electorate to only Muslims and Sikhs. The claims of Depressed Classes, thus, were supported by Jinnah and Agha Khan, Sardar Ujjal Singh, Selvam and Colonel Giddney also extended their support on behalf of Sikh, Christian and Anglo-Indian communities (ibid.: 2018-219). Although, the Conference failed to arrive at any consensus on safeguards for protecting minority interests, significance of minority protection was unanimously reiterated by the members. On the face of this failure, representatives of the communities demanding separate electorate submitted Minorities Pact to PM Macdonald, advocating separate electorate for all those communities that were then represented in legislature through any form of special representation. This Pact was jointly forwarded by representatives of Muslims, Depressed Classes, Indian Christians, Anglo-Indians and Europeans (ibid.: 223).

In this scenario, anxiety of Hindu elites increased manifold. In his bid to keep the Hindu community united, Hindu Mahasabha leader B. S. Moonje convinced some untouchable leaders to come in support of joint electorate. Untouchable leader like M. C. Rajah of Nagpur and G. A. Gavai of United Provinces were persuaded to support joint electorate in front of the Franchise Committee in exchange of 22 percent reserved seats in legislature that was in proportion to untouchable population. While Rajah remained a close ally of Moonje, Gavai found that 'preservation of Hindu unity' was inconsistent with orthodox Brahmans, for whom 22 percent seats were too big an offer. Thus, Govai reverted to his original support for separate electorate which left Moonje horrified with untouchable's obsession of 'Bramanical supremacy' at the cost of Hindu unity. He was afraid that if non-Brahman and Depressed Classes would split away from the larger

Hindu community, India would be reduced into series of minorities naturally benefiting Muslims and contributing in volatility. Moonje wrote-

> If Depressed Classes are separated by Separate Electorates the non-Brahmins are at once reduced from their majority position by no less than 7 crores…and become practically subservient to Moslem who, joining hands with separated Depressed Classes rose up to 14 crores. The Brahmins are nowhere in this matter as they are hardly 2 crores in all India. But the non-Brahmin does not see it being blinded by his hate for Brahmins. Perhaps, he may even prefer the supremacy of the Moslem to the Brahmin supremacy (Moonje quoted in Tejani 2007: 223).

The First and the Second Round Table Conferences did not reached any conclusion and Macdonald's arbitration emerged as agreed formula to decide the issue of communal representation.[5] Macdonald came up with famous 'communal award' on April 16, 1932 recognizing separate electorates for Muslims, Christians, Sikhs, Europeans, Anglo-Indians and Depressed Classes. The award, moreover, conferred weightages to certain communities, and designed the representative system mutually separating a number of socio-economic identities on the lines of community, race and religion, and of economic interests and other cultural differences. The Depressed Classes were given 'double vote' that, they were given separate electorate in their majority areas and also allowed to vote in general seats to avoid perpetuation of their segregation (Tejani 2007: 225). In the last session of the Round Table Conference (November 1932), the British Government announced the decision to reserve 33% of the British Indian seats in the Central Legislature for the Muslims (Menon 1957: 47-50). Moreover, Sind was decided to constitute into a separate Muslim province. To maintain the balance, Orissa was decided to be a Hindu province later (Menon 1957: 50). While Christians, European and non-Congress Muslim members were contented with the award, Ambedkar was bit dissatisfied because of the scaling down of Depressed Classes representation.

It was the Congress and Gandhi who found the communal award a threat to national unity in general and separate electorate for Depressed Classes as divisive for Hindu

[5] Meanwhile the Congress adopted famous Karachi Resolution in 1931, which was one of the major steps in the in direction of the Constitutional rights of the Indian people and imagination of universal citizenship. The Resolution emphasized that positive obligation of the state towards betterment of socio-economic conditions of the people and eradication of pervasive inequality and discrimination in the society. The Karachi Resolution was subsequently adopted by the All-India Congress Committee's meeting at Bombay in August 1931. Envisaging common fundamental rights for the future Constitution of India, it opposed differentiated measures of political for minorities (The Indian National Congress Resolution 1930-34 cited in Annie 1995).

community in particular. Gandhi, who was imprisoned for initiating second round of civil disobedience, wrote from Yeravda prison that 'when the minorities claim was presented I said that I should resist with my life the grant of separate electorate to the Depressed Classes…I am not against their representation in legislature…But I hold that separate electorate is harmful for them and for Hinduism' (quoted in Tejani 2007: 226-227). Gandhi opined that the separate electorate would destroy Hinduism, 'Untouchable hooligans' together with 'Muslim hooligans' would make 'common constituent cause' and would kill Hindus. He went on 'fast onto death' for withdrawal of separate electorate for Depressed Classes and to save the unity of Hinduism. In response, Macdonald entrusted caste Hindus and Depressed Classes leaders to arrive at some alternative position to adjust the provisions of award. Majority of people were behind Gandhi including a section from Depressed Classes. But Ambedkar and the like-minded considered Gandhi's fast as 'political stunt' 'coercive' and 'manipulative' which was morally inconsistent (ibid. 228-231). Finally Ambedkar surrendered to the country wide pressure, gave up the demands of the separate electorates (ibid., Menon 1957: 200) and signed famous Poona Pact in 1932 with Gandhi which provisioned reserved seats in joint electorate for Depressed Classes. The Poona Pact extinguished the chances of Depressed Classes breaking away from Hindu community that had settled Hindu as permanent numerical majority. It was the spectre of disappearance of identifiable majority that had brought Hindu nationalists, liberals and Gandhians together against separate electorates for the Depressed Classes (Tejani 2007: 228). The Agreement reached in the Poona Pact was kept intact in the Government of India Act 1935 (which also introduced the term 'Scheduled Caste' to describe the castes scheduled to be beneficiaries of special representation in legislative bodies) and later in the Constitution (ibid. 232). Contestations over separate electorate for the Depressed Classes and acceptance of the same for Muslims and Sikhs suggest that the communal and Caste questions were deeply entangled and not detached. Tejani argued that the Depressed Classes question was resolved by retaining them within Hindu folds while reaffirming minority status of Muslims at the same time, led to demarcation of majority and minority (ibid.). The inclusion of Depressed Classes within Hindu majority canvas came with the recognition of their vulnerability, socio-economic, political deprivation and subordination leading to consequent legitimization and confirmation of their claims for special rights in the

Constituent Assembly (Bajpai 2011). Subsequent contestations were excessively centred on the communal demands of the Muslims whose protection as a minority was affirmed by the Lucknow Pact 1916.

By 1932, it was clear that the differential treatment to communities and classes became a permanent feature of Indian polity through the measures like communal representations, separate electorates, and reserved seats etc. Reflecting universalistic aspirations, the Congress was of the view that the problem of minorities could only be resolved by incorporating a detailed list of fundamental rights in the Constitution which would be applicable to all Indian citizens irrespective of their religious affiliation. Thus, the Congress Working Committee demanded a Constituent Assembly which would represent all sections of Indian society in 1934 (Tejani 2007: 337, Austin 1966: 1-2, Bajpai 2011: 43). Contrarily to the Congress's aspirations and demands, the Government of India Act l935 made special Constitutional safeguards in the form of specific fundamental rights to minorities, reaffirming division of the Indian population into watertight groups and reserving seats for them in the legislatures. The Act 1935 accorded recognition to Depressed Classes, Tribals, Muslims and other religious minorities as separate and distinct groups, but recognition was not viewed as something completely negative and repulsive since it recognized their differential social positioning (Ansari 1996).

The elections of 1937 exposed the popularity of the Muslim League as it got only 4.8 percent of total Muslim votes and won only 109 out of the 482 seats allotted to Muslims under separate electorates. But in 1939, the League managed to get a veto power from the British government which promised that no Constitutional advancement would be made without the League's approval (Tejani 2007: 238). Jinnah kept insisting that the League should be recognized as the sole body representing the interests of all Indian Muslims and that the Congress should be recognized as the spokesperson only of the Hindus. Soon after these developments, the Congress demanded complete independence and a Constituent Assembly at Ramgarh session in March 1940; in the same month Jinnah preached the Muslims the two-nation theory in his presidential address to the Muslim League and passed a resolution demanding partition of the country into Hindustan and Pakistan (ibid.). On the other hand, the British government made 'August Offer' to advance the Constitution making process for the free country. The government held that Indians themselves would be responsible for the framing of the new

Constitution and the body responsible for the framing (Constituent Assembly) would represent the 'principal elements in India's national life' that were the different communities of India (ibid.). The Offer was unacceptable to the Congress as it did not fulfil the demand of a national government (ibid. Bajpai 2011: 44). On the other hand, the Muslim League welcomed the August Offer as it provisioned that without the consent of the minorities no Constitution would be accepted. However, the League continued its demand for a separate state for Muslims. To resolve the deadlock among Indians and get their support for World War II, Sir Stafford Cripps came to India in March 1942. The proposal forwarded by the Cripps Mission to protect the interests of Muslim minorities, stimulated the demands for the partition, for that reason, the Congress rejected the Mission. The Muslim League also rejected the proposals as it had not provisioned for the body to build the union of Pakistan (Tejani 2007: 239). The most significant contribution of the Cripps Mission was its acceptance of demand of a Constituent Assembly (Austin 1966: 3).[6]

Subsequent to the failure of Cripps Mission, Gandhi's plea to Jinnah for unity of the nation met with disappointment. To give the communal and minority problem a fresh look, the standing committee of the Non-Party Conference decided to set up a committee to examine the matter from a Constitutional and political perspective. The committee was constituted in 1944 under the chairmanship of Sir Tej Bahadur Sapru who conversed with the leaders of different political parties including that of minorities. It recommended equal representation of Hindus and Muslims in Constitution making body, three-fourth support of members to a decision, joint electorate with reserved seats, rejected idea of Pakistan, and recommended establishment of the Minorities Commission (1945). The Sapru Committee failed in its efforts to advance the unity negotiation and its proposals were rejected by most of the groups and communities. In 1946, the Muslim League fought elections around one single issue; separate state for Muslims. The Muslim League secured majority of reserved seats for Muslims with 70.7 % vote share, suggesting general consensus among Muslims for Pakistan, the Congress performed splendidly on

[6] The Congress began to demand for a Constituent Assembly from mid-1930s, but Jinnah and Ambedkar were not supported this demand (Austin 1966: 3).

general seats securing 80.9 % of total general votes (Guha 2007: 29).[7] The Cabinet Mission came in 1946 and assembled the Congress and Muslim League to discuss the prospects of united or divided India, met with failure. While rejecting the idea of Pakistan, the Mission provided for the Constitution making body and elaborated procedures to be followed in framing the new Constitution which was published on 16, May, 1946. It concluded that partition could not provide an acceptable solution for minority problem rather an Advisory Committee be set up to suggest and discuss the rights of minorities in a preliminary meeting of the Constituent Assembly. Although, the Cabinet Mission Plan held that the representation to the Constituent Assembly should be 'as broad based and accurate a representation of the whole population as is possible' (ibid.). In order to expedite the process of Constitution making, the Cabinet Mission Plan rejected the idea of elections to the Constituent Assembly; it advocated the utilization of the last elected Provincial Legislative Assemblies as the electoral bodies. Accordingly, through indirect elections 296 members were elected to the Constituent Assembly. The Assembly was represented by almost all communities and groups (Bajpai 2011: 48-49, Austin 1966).[8] The Muslim League protested the overwhelming presence of the Congress in the Assembly thereby rejected the Cabinet Mission Plan and decided to boycott the Assembly proceedings. Nevertheless, the first proceeding of the Assembly was held as programmed on 9 December, 1946. Out of the total 296 members, only 210 attended the first proceedings. Other than the Muslim League, almost all other minorities participated in the Assembly irrespective of their religion or political affiliation.[9]

Prime Minister Attlee announced in the House of Commons on 20 February, 1947 that the British Government was intended a peaceful transfer of power in India by a date not later than June 1948 (Guha 2007). Lord Mountbatten came to India to find out an agreed solution on the basis of the Cabinet Mission Plan but was unsuccessful and formulated alternative plan accepting partition, the plan was known as 'the June 3rd Plan' or 'the Mountbatten Plan'. The British Parliament introduced 'the Indian Independence Bill' in

[7] On reserved for seats for Muslims, the League secured 114 out of 119 seats in Bengal, 54 out of 66 in United Provinces, 29 out of 29 seats in Madras swelling the vote share of the ML vindicating its claims of separate Muslim homeland (Guha 2007: 29).

[8] Hindus-163, Muslims-8, Anglo-Indians-3, Indian Christians-6, Parsis-3, Sikhs-4, Scheduled Constituent Assemblystes-31 and Backward Tribes 6 (Shiva Rao 1967: 298).

[9] Number of members present in the first meeting from different communities: Hindus (155 out of 160), Scheduled Castes (30 out of 33), Sikh members (all 5), Indian Christians (5 out of 6), Backward Tribes (all 6), Anglo-Indians (all 3), all the 3 Parsi members and Muslims 4 out of 80 members (CAD Vol I: 96).

the House of Commons on 4 July, l947 which constituted two independent dominions of India and Pakistan with effect from 15 August, 1947.

Accommodating Difference and Thrust for Universalism in the Constituent Assembly

The colonial discourse on group rights had provided the precise background whose experiences had significantly influenced the shape of the relationship between state and individual/community and the rights of religious minorities and other vulnerable sections in independent India. Smith has argued that developing common citizenship in individualistic lines for the people, who were treated as separate social groups for centuries, was the serious concern of the Constituent Assembly (Smith 1963: 407). Thus, prospect of rights of minorities through communal representation was the vital Constitutional problem to be settled in the Constituent Assembly (ibid.). In view of that, the Assembly revisited group rights as envisaged by colonial rulers and attempted to provide normative justification to differentiated provisions given to groups for the future democratic polity. This exercise had altered colonial regime of differentiated group rights in various ways by including, excluding, expanding and shrinking them on the one hand, and legitimizing or delegitimizing certain group rights (ibid. 48-60). Rochana Bajpai has argued that the key players in the Assembly kept changing their positions on rights of minorities and reached a moderate position which altered colonial system of group preferences greatly, resulting in their attenuation in the final draft of the Constitution. For instance when deliberations began, Congress took a 'limited multi-cultural stand' on rights of minorities and settled for 'assimilative/integrationist' position at the end of deliberations. On the other hand, parties representing minority communities initially espoused 'maximal safeguards under multi-culturalist approach eventually Constituent Assembly came to accept 'limited multi-cultural stand' (2011: 48, 2008: 285).

Partition altered the course of the Constituent Assembly drastically. As a result, representatives of certain areas jointed Pakistan and certain remaining members lost their

seats in the Assembly as their area now come under Pakistan.[10] There were 36 Muslim, 6 Sikh, 6 Christian, 3 Parsis and 3 Anglo-Indian members in post-partition Assembly who actively participated in designing safeguards for religious minorities (Austin 1966). Minority question continued to occupy the attention of the Assembly until the finalization of the draft Constitution in November 1949. The Assembly's desire to frame a Constitution that would be acceptable to all sections sustained a firm belief that only after resolving the minority problem to a satisfactory level, Constitution would be acceptable for all Indians (CAD Vol. I: 59). This belief found its clear expression in the form of Objective Resolution circulated by Nehru on 13 December 1947 that expressed the general philosophy of the Constitution, and also showed commitment to safeguarding minorities. It was aimed at securing and guaranteeing socio-economic and political justice, equality of before law along with equality of status and opportunity. Also, Resolution promised sufficient safeguards to minorities and other vulnerable, backward and depressed sections.[11]

Provisions engrained in the Objectives Resolution worked as guiding principles at all stages of Constitution making. Following suggestions of the Cabinet Mission Plan, five Sub-committees were constituted under the Advisory Committee to facilitate its work.[12] It was in Sub-Committees on Fundamental Rights headed by Sardar Vallabhai Patel along with Sub-committee on minorities under the chairmanship of H. C. Mookherji, a Christian leader that the ultimate fate of safeguards for minorities was decided.

In its first sitting on 27 February, 1947, the Minority Sub-committee adopted a questionnaire in gather the views of the individual members of the Sub-committee carrying pertinent questions on the nature and extent of minority safeguard.[13] In the

[10] Thus, Assembly had to re-organize and restructure itself. Total strength of the Assembly was 324 in which 235 members represented the Provinces and 89 were the representatives of Indian states. Hyderabad never sent its 16 representatives to the Assembly at any stage (CAD I: 58-60).

[11] The test of the Resolution reads 'wherein shall be guaranteed and secured to all the people in India, justice, social, economic and political, equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality …wherein adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and backward classes (CAD Vol. I: 59).

[12] These were Sub-committee on Minorities, Sub-committee on Fundamental Rights, North East Frontier Tribal Area Sub-Committee, North West Frontier Tribal Area Sub-Committee, and Excluded Area Sub-Committee.

[13]The text of the questionnaire was as follows:

(1) What should be the nature and scope of the safeguards for a minority in the new Constitution?

(2) What should be the political safeguards of a minority (a) in the centre, (b) in the provinces?

(3) What should be the economic safeguards of a minority (a) in the centre, (b) in the provinces?

meantime, the Sub-committee received a report from the Sub-committee on Fundamental Rights, Sub-Committee on Minorities decided to discuss the report to ascertain whether any provision of the report required enlargement or amendment from minorities' perspective. After three days of discussion, the Sub-Committee s submitted an interim report to the Advisory Committee 19 April, 1947 dealing 'only with the question of fundamental rights from the point of minorities'. The Minorities Sub-committee received memoranda on behalf of Depressed Classes, Tribes, Sikhs, Indian Christians, Parsis and Anglo-Indians demanding Constitutional safeguards (Austin 1966: 186).

At the first stage, with regard to the claims of the minorities and the backward classes consider together (Tejani 2007), reservation was sought in three branches of the government: representation in the legislatures involving issues of joint versus separate electorates and weightage, representation in the Cabinet and representation in the services. Separate electorate was, then, perceived as a threat to national unity by instigating fierce Hindu-Muslim conflict which had resulted in the partition of the country. That is why separate electorate was rejected at very initial stage and joint electorate was adopted (Smith 1963: 407). Therefore, demands of separate electorate by the Muslims and Scheduled Castes were rejected along with the system of weightages for Anglo-Indians (Bajpai 2011: 48-49), but Sikhs endured their demands of differentiated rights (Wadhwa 1975: 162-63, Austin 1966: 188).[14]August 1947 report on minorities offered at least four crucial measures. Those were; joint electorate with reservation of seats for minorities in proportion to their population for ten years, Instrument of Instruction about 'desirability of including members of important minority communities in the Cabinet as far as practicable ' to the President and the Governors, reservation of seats in Provincial Services and a provision for 'Special Minority Officer' at the centre and in the Provinces to report the working of minority safeguards to the legislatures (Bajpai ibid.: 50-51, Jha 2003).

(4) What should be the religious, educational and cultural safeguards for a minority?
(5) What machinery should be set up to ensure that the safeguards are effective?
(6) How is it proposed that the safeguards should be eliminated, in what time and under what circumstances? (Shiva Rao 1966 Vol. II: 391).

[14] Srimokhi Akali Dal kept demanding separate electorate and weightages for the Sikh Community in the Eastern Punjab Legislature. The Akali Dal was reminded that its claim for separate electorate was akin to the League's demands for Muslim community that caused partition (CAD Vol. VIII: 313-315). Rejecting separate electorate for Sikh, Sub-Committee on minorities, the Assembly argued that acceptance of the Dal's demand would lead to extension of similar concessions to other communities which would disrupt the whole idea of secular state (ibid).

The first Draft of the Constitution of 1948 included most of the above mentioned measures granting reserved seats to religious minorities in legislature for ten years along with quotas in government employment, but written provision of minority quota in Cabinet was rejected (Bajpai 2011: 51). At the second stage of the deliberations on the provisions of Draft Constitution on the rights of minorities, the Assembly took drastic reversal rejecting reserved seats for minorities in legislative bodies followed by intense negotiations and defection of key members representing minorities (ibid.: 52). Thus, the Advisory Committee in its meeting on the 11th of May 1949 adopted the proposal of abolishing reservations of seats for minorities in the legislature and retaining the same for the Scheduled Castes and the Tribes (Austin 1966, Jha 2003, Tejani 2007, Bajpai 2007). It was recognized, keeping in view the peculiar situation of the Depressed Castes, that it would be necessary to give them reservation for a period of ten years. Moving proposals of Advisory Committee in the Assembly, Sardar Patel reopened deliberations on minority provisions of the Draft Constitution on 25 May, 1949. Patel explained that the reason of reopening debate on minorities was the feeling of some members that situations were enormously altered since the time Advisory Committee made proposals in 1947 and it would no longer be feasible to had reservation of seats for Muslims, Sikh, and Christians or for any other religious minority in the context prevailing situations (Rao 1968: 770). Thus, at the final stage of the Constitution making, reservations to the minorities were denied, but same was reaffirmed for the untouchable castes and backward Tribes in public employment and legislative bodies. While the demands of special provisions for political representation of religious and cultural minorities were withdrawn, group rights for preservation, protection and promotion of religious, cultural and linguistic minorities were included in the chapter of fundamental rights of Constitution (Jha 2008: 344-345, Ansari 1999, Bajpai 2011: 53-55, Austin 1966). But cultural and educational rights were broadened by offering ‘right to all citizens’ which inflicted ambiguity into them (Ansai 1999: 130, Bajpai 2010: 287, 2011).

Thus, the Constituent Assembly in the initial stage started discussion on rights of minorities with broad provisions of differentiation for religious minorities and Depressed Castes. The members of the Assembly were deliberating upon providing special rights to minorities to ensure their meaningful political representation, social and economic security besides agreeing on preserving their religious, cultural and educational rights.

However, towards the end no special rights other than cultural and educational rights were conceded to religious minorities.

A number of scholars put emphasis on partition as the root cause of change in the position of the Assembly on rights of minorities in shaping weightage for differentiation to various minority communities' particularly religious minorities.[15] There was a remarkable difference in the Constituent Assembly's position on rights of minorities before and after partition (Austin 1966). Partition of India on religious lines led the Assembly to a state of reluctance in extending political safeguards to the religious minorities, particularly to Muslims and Christians. However, scholars contest over whether the partition was strong enough a cause to reject group rights of religious minorities. Scholars like Rochana Bajpai see the partition as a strong reason but not the only one responsible for rejection of group rights of religious minorities, she rather places emphasis on weakness of legitimizing vocabulary for the withdrawal of strong group right. Bajpai has argued that political safeguards were the part of the Draft Constitution even after the announcement of the partition that was till 1949 (2002, 2011: 66-69). Tejani (2013) blames the Muslim leadership's failure to sufficiently advocate economic concessions for their community that led to the withdrawal of those provisions. Jayal (2011) has argued that the end product of discussion and debates in the Constituent Assembly were the provisions that were aimed at sustaining an equilibrium and stability between the universal and differentiated notions of citizenship. It endowed the Constitution with a civic version of universal citizenship which extends citizenship to all irrespective of religion, language, region, caste, class, gender and culture, incorporated measures for 'differentiation' in form of special provisions for minorities (recognition of personal laws and protection of religious and cultural identities) and historically disadvantaged groups (in form of reservations/quotas). Both, minority rights and the reservation for historically disadvantaged groups found place in the Constitution in recognition of their social positioning. These measures were aimed at providing effective equality which will eventually lead to the emergence of an egalitarian society with firmly entrenched universalistic norms of citizenship (Jayal 2011: 193). Nevertheless, it cannot be contested that denial of reservations to the minorities in public employment and

[15]For details Retzlaff, Ralph (1963). 'The Problem of Communal minorities in the Drafting of the Indian Constitution' in R. N. Spann (ed.) *Constitutltionalism in* Asia, 55-73 Bombay: Asia Publishing House. Austin 1966.

central and provincial legislature was a blow to their socio-economic and political interests.

Reversing Colonial Order: Making Individual as a Bearer of Rights in Independent India

The final design of the Indian Constitution reflects concern for both individual and community rights though in varying degrees (Rodrigues 2008). It is imperative to note that the colonial rulers perceived Indian society as constitutive of communities, not of individuals (Bajpai 2010, Chandhoke 2002, Hasan 2009). Therefore, legislatures of colonial India were represented 'communities' with absolute rights and unchangeable interest, not individuals containing rights (Hasan 2009: 20).The Constituent Assembly made serious attempts to reverse this situation, by making individual as reference point of rights as well as of citizenship. G. B. Pant made a strong cause in the Constituent Assembly to repeal this colonial order to bring individual citizen at the forefront of citizenship benefits.

> The Individual citizen who is really the backbone of the State, the pivot, the cardinal centre of all social activity, and whose happiness and satisfaction should be the goal of every social mechanism, has been lost here in that indiscriminate body known as community. We have even forgotten that a citizen exist as such. There is unwholesome, and to some extent a degrading habit of thinking always in term of communities and never in terms of citizens (CAD Vol. I: 332).

Still the Constituent Assembly came up with a mixture of individual and group rights in the final Constitution. Such universalistic-individualistic aspirations were creatively entertained within the framework of group rights. While according group rights to vulnerable sections like Depressed Classes, the aim seems to be empowerment of the individual to enjoy his/her rights without being handicapped by social positioning. Some scholars argue that the Indian Constitution has made individual as primary unit of citizenship and consequently primary recipient of rights. The rights granted to communities only reflect the concern for the effective utilization of individual rights which could be possible only when his/her concerned community would be protected (Chandhoke 2002). According to Chandhoke, for complete utilization of the rights and privileges of citizenship, it is essential that the state regard 'individual as primary unit' of

the state and society and this is the core principle on which the right to religious freedom has been designed in India (ibid.: 1-30).

At the same time many scholars have argued that community rights denotes an alteration in the liberal ethos of the Indian state and individual was marginalized due to the high priority given to cultural and religious minorities and concerns for national unity and integrity (Mahajan 1998).The Indian Constitution regarded autonomy of groups and religious communities to be the best guarantor of equal treatment. Often community practices are protected even when they are in conflict with the rights of individual as citizen and liberty of individual is also curtailed for the concerns of national security and unity. Therefore, community identity is well protected, sometimes even at the cost of individual freedom and rights of vulnerable minority groups within larger communities (Mahajan 1998: 5-6). Minority rights of linguistic and religious minorities provide 'autonomy for cultures' (ibid.: 60) which empower communities and protect them from homogenizing tendencies of nation-state, it has paradoxically restricted the process of democratization and equality within communities. The most glaring example of this paradox is condition of women, in Muslim community. In order to preserve cultural and religious autonomy of these communities, right to be governed by the Personal Law of the community was inserted as freedom to practice religion. This provision secured self-governance in matters pertaining to marriage, divorce, maintenance and inheritance etc. for religious minorities. This provision, however, placed the Muslim women on disadvantageous position making them unable to enjoy their individual rights effectively. Jayal forwarded the argument that both individual and group rights are finely balanced in the Constitution with the individual given the prime position. On the one hand Indian citizenship conceptualizes individual as a basic unit of citizenship who are included in the polity on equal terms, groups and cultural communities are granted recognition in form of minority rights and compensatory provisions (2011: 194).Moreover, the Constitutional provisions of groups and cultural minorities endow the individual with competence to be a part of group or community at the same time providing him security against the arbitrary rule of the group(Jacobsohn 2003). However, there is no easy conciliation between the two, a persistent tension characterized the Career of individual and group rights in India. While group rights given to Depressed Classes are celebrated as empowering mechanism to individual, community rights extended to religious

minorities are generally regarded as alteration to liberal democratic ethos undermining individual rights of citizens (Mahajan 1998).

Citizenship Rights and Minorities: Secularism as the Only Key to Equality for Religious Minorities

The Constitution finally adopted by the Constituent Assembly on 26 November 1949 took heterogeneous character of the people into consideration and resolved to establish a new social order based on secularism and to recognize cultural and linguistic differences within the framework of political and economic unity of the nation (Sheoram 1994: 30). Secularism, thus, is of overarching importance in India to deal with the problems of religious minorities and considered as a prerequisite to individual as well as group equality. Created to settle relationship between the state and religion, secularism is the single most significant value which empowers religious minorities to claim their equal citizen-hood in the Indian state.

India's model of secularism has been understood in different ways by scholars, for instance Gurpreet Mahajan puts Indian secularism as 'non-establishment of religion combined with the absence of separation' (2008), Gary Jeffrey Jacobsohn Calls it 'ameliorative secularism' (2005) for its inclination to ameliorate the society. Untouchability was abolished and any practice of untouchability was criminalized with the positive provisions of affirmative action to ensure the presence of SCs/STs in legislatures, public employment and educational institutions. Moreover, state intervened through legislations to improve the condition of Hindu women. Rajeev Bhargava names it as 'contextual Secularism' (1998) for its potential to deliver appropriately according to the contexts and the requirements of society. Drawing from Ronald Drowkin, Bhargava describes the rationale of the Indian secularism is to ensure equality among citizens and eliminate the chances of discrimination on the ground of religious affiliations and equality for all i.e. treating everyone as equal than giving equal treatment to all (2002: 116). It envisages a model of state-religion relationship that ensures essential conditions for survival of minority communities and active intervention in majority religion for reformative purposes. In other word, the most significant outcomes of the Indian brand of secularism are; equal respect to all religions, non-discrimination, intervention in

community life for the purpose of amelioration, preferential policy consideration for backward sections, and cultural autonomy of minority communities.

Still it is difficult to affiliate secularism with any one single explanation. There are scholars who claim that Indian secularism has failed to secure its stated goal of equality among citizens professing different religion. Secularism seems to have precisely reduced to the questions of retention of personal laws or application of uniform civil code to all religious communities. This reduction is crucial to the understanding of the Indian nation, its citizenship and relations between Hindus and Muslims characterizing antagonism, hostility and violence. Quite often secularism revolves around Hindu-Muslim relations. Unlike in the West, Secularism in India does not refer to the state policy of separation of state and religion, but to popular anomalies and their consequences, namely separatism. Secularism is therefore perceived as opposite to separatism meaning national unity (Brass 2006).

The term secularism was not defined anywhere in the original Constitution, it was inserted in 1976 through 42nd Constitutional amendment during emergency rule of Indira Gandhi. During the Constituent Assembly debates, Secularism was invoked with a series of overlapping concepts such as democracy, social justice, development and national unity to provide a framework for addressing the minority question in the manner it was addressed (Bajpai 2011). In other words, in the Constituent Assembly secularism was invoked in the manner that it led to a collapse of various categories (caste, class, gender, and region) into one category i.e. religious identity for the members of minority community based on religion (ibid.) though he/she may carry all of them. While withdrawing political safeguards for minorities, secularism was used in collusion with national integration and national unity. Unlike political safeguards minority cultural and educational rights did find some support within the nationalist normative vocabulary, nevertheless an analysis of this vocabulary reveals crucial gaps which suggests that justificatory basis of minority cultural rights was weak. Though, the nationalist vocabulary showed commitment to religious, cultural and educational rights of minorities, so far these rights involve special treatment over and above the rights enjoyed by all individuals and groups, their normative basis remained ambiguous. A kind of tension was persisted in nationalist normative vocabulary on the issues such as cultural

rights of minorities and justice constructed in individualist, difference blind terms, and concerns for national unity (Bajpai 2010: 284-295).

Shabnum Tejani, through an analysis of the Constituent Assembly Debates, argues that emphasis on religion as a problem of secularism has detracted attention from the substantive arguments of religious minorities about the manner in which equal citizenship could be guaranteed to them. Secularism was invoked as an argument to withdraw reservations for religious minorities and secularism-communalism binary had inclined to impede a deeper consideration of inequality in the Constituent Assembly (2013: 204-208). Religious identity of minority communities got precedence over their backwardness and inequality. State intervention was justified for Scheduled Castes and Tribes on the grounds of historic inequality and as part of responsibility of an egalitarian state (ibid., Tejani 2007: 236); but similar ground could not become available for religious minorities and secularism was considered sufficient to protect fundamental religious freedoms and as a panacea to treat the ills of communalism (ibid.). Tejani further argues that religious minorities, particularly Muslim leadership failed to successfully advocate against their own marginalization and backwardness which was ultimately reflected in the Constitution. Thus, non-intervention in religion (i.e. protection of the religious identity of minority community) rather than positive intervention to eliminate socio-economic inequality was defined as secular state in the Constituent Assembly (Tejani 2013: 219). Zoya Hasan also argues that inadequate recognition of socio-economic inequality of minorities has been a result of overemphasis on religious identity (Hasan 2009: 47).

The categorization of beneficiary groups entitled to differentiated policies was done as per the availability of strong or weak justificatory bases to their claims. Minorities were classified in order to accord them different sets of group rights (Bajpai 2011). During the national movement and in the initial phases of the CAD, the term minority included Scheduled Caste and Scheduled Tribes along with religious, cultural and linguistic minorities. Later Scheduled Castes and Scheduled Tribes were taken out of the category minority and were given strong group rights on the basis of their historical backwardness and discrimination (Tejani, 2007, 2013: 211-15, Jha 2002). For the left out groups, three markers viz. religious doctrine, backwardness and territorial context along with population size, were considered as sources of identification of a minority (Mahajan

1998: 88). Therefore, religious-linguistic (based on religious doctrine and numerical inferiority) and Caste-tribe groups (based on backwardness) were identified as minorities. The debate around reservation and identification of its beneficiary groups, therefore, led to the deletion of Scheduled Caste from the list of minorities, Tejani argues that such actions did not specify clearly as to what recognition of minority status was intending to achieve in post-colonial India (Tejani 2013: 211). Mahajan clarifies that being minority confers three claims to a group; (a) autonomy from the state in community affairs, (b) protection of free expression of community identity, and (c) a non-homogenizing state (Mahajan 1998: 90). In other words, secularism provides minorities freedom to profess, practice and propagate religion, non-discrimination and equality irrespective of religion and right to conserve their language, script, and culture, and to establish and administer educational institutions.

II

Post-colonial State Practices and Minority Citizens: Contestations over Citizenship and Rights of Minorities

Identity of minority citizens seems to play crucial role in ascertaining their accessibility to their individual and group rights in the ways in which they claim their equal citizen-hood. In this context, India's model of citizenship as 'a bundle of rights' requires a comprehensive analysis to know how religious identity operates and creates difference in terms of experiencing citizenship in daily life of individuals and groups. Upendra Baxi points out that the republican citizenship, which was adopted at the inception of the republic, was indeed momentous which enunciated equal worth of all citizens. It has created necessary bases which delegitimized ritual hierarchy in form of prohibiting the practice of untouchability, forms of serfdom and discrimination on the ground of sex. It has also generated a robust regime of minority rights for the well-being of minorities (Baxi 2008: 104). Although, all citizens have an equal excess to same normative order of rights, their division between fundamental rights and directive principles certifies that enjoyment and achievement of fundamental rights stands differentially distributed among Indian citizens (ibid.).This 'momentum' of Indian citizenship has been challenged by the discursive practices in socio-economic and political fields. Baxi further argues that the

Indian Constitution has failed to create an authentic practice of the idea of republican citizenship as restrictions imposed upon liberty and rights always have potential to generate situations of 'right-less-ness' for democratically enfranchised citizens (ibid.: 105-10). Indeed the momentum of citizenship has unfolded into hierarchical patterns of citizenship in which ability of individuals and groups differ significantly with respect to their accessibility to resources, laws and benefits related to citizenship status (Rodrigues 2008, Roy 2010). Baxi describes these hierarchical categories of citizens as *super citizen* (beyond the law), *negotiating citizen* (upper middle class who have capability to negotiate the law), *subject citizens* (majority of Indian citizens who do not have resources or power to negotiate with the state machinery and law enforcement bodies consequently law applies on them ruthlessly), *insurgent citizens* (who are perceived as threat to the state's security and are exposed to state violence), gendered citizens (women, lesbian-gay, and transgender people who are subjected to societal and state violence and discrimination), *project affected people* who remain victims of state practices of Lawless development (Baxi 2002). Universally available scheme of citizenship has emerged as contested terrain on which contest between hegemonic Hindu notion of citizenship and secular-differentiated notion of citizenship was played out (Pandey 1999: 608-629. In terms of state policy too, India seems to be moving from an inclusive approach to citizenship to a noticeably ethnic conception of citizenship where descent from parentage of Indian origin becomes prime consideration. Regardless of the overriding significance accorded to ethnic ties, judicial pronouncements are largely unfavorable to Muslims with divided families in India and Pakistan (Chatterji 2011, Rodrigues 2008, Roy 2010). Whereas Hindus were ascribed a superior claim on citizenship as compared to other communities as reflected in the pronouncements and slogans of rising tide of the Hindutva wave (Rodrigues 2008: 174, Chatterji 2011, Roy 2010).

In India, the assurance of formal equality of citizenship supplemented with minority rights could not have translated into substantial equality among citizens belonging to minority communities (Mohapatra 2010). The difference in experiencing citizenship was result of interconnected social divisions based on religion, gender, language, Caste, class and culture etc. Minority identity emerged as basis of discrimination and various types of violence; structural violence (absence of precise laws on religion based discriminations,

non-recognition of SCs among minorities) physical violence (communal riots, police torture of minorities) and symbolic violence (stigmatization and stereotyping) (Oommen 2016: 120-124). Hindu communalists questioned the Muslims who choose to stay back in India when they received their share in the form of Pakistan. Muslims were designated as traitors and put on 'loyalty test' (Pandey 1999: 608-629). Their citizen-hood could not bestow them equality of citizenship reducing them to the status of second class citizens.

Post-partition state practices including judicial pronouncements have been largely unfavourable to Muslims with divided families in India and Pakistan while considering their claims over Indian citizenship, regardless of the fact that overriding significance was accorded to ethnic ties in citizenship matters (Rodrigues 2008, Roy 2010) and Muslims had those ties with free India. Although, this research work does not explicitly deal with question of 'belonging-ness' as emotional aspect of citizenship, it treats religious identity as explicit and implicit source of discrimination in state policies. In post-partition scenario, Muslims who had their kin on the other side of the border were looked upon with suspicion. Not just the RSS, chauvinists were also present in the Congress who suspected Muslim loyalty towards India (Guha 2008: 364). There was a persistent dilemma on the position of Muslims in post-partition India; top leadership of the Congress appeared divided. For instance, delivering a lecture at Lucknow, Sardar Vallabhbhai Patel said that 'those who had not chosen to go to Pakistan, it was not enough to give 'mere declaration of loyalty to the Indian Union', they 'must give *practical proof*[16] of their declarations' (Patel quoted in ibid: 365).[17] Ministry of Home Affairs under Patel's leadership directed secretaries of all other department to prepare lists of Muslim employees with divided families in Pakistan as they could be potential channels for information in wake of Indian policy towards Kashmir and Hyderabad or could be influenced by their relatives in Pakistan. Thus, 'it is essential that they should not be entrusted with any confidential or secret work or allowed to hold key posts' (Top Secret Letter cited in ibid.). On the other hand, PM Jawaharlal Nehru did not appear to subscribe Patel's view. Nehru emphasized the Constitutional obligation of making all citizens secure, particularly Muslims who decided to stay back in India. Contrary to Patel, Nehru directed to chief ministers of the states to ensure that public services should

[16] Emphasis supplied.

[17] It may be reminded that Patel was the same person who reopened minority provisions of draft Constitution 1948 for discussion which resulted into attenuation of those provisions.

not get infected with the virus of communal politics (ibid.: 368). He wrote that we should not be provoked by 'indignities and horrors inflicted upon non-Muslims' in Pakistan, 'we have got to deal with minority in a civilized manner. We must give them security and the rights of citizens in a democratic state' (quoted in ibid.: 369). Nehru was indeed concerned with low representations of Muslims in the position of authority; in secretariat and in defence services. In his view, this situation was an outcome of the failure in inculcating a 'sense of partnership in every group and individual in the country, a sense of being a full sharer in the benefits and opportunities offered' (quoted in ibid.: 370). These kinds of paradoxical tendencies remained the significant feature of the state policy toward minorities in India.[18] This is particularly so in cause of Christians and Muslims whose religions bear the stigma of foreign origins and transnational bonds which led many Hindus to suspect their Indian-ness (Smith 1966: 432). Moreover, Wilkinson has argued that Nehru wanted to make India colour blind (i.e. unwilling to recognize cultural differences); in fulfilment of this desire government publicized its decision to stop compilation of Caste date in census exercise in December 1949 (2000: 774-75).

The situation of Sikh minority was different. Despite opposition to partition, the Sikh community was victimized by the partition. But regained its confidence soon with the help of the friendly government policies and agencies and emerged as a socio-economically and educationally a forward community (Guha 2008). In the initial years of independence, the Srimokhi Akali Dal centered its politics on the demand of separate Punjabia Suba. In a memorandum submitted to the State Reorganization Commission, the Akali Dal urged that materialization of separate Punjab out of Punjabi speaking areas in Punjab, PEPSU and Rajasthan would resolve mother tongue controversy, strengthen the north-west border defence and satisfy Sikh community with a distinct Sikh state (Wadhwa 1975: 163-165). The Commission rejected this demand as separate Punjabi Suba would not be able to resolve either language or communal problem rather intensify them. However, in 1966 government bifurcated Punjab and Haryana fulfilling long standing Sikh demand (ibid.). Another important source of Sikh dissatisfaction was exclusion of Dalit Sikh from the benefits of preferential policies as available to Dalit

[18]When the debate on minority safeguards reopened, Nehru also wanted that minorities should voluntarily give up their claims of special representation and reservation in favour of national integration. He welcomed the withdrawal of special safeguards for minorities and asked minorities to have faith in majority's fair play (CAD Vol. VIII).

Hindus. This grievance was also taken care of in 1956 with the inclusion of more Dalit Sikh Castes in the Presidential Order 1950 despite the fact that like Islam and Christianity, Sikhism also does not sanctify Caste system (Wadhwa 1975: 167). This, along with the definition of Hindu offered under Article 25 b explanation II creates a dichotomy between minority religions originated outside India and indigenous minority religions and subjected them to differential treatment. Under this clause 'reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly'. However, these minority communities assert their distinctness from the Hindu community and demand amendment in this clause. In years to come, Sikh too emerged as turbulent minority riding on the tides of Sikh nationalism and demands for *Khalistan* and also suffered large scale state sponsored violence during 1980s.

Even among religious minorities, Muslims are severely unrepresented in parliament, government and private sector employments, mostly self-employed, easy targets of communal violence, socially and economically disadvantaged and educationally backward.[19]One of the reasons for marginalization of minorities was rooted in Constituent Assembly where secularism constrained 'religious community' to be a valid vantage point of state policies (Mahajan 2010: 16, Bajpai 2011). Backwardness rather than religio-cultural difference was sought as legitimate ground for policy making (Bajpai 2011) which has emerged as source of discrimination and marginalization of minorities. Post-colonial state practices offered even more obscure response to the socio-economic needs of minority communities, particularly so in cause of Muslim and Christians. The Presidential Order of 1950 chose to ensure preferential benefits to historically backward sections from majority religion designated as Scheduled Castes. Similar sections were brought under the umbrella of preferential treatment from Sikh and neo-Buddhist communities by amendments in the Order in 1956 and 1990 respectively reflecting indigenous and foreign religion dichotomy. Even before these amendments, several states had included Neo-Buddhist caste groups on their Scheduled Caste list (Smith 1963: 322).The state response to Muslims and Christian as far as their socio-economic development is concerned remained full with contradictions. Successive

[19] For statistical details of this argument see Gopal Singh report 1983, Sachar Committee report 2006, Ranganath Misra report 2007, and the Post Sachar Evaluation Committee report 2014.

governments, though appointed Committees and Commissions to comprehend their situation, tend to relegate their findings and showed unwillingness to take remedial measures to ameliorate the socio-economic condition of Muslims.

Together Scheduled Castes, Scheduled Tribes and other backward castes (including religious minorities) constitute backward classes in the Indian society. While Scheduled Caste and Scheduled tribe were neatly defined categories, OBC as a category was amorphous and more open ended and inclusive category which was left undefined during the Constituent Assembly deliberations. Article 340 directed the President to appoint a commission to identify OBCs and formulate remedial measures. To fulfil this obligation, President appointed the First Backward Classes commission under the chairmanship of Kaka Kalelkar in 1953 to consider whether any section of people other than Scheduled Castes and Scheduled Tribes should be treated as socially and educationally backward classes. Its report was submitted in March 1955 indicating presence of other backward classes among Hindu, Muslim, Christian, Sikh, Eurasian and Gorkha communities (Kalelkar 1955: 160-161). It recommended multiple welfare schemes along with differentiated reservation for the backward classes from 25 per cent of the jobs in class I and 40 per cent in class III and IV. The Commission received representations from the Muslim organizations pleading that all Muslims should be declared as backward and given educational aids and adequate representation in government employment. Although the Commission did not find it fair to recognize entire Muslim community as backward, it found permeating presence of Caste inferiority in the Muslim community and recommended inclusion of some Caste groups of Muslim community into OBC list. The Commission opined that

> Officially Muslims do not recognize any Caste…All Muslims, drawn from any stock or community, were regarded as equal both in the mosque and at the dinner parties. They did not recognize social distinctions as is done on the cause of Caste groups in Hindu society. Gradually, however, Islamic society in India succumbed to the influence of Caste and lost it pristine purity. The racial distinction of Mughal and Pathan, Sheikh and Syed has been maintained though without any sense of social inferiority. 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 today there are a number of communities amongst them that are suffering from social inferiority and consequent educational backwardness (ibid.: 27).

The Commission prepared a list of 2,399 castes cross all religious communities that were made subject of preferential state action. Commission's report suffered many methodological defects and internal contradictions, and was non-unanimous. Three of its members rejected Caste as indicator of social backwardness, chairman Kaka Kalelkar pleaded for economic criteria for identification of backwardness in the forwarding letter of the report to the President undermining entire exercise of the Commission. He urged that individual rather than group should be considered the prime unit for policy making (ibid.: XIV). He expressed anguish on the ways in ways in which Christians and other non-Hindu communities came forward asserting presence of Caste related suffering in their communities to secure some governmental help for their people which would lead to more Caste entrenchment in the society. Kalelkar wrote that

> my eyes were however opened to the dangers of suggesting remedies on the basis of Caste…This was a rude shock and it drove me to the conclusion that the remedies we suggested were worse than the evil we were out to combat…backwardness could be tackled on a basis or number of bases other than Caste…We must be able to help both Indian Christians and Muslim without their being driven to accept the fissiparous principle of Caste. (ibid: VI-VII).

Kalelkar had polemically written against each of the Commission's recommendation from Caste as criterion of backwardness to reservation and Caste census practically nullifying the report altogether. He argued that the special privileges given to Hindu lower Caste acted as bait and incite the Muslim and the Christian communities to revert to Caste and Caste prejudices rendering social reforms of these communities 'null and void' (ibid.: vi). The report was not discussed in the Parliament and the government decided not to prepare any Central list of OBCs and not to reserve seats for them in the central services (Rao 2015: 22). Nehru himself preferred merit over social justice and said 'if we go for the reservations on communal and Caste basis, we swap the bright and able people' (quoted in Rao 2015), further he said 'I am aggrieved to learn how far this business of reservations has gone based on communal and Caste consideration' (quoted in Wilkinson 2000: 775). Both Kaka Kalelkar and then Home Minister rejected Caste as an appropriate or possible ground for affirmative action, validating their arguments riding on a liberal democratic vocabulary that suggested that economic and educational backwardness of individual, and not of social groups, should be the basic criteria for alleviating backwardness (Jaffrelot 2003, 222-227).This was the first chance in which Muslims and Christians might have emerged as development subject but this turned out

not in their favour. States were left on discretion to enumerate their own OBC lists. While many south Indian states using this discretion also brought some sections from Muslims and Christians within the ambit of preferential policies, North Indian states remained reluctant to draw their lists.

After the gap of two and a half decades, issue of identification of OBCs at the central level resurfaced, not by the Congress government but under the coalition government of the Janata party. The party manifesto of 1977 promised 'a policy special treatment' to weaker sections by implementing 25% to 33% reservations in government jobs for OBCs on the lines of Kaka Kalelkar Commission report. The Second Backward Class Commission was appointed on 20th December 1978, popularly known as Mandal Commission after the name of its chairman. Mandal Commission was somehow different from Kaka Kalelkar Commission which presented a reformed model to define backwardness. The Commission had identified 3,743 Castes groups representing 52 per cent of India's population as backward on the basis of eleven indicators of backwardness from social, educational and economic parameters (Mandal 1980). The Mandal report discursively brought backward sections from religious minorities under the purview of preferential state policies recognising their relative socio-economic backwardness. Out of total 52% OBCs, Hindu Castes constituted 43.7% and Castes amongst religious minorities assessed to 8.4%. Although OBCs assessed to be 52 % of entire Indian population, Commission recommended only 27% reservation in government employment and educational institutions (Mandal 1980) in order to confirm the Supreme Court imposed 50% ceiling on reservation in *Balalji* case. The Commission also gave an estimation of SC and ST population in minority religious communities including Muslims and Christians (ibid.: 56).

The Mandal report was submitted during the Congress regime in 1980. Indira Gandhi preferred to keep the report in cold storage and did not implement it. Rajiv Gandhi gave similar treatment to the Mandal report. For 1989 general elections, all political parties, except the Congress, promised to implement Mandal recommendations (Rao 2015: 31). The National Front government under V. P. Singh, finally implemented some of the recommendations of Mandal Commission which invited upper Caste youth agitation all over India. The Congress party showed double face during anti-Mandal agitations. One the one hand the Congress showed sympathetic attitude towards lower Castes, Muslims

and other minorities and even announced several schemes for their betterment, but on the other hand refrained from taking concerted policy step. In fact, student wing of the Congress, NSUI supported anti-Mandal agitators (ibid.: 33). Rajiv Gandhi alleged that V. P. Singh has brought the country at the edge of Caste war (quoted in ibid. 34). While implementing the report, the V. P. Singh government presented it as Cause of social justice where justice is defined in terms of social equality of groups rather than individuals. Therefore, social groups were calculated as beneficiary units (Bajpai 2011: 231-233) which also made available the benefits of preferential treatment to a small section of Muslim community.

While the Janata government appointed the Mandal Commission to look into the socio-economic situation of Backward Classes in 1979, when Indira Gandhi returned to power, she appointed a High Power Panel on Minorities, SCs/STs and other weaker sections. The Panel stemmed from the Congress's promised to Muslims and SCs/STs to conduct a study of their economic plight in the election manifesto of 1979. In fulfilment of that electoral promise, Indira Gandhi appointed a High Power Panel on Minorities Scheduled Castes, Scheduled Tribes and other Weaker Sections under the chairmanship of Dr. Gopal Singh (Zakariya 1995: 163) which submitted its report on 14th June 1983. The report contained some very crucial data revealing actual socio-economic situation of Muslims, Christians and other minorities. [20] The Panel found that in Muslim concentrated areas, facilities like hospitals, schools, training centres were almost non-existent and Muslims and SCs were unaware of government schemes framed for them (Singh 1983: 106). Along with SCs, Muslims were found to be at the lowest rung of the ladder in the urban areas (ibid.). They were mostly self-employed or worked as daily wagers in shops and in private transport agencies and did not own any establishment and vehicles themselves. The licenses of small establishments and public transports were cornered by the better off persons who had connections with influential people (ibid.: 106-107). These findings were later re-affirmed by the Sachar Committee report. The Panel recommended replacement of all the existing Commissions for different vulnerable sections with for 'High Power Commission on Minorities and the Weaker Sections'

[20] The Panel also recognized the backwardness of Muslims in the fields of education, public employment and their peculiar reluctance in educating their women which had dropped their participation in education and public employment and recommended massive state and private intervention to rectify this malady (1983: vii).

(including Scheduled Castes and Scheduled Tribes and other weaker sections) which would have suitable legal powers whose decisions would be binding (Singh 1983: 110).It had further suggested that if it would not be possible to establish this Commission then the government might constitute Ministry of Minority Affairs both at the centre and in the states (ibid.) to look after the issues and concerns of weaker sections and minorities.

One of the most important issues that the report categorically raised, was, the need to empower socially-economically backward sections irrespective of how backwardness was generated and perpetuated. The Panel pointed out that though no concession could be given to any particular section of population on the basis of religion as being a secular state India was expected to distance itself from religion, but recognized that the most deprived section of population namely Scheduled Castes was given concession, solely on the basis of religion (ibid.: 109). Zakaria said that that the report of the Panel was 'eye opening' and found that the economic condition of Indian Muslims was worse than that of Scheduled Castes and recommended strong policy interventions including reservations for their upliftment (1995: 163), the situation that was restated by the Sachar Committee in 2006. However, the report was not placed before the Parliament nor released for wider public debate under the Congress rule. V. P. Singh finally decided to release this report but did not go ahead with the implementation of its recommendations.

While Indira Gandhi refrained from publicizing and implementing the findings and recommendations of the Gopal Singh Panel, she went ahead with the formulation of Prime Minister's 15 Points Programme which took cognizance of various minority problems and prepared guidelines to deal with them. The 15 Point Programme contained directives to curb communal violence, check discrimination in recruitment, ensure flow of benefits to minorities under development programmes, removal of local irritants to minorities, and establishment of special cells to attend the problems of minorities.[21] Rafiq Zakaria, who was the member-secretary in Gopal Singh Panel, has written that while shelving the report Indira Gandhi told him that 'post-mortem' would not help and 'it would be prudent to forget past and plan for the future' (Zakaria 1995: 163). That might be the reason why she went ahead with the framing of PM's 15 Point Programme. The findings of the Gopal Singh Panel were completely set aside and indeed suppressed. Unlike Gopal Singh Panel, 15 Point Programme did not offer alteration in Constitutional

[21] See full text of the PM's 15 Point Programme in Appendix IV as amended in 2009.

position on religious minorities as ineligible subject of the state preferential policies. The non-statutory and unbinding nature of this Programme made it merely an inclusive policy direction to cater material and to security needs of minorities.

III

Emergence of the 'New Citizen Politics' and Return of Reluctance: The Sachar Committee and the Post-Sachar Evaluation Committee

The rise of Hindu Majoritarianism in 1980s is very crucial to understand minority insecurities that were shaped by significant penetration of Hindutva into the public culture to the extent of leading to its redefinition (Hansen 1999: 4-5) by greatly altering the liberal democratic vocabulary[22] (Bhargava 2010). It has endorsed the idea of exclusive nationhood (Hansen 1999, Mohapatra 2010) and exclusionary citizenship (Sirnate 2008: 228-230) that has challenged special provision for religious minorities as 'minority appeasement' and 'pseudo secularism'. The identity concerns of minorities came up in response to the unity and assimilation drive of the majoritarian forces, which strove to assimilate the identity of minorities or to reduce them to the status of second class citizens'. Likewise growing instances of communal violence have raptured minorities' identity as citizens. In many Cases, incidents of communal violence point out collective engineering and direct or indirect complicity of the state and its law-enforcing agencies (Mohapatra 2010: 222, Brass 2006).Majoritarian understanding of secularism and nationalism headed towards two contradictory trends in state-minority relationship. On the one hand, Muslims became alienated from the mainstream of the nation-state but began opting for secular themes of politics. State on the other hand, attempted to address this alienation by satisfying identity drive or by highlighting secular themes of politics in managing relationship with religious minorities (Alam 2010). While sustaining identity concerns of Muslims remain a safe card in politically stable times, emphasis on secular needs, what Javeed Alam (2010) termed as 'citizen's politics' has been given in

[22] The existence of liberal democracy compels Hindu nationalist forces to legitimize their action in terms of its normative vocabulary as made available by the Constitution of India; freedom and equality, rights, justice, democracy and secularism. But they significantly altered the meaning of these terms to the extent that they have gone beyond recognition, for instance, democracy is made to mean rule of an ethno-religious majority and Constitutional meaning of secularism became pseudo-secularism. By altering these terms, Hindu nationalists transformed the whole political culture. This transformation led to the takeover of political arena and the state by Hindutva forces (Bhargava 2010: 251-171).

politically turbulent periods and mostly in fractured political fields. The only exception is the Sachar Committee whose birth was based upon a positive reading of the electoral mood of Muslims.

Javeed Alam has argued that citizen politics was in place at least for the last two decades which means, in the decades of 1990s and 2000s citizen politics was triggered.[23]Ramjanambhoomi movement onwards, Hindutva forces contagiously propagated Muslims as treacherous and problematic for national integrity, leaving Muslims to wonder 'if they were at all considered part of India's citizenry'. Interestingly, this moment brought changes in the orientation of Muslims towards Indian nation and politics initiating the era of citizens politics. Alam elaborated that V. P. Singh's exemplary act of giving up power to protect Babri Masjid escalated him to the status of a lonely heroic figure who relinquished power to preserve the Muslim community's honour and dignity. He convinced the Muslims that 'with him they could stand tall with dignity and pride as an inalienable part of the nation' (Alam 2010: 206). This exemplary action coupled with the implementation of the Mandal Commission report which recognized Muslims as preferential subject for state policy led to a shift in Muslim political orientation at large. Disrespect (demolition of Babri Masjid), violence (post Babri Masjid demolition riots), and socio-economic inequality combined precipitated the necessity for Muslims to align with new secular trends and search for secular ways to engage with the state.

I would like to stretch this argument a bit, that, the roots of this kind of politics might be there in the post emergency scenario when civil rights received renewed importance, and the necessity to protect these rights were felt, including protection of the rights of religious minorities. Certain concrete policy decisions were taken to protect disadvantageous sections; religious, linguistic minorities, Scheduled Castes, Scheduled Tribes and the other backward classes. These policy decisions included formation of two autonomous national commissions: one for religious-linguistic minorities and the other for the Scheduled Castes and Scheduled Tribes in 1978, appointment of the Mandal

[23] This article was originally published in EPW, Vol. 43, No. 2 (Jan. 12 - 18, 2008), pp. 45-53 and reprinted as Alam, Javeed. (2010) 'The Contemporary Muslim Situation in India: A Long-Term View', in Gurpreet Mahajan and Surinder S. Jodhka (eds), *Religion, Community and Development: Changing Contours of Politics and Policy in India*, Routledge Publications, New Delhi and London, pp. 202-227. Reprinted version of the of the article is referred in the thesis. .

Commission in 1979, appointment of the Gopal Singh Panel in 1980 and formulation of Prime Minister's 15 point programme in 1983 that had generated new hope. Nonetheless, these efforts produced uneven results in terms of bringing positive changes in the lives of these vulnerable sections. Nearly three decades later, the Sachar Committee report and the Ranaganath Misra reports have generated similar optimism. Nevertheless, when one looks for results in terms of concrete policies and their successful attainment, implementation related problems and lack of political will fail to meet the promise generated by these reports (Hasan 2009, Kundu 2014, Sharif 2016). I would substantiate this point later in the chapter. In fact, whenever majoritarian forces attempt to dominate the democratic structures of the state, there seems to be occurrence of events signifying expansion of minority protection mechanisms. The decade of the 1980s marked the dawn of full-fledged majoritarian politics; the same period, however, also signified the evolution of newer mechanisms for promoting and protecting minority interests. For example, the year 1978 witnessed a major policy innovation in the area of minority protection in the form of the creation of the Minorities Commission, which was the first experiment of its kind at the national level in post-independent India and appointment Mandal Commission in 1979 whose recommendations were implemented by V. P. Singh in 1991, triggering massive political confrontation with upper Castes. Appointment of the High Power Panel headed by Gopal Singh and formulation of Prime Minister's 15 Points Programme fell in the same line.

The second half of the 1980s witnessed a setback to socially and economically oriented policies towards Muslims in the wake of the Shah Bano controversy and Ramjanambhoomi movement, both reinforcing each other and ultimately contributing in the advancement of right wing politics and entrenchment of Muslim and Hindu identities. Still, in the closing year of the decade of 1980s some space was generated to consider minority protection by political parties in their election manifestos where they promised to give Constitutional status to the Minorities Commission. The SC/ST (Protection against Atrocities) Act was passed in 1989, reflecting concerns for equality and non-discrimination for citizens. The catalyst moment came, as Javeed Alam has underlined, with the resignation of V. P. Singh in the context of the Babri Masjid crisis. From this moment, Muslims began to align with secular forms of demands (ibid).

Although it is difficult to draw a straight line in mapping the progress of minorities oriented policies in India, one could nonetheless trace an uneven zigzag trajectory. There are high moments as well as low moment in history. In this context, the Sachar Committee Report signifies the high moment in the history of citizen politics. With the Sachar Committee report, for the first time, backwardness of the Muslim community was been officially recognized and explained with the government stamp on it, though similar scholarly studies were already in the academic realm and the Gopal Singh report had also pointed in the same direction but this report made public the worse off socio-economic condition of the Muslim community in meticulous detail. The terms of reference given to the Sachar Committee were comparatively more elaborate than that of the Gopal Singh Committee. The Sachar Committee emphasized 'developmental and infrastructural deficits' in Muslim concentrated areas which have nothing to do with communal-secular binary. The National Commission for Religious and Linguistic Minorities headed by Chief Justice Ranganath Misra was constituted prior to the Sachar Committee; vide resolution dated 29th October, 2004 to recommend measures for welfare of socially and economically backward sections among the religious and linguistic minorities. The terms of reference assigned to this Commission were even broader than that of the Sachar Committee. It submitted its report in 2007 but the government did not show much enthusiasm in implementing its recommendations, and the Sachar Committee report remained more celebrated. The Misra Commission report was made public only after two and a half years of its submission. It was also subjected to hostile attitude of its IAS secretary Asha Das who wrote a note of dissent, disagreed on almost all the recommendations made by the Commission (Note of Dissent in Misra Report 2007: 156-168).

What is more interesting is to understand the fact that the Sachar Committee and the Ranaganath Misra Commission were not formed in a vacuum or on a sudden realization of the poor condition of Muslims in India. Political considerations were deeply influential in necessitating the alteration of the terms of the debate and discourse on Muslims. The state was already well aware of the socio-economic backwardness of Muslims. What precipitated the necessity to bring this knowledge in the public domain is something which needs explanation. Zoya Hasan provides insights into the creation of the Sachar Committee and the shifting of terms of debate on Muslims in the context of

electoral politics and has elaborated the political considerations which made available the ground to remedy Muslim backwardness. Hasan explains that the terms of political engagement with minorities, particularly with Muslims, had been defined by the Congress party since independence. After independence, the Congress chose to target minorities through their community membership and found easy to engage with identity concerns of community subsiding developmental issues of education, health, employment, and housing etc. (2012: 169). In doing so the Congress gave undue authority to conservative sections of the community like the All India Muslim Personal Law Board and *ulemas* which, in turn, made room for Hindu Right wing to capture the public domain. In the second half of 1980s, nullifying the Supreme Court's decision in Shah Bano case to calm down agitated conservative sections of the Muslim community and then balancing this act with appeasing Hindu right wing forces by opening the doors of disputed Babri Masjid for *Shilaniyas* of the proposed Ram temple, exemplify this trend. The Congress' failure to manage conservative sections of both Hindu and Muslim communities had a far reaching effect and brought Majoritarian politics to the centre stage of Indian politics, relegating the Congress to the political margins in the latter half of the 1990s.

Hasan argues that when the Congress returned to power in 2004, firstly, it became clear to the Congress leadership that the problems of minorities, particularly of Muslims could not to be resolved by the customary allegiance to secularism and pluralism. It is necessary to go beyond identity politics and give regard to equal rights and equal access of citizens to government and the benefits of development (ibid.). Secondly, in 2004 Parliamentary elections, Congress and its allies received strong support from Muslims contributing significantly to its victory - about 53% Muslims voted for them, claiming 'a kind of ownership of the UPA regime' (ibid.). Therefore, taking a significant departure, the UPA government began to focus on socio-economic development of minorities instead of emphasizing identity in terms of protecting Muslim Personal Law (ibid.: 170-171). The policy outcomes, therefore, began to consider minorities as development subjects; in 2006, the Ministry of Minority Affairs was created as a political step to demonstrate an acceptance of the minority category for the purpose of policy making and a range of welfare schemes targeting minorities came into existence. Religion neutral schemes like the National Common Minimum Programme (NCMP) which aimed at

eliminating poverty were made more minorities oriented, particularly in favour of Muslims (Hasan 2012: 170-172). Concrete measures were taken to provide some sort of legitimacy to make 'religious minorities as development subjects' by appointing the Sachar Committee. The Sachar Committee along with findings of the Ranganath Misra Commission generated arguments based on extensive data which advanced the cause of state intervention in favour of religious minorities and supplied legitimacy by declaring the Muslims as socially, economically, and politically backward. The SCR, however, has been more celebrated in the academic circles and in public debates on the Muslims for being first of its kind and because of the nature of its recommendations. It has pointed in the direction of more diverse public sphere that has to be constituted not only on the lines of formal cultural equality but also on the basis of more substantive material equality. To achieve such public sphere greater socio-economic equality among groups based on religious identities is necessary, for that religious community is to be legitimized as a unit of analysis of the policy orientation of the state (Ali 2010: 70-71). Thus, Amir Ali argues that the most important contribution of SCR is that it has successfully legitimized 'religious community as a viable unit for socio-economic policy making of the state' (ibid.: 71). Therefore, Muslim community was re-constructed as 'developmental subject' of the state causing a shift from the politics of identity to the politics of development (Hasan and Hasan 2012: 242) by introducing the language of equality, of opportunity, and anti-discrimination.

In this connection, I would like to argue that this aspect was not completely absent in the Constitution, but was not available to religious minorities due to ambiguous and hesitant state policy towards them since independence. The fact is that the language of equality and non-discrimination is already present in the Constitution when it recognizes the need of special provisions for backward classes, but it could not be utilized in favour of religious minorities, particularly for the Muslims and Christians. The Kaka Kalelkar Commission found the evidences of Muslim and Christina backwardness and recommended special schemes and differentiated reservation for the backward classes among them. But, the chairman of the Commission refuted findings of the Commission (Kaka Kalelkar Commission 1955: i-xxix) and argued that the recognition of Caste among Muslims and Christians would refute social reforms of these communities (ibid.: vi). The Mandal Commission, as mentioned earlier brought backward classes of all

religious communities under the preferential policies. The Commission categorically clarified that it had recommended reservations under the meaning of Article 15 (4) and 16 (4) keeping 50 % reservation ceiling imposed by the Supreme Court on this category. The Report meant not to restrict further reservations for women, poor and others not covered by this report (Mandal 1980 iii-iv).[24]

Nevertheless, there are thus inherent problems with the ways in which successive governments have dealt with religion and have created a dichotomy between majority and minority religions, and within minority; religions of indigenous and foreign origin. This contradiction is more evident in the state preferential policies towards the weaker sections within religious communities. Majority religious community was already under the purview of preferential policies by way of state intervention in majority religion for amelioration and for removal of untouchability and socio-economic segregation of Dalits. Minorities particularly Dalit Muslims and Dalit Christians were excluded from the benefits of positive discrimination and four Dalit Sikh Castes namely Mazhabis, Ramdasias, Bazigars, and Sikligars were included in the list of Scheduled Castes in exchange of withdrawal of their demands of political representation by the CA(Galanter 1994: 119, Bajpai 2011: 54). More Castes from Sikh and Buddhist communities were included in this list through later amendments Presidential Orders of 1950 in 1956 and 1990 respectively.

The Gopal Singh Panel, the Sachar Committee and the Ranganath Misra Commission all, have questioned this Constitutional ambiguity. The National Commission for Minorities have been recognizing this issue since mid-1990s and have repeatedly made recommendations to ensure due representation of religious minorities, Dalit Muslim and Dalit Christians in particular, in legislatures, armed forces, public and private employment in general. Rangnath Misra Commission took this cause forward and suggested more concrete steps in form of reservation schemes for religious minorities as it recommended wide-ranging affirmative action, including quotas for Muslims, Christians and other religious minorities in educational institutions, and government jobs and proposed that the Scheduledd Caste net be made 'fully religion-neutral' (2007). It recommended that 15 percent seats should be earmarked by law for the minorities in

[24] While implementing the report, the V. P. Singh government presented it as case of social justice where justice is defined in terms of social equality of groups rather than individuals. Therefore, social groups were calculated as beneficiary units (Bajpai 2011: 231-233).

non-minority educational institutions, in government jobs of cadres and grades under the central and state governments, and in all government schemes like Rural Employment Generation Programme, Prime Minister's RozgarYojna, Grameen Rozgar Yojna, etc. And within this 15 percent, 10 percent were to be reserved for the Muslims in accordance with their 73 percent share the total minority population at the national level) and the remaining 5 percent for the other minorities (ibid: 150-55). The Kundu Committee (Post-Sachar evaluation Committee 2013) also advocated inclusion of Muslims under SC category on lines of the Ranganath Misra Commission; it proposed a stratified scheme of reservation on Caste/class basis. It recognized the existence of social groups within the Muslim Community that are equally deprived and must be included in the SC category.[25] The Committee recommended 'identification of most deprived social groups among the Muslim population who should be given the benefits of affirmative action at identical levels, currently being bestowed only on SC and ST population...This would not entail extending reservation to the Muslim community in general in the country' (ibid.: 12).

The Post-Sachar scenario characterises equity and equality as the dominant theme of minority discourse recognising wide spread socio-economic discrimination and endorsing diversity index, equality of opportunity and anti-discrimination legislation as remedial policy out comes. After 10 years of the existence of the full-fledged Ministry of Minority Affairs and the Sachar Committee report, little has been done and even initiated on these grounds manifesting state's reluctance on minority policy and administrative bottlenecks. The MMA has proved 'powerless and redundant', mostly 'acting as post-office, and forwarding requests and recommendations to other Ministries that actually took decision' (Salman Khurshid, Minister of Minority Affairs, quoted in Hasan 2012: 171). Being more a political credit of the Congress, the MMA is lacking institutional and political weight and influence to push minority development agenda, and deficient in devising new schemes and guidelines for need based policy interventions for minorities (ibid.: 172). Hence, it has not proved successful in forwarding minority development agenda with central or state governments to a significant degree, nor within the minority communities themselves through outreach programmes (ibid.).

[25] This demand it continuously made by lower caste organizations among Christians and Muslims, nevertheless upper castes within these communities kept denying existence of castes in their respective communities as Islam and Christianity do not sanctify caste system.

Similarly, the UPA government's response to the SCR remained a half-hearted effort, devoid of the political will to undertake bold policies. Directing implementation of already existing policies was also not been very encouraging. The government overemphasized community specific schemes like Madrasa education than the mainstreaming of minorities by ensuring their equitable share in finance, education and health services and bringing under poverty eradication programmes. Moreover, most of the benefits intended for minorities were cornered by either the majority population or non-Muslim minorities, as revealed by the Social Development Report (Hasan and Hasan 2012, Kundu 2016, Sharif 2016). The report listed misplaced focus of minority-oriented programmes, lack of funds and fear of 'minority appeasement' labels as the reasons for UPA government's failure to implement Sachar report successfully. Referring to little gains of efforts of the Centre and state governments, Prof. Abusaleh Sharif, member secretary in the Sachar Committee, argued for durable changes and recognition of the fact that deprivation amongst the Muslims exists due to 'systemic causes'. These could be remedied only through broad-based public policy initiatives, not just through 'special purpose vehicles such as the minority/Muslim-oriented programmes. It would be best to enable them to access their share within the mainstream line of ministries, departments and programmes' (Sharif 2016).

Amitabh Kundu committee which was formed to evaluate the process of implementation of decisions of the government on the recommendations as outlined in the SCR for institutional reforms and programmatic shifts concluded that although the process of addressing development deficit of Muslim minorities had been initiated after the acceptance of the Sachar Committee Report, 'serious bottlenecks' remain (2014). The committee identified at least five major problems in the government's response in addressing socio-economic deprivation of minorities. First of all, the Committee found the magnitude of government interventions insufficient keeping in view the large number of marginalized minority population and the level of their socio-economic deprivation. Secondly, it stated that the designs and programmes were, very often, not focused on minority concentrated areas and on minorities per se. Thirdly, the institutional mechanisms designed to execute these initiatives were inadequate in terms of personnel, mandate, training, and support. Fourthly, the demand side was found to be weak; civil society and NGOs had not shown enough interest to carry out these initiatives in

partnership with government towards actively fostering confidence and leadership among minority citizens at the local levels. Lastly, not much attention had been given for strengthening community institutions, particularly of women, youth, working for poor minority communities, to enable them to reach out to government programmes and to promote the vision of inclusive India with the ideals of diversity and equal opportunity for all at heart (Kundu 2014: 176). [26]

Keeping in view these bottlenecks, the Kundu Committee made its recommendations both at the level of policy to bring Muslim community in the mainstream. While appreciating the SCR's idea of Diversity Index aimed at combating social discrimination, the Committee viewed that 'the broad perspective on diversity and non-discrimination must constitute the basic framework of the inclusive strategy of development in the country. Therefore, the committee proposed adoption of an incentive system based index system as the evidences suggest that that community based discrimination and deprivation have not gone down in many of the social spheres in the country' (Kundu 2014: 11). Moreover it suggested that 'Muslims need concerted state intervention in form of planned targeted recruitment derive' (Kundu: 35). This report is problematized by the NDA who questioned the rationale of a committee focused on Muslims only in a secular state. Submitted during the initial days of the NDA government, the government neither rejects nor accepts the report.[27] The achievement of the Sachar Committee by successfully upholding socio-religious category as legitimate unit of state policy was placed under pressure by raising questions on Post-Sachar Evaluation Committee's focus on Muslim community in secular state. Amitabh Kundu, in an interview with the

[26] On the condition of anonymity, a senior scholar who had worked on and analysed UPA's minority policy in a conversation with this researcher said that many senior within the Congress became disenchanted with the UPA I's Muslim policy including that of the appointment of the Sachar Committee. They believed that *the Sachar Committee was a wrong decision* in view of electoral politics. By UPA II this group of leaders began to assert pressure on the government to go slow on the Sachar Committee recommendations. They feared that UPA's generous response towards Muslim would give signal to Hindu majority if Congress was a Muslim party and that would lead to *anti-Muslim, anti-Congress polarization of Hindu majority*. The repercussion would be polarization of Hindus towards the party which was more committed to protect Hindus and their interests, i. e. BJP. The anonymous scholar believed that this actually happened in 2014 general elections (informal conversation).

[27] The report was submitted on 9 October, 2014, and the government told the Parliament on 23 March 2015 that it would take appropriate decisions after receiving the comments of the concerned Ministries/ Departments on the recommendations of the Committee since they were overarching and covered the policies and programmes of other Ministries and Departments of the government. Action Taken on the Report of Amitabh Kundu Committee http://pib.nic.in/newsite/PrintRelease.aspx?relid=116357Accessed on 22 August 2016.But the report is yet to be uploaded on the official webpage of the Ministry of Minority Affairs where the Sachar, Ranganath Commission and other reports placed.

researcher said that that the vision proposed by the Sachar Committee was inclusive and the Post Sachar Evaluation Committee followed that vision. For overall development of the county, mainstreaming of Muslims is important (Kundu 2017). In the absence of binding legislations, socio-economic welfare of minorities becomes obscure and provides right wing forces to question the Constitutional basis for minority protect.

Conclusion

Along with the British administrative policies, Indian national movement played a decisive role in entrenching identities and evolving majority and minority categories. Depressed Classes were (almost forcefully) integrated into Hindu folds to keep Hindu community united and numerically major. Although the Lucknow Pact made it clear that Muslims were 'separate minorities', colonial rulers kept considering Depressed Classes together with other linguistic, religious and vulnerable groups for the purpose of differentiated policies. The Constituent Assembly however made efforts to withdraw colonial differentiated policies for religious minorities rejecting 'difference' as a source of political and economic preferential treatment, making historical disadvantage and backwardness as legitimate bases for socio-economic and political preferential policy making. That allowed it to arrive at consensus on differentiated policy making for Scheduled Castes and backward Tribes and reject such claims of religious minorities. It does not mean that Constituent Assembly rejected all kinds' claims of differentiated treatment of minorities. Cultural and educational rights were extended to preserve, protect and promote minority cultures, languages and scripts. Abstract universal citizenship remained the most celebrated idea in the Constituent Assembly deliberations to underplay divisive and separatist tendencies against national unity, the differentiated treatment agreed to Depressed Classes were added as a temporary exception. As pre-requisite of universal citizenship, secularism was adopted to ensure equality and non-discrimination among citizens. Considered as panacea for religious minorities, secularism offered little to them; that is just cultural autonomy which also came under universalistic scanner after independence. Indeed, secularism was invoked to block special treatment to minorities. Inherent problems in the outcomes of the Constituent Assembly have kept the debate on rights of religious minorities alive in independent India. Independence unfolded with the stark reality of partition further alienating

minorities, particularly Muslims who were looked upon with suspicion labelling them 'traitors'.

Rise of majoritarianism added most difficult predicament for minorities to claim their equal citizen-hood, however paradoxically creating space for egalitarian discourse on minorities. Emergence of 'citizen politics' that addresses issues of 'policy exclusion' and 'policy untouchable' of minorities might be one of the possible ways in which we could understand tensions and conciliations in the realm of citizenship which enables us to understand that how citizenship endeavours to make itself emancipatory by resolving its contradictions, however it still have elements of exclusion and discrimination in its grey areas, though in different extent and form. This process of inclusion challenges hierarchical versions of citizenship and a thin concept of equality (formal equality) at least from one direction (socio-economic equality of groups), other aspects of substantive equality, differentiation and inclusion may remain unresolved.

Although, successive governments have adopted an ambiguous policy towards religious minorities, particularly towards Muslims and Christians, and showed a great degree of reluctance towards adopting cogent policy measures towards the alleviation of their socio-economic backwardness, intellectuals and policy analysts have been constantly insisting upon the need of framing and implementing policies to ameliorate socio-economic conditions of disadvantageous Muslims and Christians, and the government never negates this suggestion at least theoretically. Electoral compulsions in winning number based elections seem to present a crucial predicament in post-independence context. In elections Muslim numbers are not entirely critical for winning elections in comparison with Hindu majority who occupies centrality in elections, and keeping them electorally happy is the key to success for political parties in elections. A major section of Hindu majority is against special provisions for minorities. Therefore, political parties try to project themselves as religion neutral (secular) and do not want to affiliate specifically with the welfare of the members of Muslim community which may result in loss of support from majority community in elections.

In evolving policies focused on religious minorities, the anxiety of falling victim to communal/secular divide, political parties become reluctant in pushing this agenda. The question of substantive equality of religious minorities appears to be trapped in the vicious circle of legitimate/illegitimate presence of religion in policy matters and

willingness/unwillingness of political leadership, even after the Sachar Committee report. The hope of breaking secular/communal binary whenever emerges on the political horizons, again sinks to illegitimacy of religion (minority) in the public domain featuring reluctance of major political players. This might be the reason why the Kundu Committee emphasized the necessity to build consensus across political parties for initiating new perspective of inclusive development for Muslims (Kundu 2014.: 12).Therefore the extension of formal citizenship is a limited achievement given that the inherent structural exclusion of religious minorities continues to exist in society. Until structural exclusion in polity and economy is not fully addressed, their inclusion in legal citizenship of the Indian state remains amounted to formal inclusion.

The next chapters establish a connection between Constitutional understanding of rights of religious minorities and manifested weaknesses of the same to the need for a protective institutional arrangement for religious minorities. It explores the founding conditions of mechanism for the protection of religious minorities and searches for a political consensus. Founding moment and later Parliamentary debate suggest that, political consensus has remained fraught with contradictions when it comes to design any minority focused policy as happened in cause of the Minorities Commission. Secularism, nation unity and integrity emerged as restraints for any enhancement of the framework of minority protection on several occasions. The contradictions in the political consensus have facilitated factors like political appointments, lack of imagination in members and chairman, limited powers, deficiency of investigating agency etc. which have also contributed in limiting its role in the lives of minorities.

Chapter II

The National Commission for Minorities: State Responses to the Rights of Religious Minorities

There were at least two ways in which framers of the Constitution took up the question of Indian citizenship. One was inclined towards establishing universal abstract citizenship for all which masks social position of the individual citizen that provide citizenship equally to all irrespective of *religion*, race, caste, sex, and place of birth or any of them. The other notion recognized differential placing of individuals in society and made differentiated provisions for these groups so that they would not feel discriminated against and effectively utilize their rights.

Theoretically, diverse religious identities have been recognized and well protected by non-discrimination, equality, religious freedom, cultural, and educational rights clauses of the Constitution. Chapter one has provided enough evidence to show that the Constituent Assembly could not come up with effective provisions to secure political representation and socio-economic wellbeing of religious minorities in the form of affirmative action etc. 'Religion' could not emerge as a legitimate basis for differentiated socio-economic and political policies in the nationalist discourse. It was 'backwardness' that occupied the heart of the legitimate justificatory basis for affirmative action (Bajpai: 2010). Similarly, the provision of Special Commissioner entrusted to protect the rights of religious minority, was dropped without much deliberation. Nonetheless, the absence of differentiated policies in socio-economic and political arena for religious minorities, who are backward, is suggestive of ambiguous public reasoning in the framework of minority protection. Persistent violence, discrimination and backwardness of religious minorities are reminders of this ambiguity.

Although provisions of differentiated representation were dropped, cultural, religious and linguistic identities were recognized and protected under the Constitutional scheme of rights which included the principles of religious freedom, equality, and non-discrimination (Jha 2008). Like all citizens, fundamental rights are available to religious, cultural and linguistic minorities. The framers of the Constitution have chartered equality, liberty, and justice as founding principle of the Indian democratic republic in

the preamble and supported them with a detailed scheme of rights, but this scheme has proved of limited use for minorities. Nevertheless, the Constitutional scheme of rights including cultural and educational rights of minorities has proved insufficient to protect them against discrimination and violence making them unable to exercise their citizenship in meaningful ways.[1] Therefore, a complementary welfare mechanism and a watchdog institution were considered necessary to oversee the implementation of these safeguards (Mohapatra 2010: 219-237). Subsequently rights of religious minorities have been supplemented with additional institutions, laws and policy initiatives to ensure implementation of their Constitutional and legal rights and to advance their welfare. A number of protective and promotional institutional initiatives for minorities such as the National Commission for Minorities (NCM), the National Minority Development and Finance Corporation (NMDFC), the Maulana Azad Educational Foundation (MAEF), the National Commission for Minority Educational Institutions (NCMEI) and a Ministry for Minority Affairs came into existence. In this connection, formation of the Minorities Commission was the first major step to redress the grievances of minorities. This was also an acknowledgement of the fact that differential positioning of individuals and groups in a society could be a source of denial of their citizenship rights and special measures are required to remedy this situation without altering their identities. This chapter focuses on the NCM as this was the first institutional response of the Indian state to address minority issues with largest range of functions.[2]

This chapter examines how minority specific policies suffer from the lack of political consensus around protection of religious minorities in India. Absence of political consensus makes it difficult to draft a policy at the first place and if a policy is made, it carries the seeds of dissension making it difficult for the policy to sustain. State policies targeting protection and promotion of minority interests have been routinely criticized as minority appeasement. In this context I am elaborating this argument from the making of the Minorities Commission which might be seen as an elusive promise of Indian state to protect minorities and their rights without really empowering it to perform its stated

[1] Socio-economic backwardness of largest religious minority community is evident in the findings of Gopal Singh Panel, Sachar Committee and the Ranganath Misra commission and Post-Sachar Evaluation Committee's report. For comparative social status of disadvantaged Castes among religious minorities, see Deshpandey 2008. Since independence the numbers of cases involving violence particularly against Muslims and Christians have been tremendously increased.

[2] This proposition excludes the Ministry of Minority Affairs which is more like an extension of executive's hand and has considerably a recent origin. It came into existence in 2006 only during the reign of UPA I.

goals. Its long historical existence and broad mandate compels a close analysis of this institution in the context of changing majority-minority relationship in the Indian political fields. Its creation, continued existence and working highlight problems in the state policy towards religious minorities.

Most of the studies (Mahmood 2005, Jayal 2006, Hasan 2009, Mohapatra 2010, Najimullah 2011) done on the NCM delve into the link between institutional design and corresponding performance without going much deeper into the problems of policy discourse on religious minorities in political processes. These studies blame mostly absence of investigating agency (Mahmood 2005, Hasan 2009, Mohapatra 2010, Najiullah 2011), state apathy (Mahmood 2005, Jayal 2006), inadequacy of funds (Hasan 2009) etc. as causes of weakness and its ineffectiveness. This chapter is not intended to evaluate the performance of the NCM; rather it focuses upon the process of aggregating political consensus on minority specific policies and searches the roots of pronounced weakness and ineffectiveness of the NCM into the political deliberations around the making of the NCM that are suggestive of the ambiguity in backing minority protection, subsequently creating a weak and ineffective institution due to weak political consensus behind. The Minorities Commission was neither an outcome of any minority based movement nor a result of well thought out state policy. The circumstances leading to its creation carry the ambiguity and tension regarding protection of minorities. Emphasizing the importance of initial design and founding circumstances, Kapur and Mehta (2005) have argued that these conditions play very crucial role in the evolution of the institutions and their successful working. They explained that the state institutions are embedded in wider political processes. Their evolution and development is an outcome of distributional conflicts both in the society and within the institution itself (ibid.: 7). Taking clue from them, the chapter analyses political situations and the stages of evolution which consequently resulted into the creation of the Minorities Commission and its latter escalation as a statutory Commission. The birth of the Minorities Commission reflects several complex ways in which the rights of religious minorities and citizenship have been raised and considered in liberal democratic discourse of India.

The first portion of the chapter traces the historical roots of the Minorities Commission during the national movement and in the deliberations of the Constituent Assembly. The second part of the paper highlights lack of grounded political work in the political

scenario of late 1970s. The third section examines the Parliamentary debates of early 1990s around the extension of statutory status to the Commission which has advanced a statutory institutional mechanism to figure out the legitimizing normative vocabulary which has advanced an institutional mechanism for safeguarding rights of religious minorities. The next section describes the design of the NCM along with structural and normative issues confronting it in the context of state action. This section briefly describes the mandate of the NCM with emphasis on practical problems in carrying out the mandate with weak institutional design. The last section sheds light on the crisis of deficient links with other sister institutions and other kinds of Commissions for religious minorities. This chapter has focused on how the founding moment and institutional design of the NCM contributes to its pronounced incompetence and ineffectiveness to address minority's grievances.

I

Historical Genesis of the National Commission for Minorities

The roots of the Minorities Commission can be traced back to the colonial period when the idea of protective institutional mechanism for minorities first surfaced in the Nehru Committee in 1928. The Committee had rejected any special way of representation to Muslim and argued that the two communities; Hindus and Muslims were numerically large to effectively protect their interest and represent themselves, did not need any special representation measure. Instead of separate electorate, it considered the Communal Councils for other minorities whose population was ten lakhs or more in any province, they would have the right to have Council representing them for certain purposes; (a) supervision of primary education, schools, orphanage, *dharamshalas*, *sarais*, widow homes, and rescue home, (b) encouragement of script and languages. The manner of the election of the members of the Council was to be determined by the Provincial Council. Each Council was to consist of not more than 25 members. Conversely this proposal was also rejected in the Nehru Committee itself as many members felt that it would perpetuate communalism (The Nehru Report 1928: 29-30).

In 1931, the Indian National Congress proposed the creation of independent institutional machinery to enquire and report the state of minority safeguards. In 1945, the Sapru Committee came up with elaborate safeguards for minorities and proposed the

establishment of the independent minorities' commission at the Centre and in the Provinces to keep a watch over rights and interests of the minority communities.[3] The Committee provided that this commission should be composed of elected representatives from each of the minority communities who were represented in the legislature. It was not necessary for the members of the proposed Minorities Commission to belong to the same community which he/she would represent, but the members of the Commission had to be elected by the members of legislature belonging to that community only (The Sapru Committee Report 1945, pp. 259-260). For instance, a Hindu member of legislature might become a representative of Muslims if he could secure votes from the legislators of Muslim community. It is important to note that at that time the term 'minority' used to refer Scheduled Castes, Scheduled Tribes, religious and linguistic minorities. It was during the deliberations of the Constituent Assembly Debates that Scheduled Castes and Scheduled Tribes were removed from the category 'minority' (Tejani, 2013, Jha, 2002). The question about the nature of the machinery to ensure the safeguards for minorities was again raised in the Constituent Assembly and included in the questionnaire circulated by K. M. Munshi in February 1947 (Rao 1968, Vol. II: 391).[4] Mr. Khandekar proposed a Minorities Commission whose recommendations were to be mandatory, Contrarily, Mr. Anthony proposed mere advisory Commission. However, both of these proposals were lost (ibid.: 396-401). M. Ruthnaswamy rejected the need for such machinery on the basis that safeguards for minorities were incorporated in the Constitution itself, like rest of the Constitution they should be placed under the protection of the Federal Court and its local units in the provinces (ibid., Ansari 1996: 224). The Sub-committee on minorities also received a memorandum from the Jain community in April-March 1947 which suggested a strong permanent commission for minorities with accredited representatives of the various minorities at the centre and in the provincial legislatures[5]. All legislations concerning minorities should require a prior

[3] This committee was appointed by a non-party conference held in November 1944 under the chairmanship of Sir Tej Bahadur Sapru to examine the whole minority question from Constitutional and political point of view.

[4] The Questionnaire on Minority Rights (drafted by K.M. Munshi and circulated among the members of the Sub-Committee on Minorities) contained a question about the setting up of machinery to supervise the efficacy of the safeguards provided to minorities.

[5] Although, Jain community advocated the need of protective institutional, mechanism for minorities, it has been notified as national minority only in January 2014. Jains keep demanding for minority status in after

consent from those commissions and approval from them. Any member of the commission may demand that legislation affecting his/her community should require the consent of the community. In case a dispute arose between the legislature and the commission, matter should be referred to the Federal Court and its decision should be final and binding on both the legislatures and on the commissions. It was also suggested that in the Central Judicial Machinery, there should be a special section which alone would be capable to decide both questions of laws and facts with regard to minorities (ibid.: 236). In his Memorandum and Draft Articles on the 'Rights of the States and Minorities' presented to the Constituent Assembly in March 1947, Dr. Ambedhkar emphasized the need for a Superintendent of Minority Affairs who would enjoy a similar status to the Auditor-General and report to legislature about state's treatment to minorities, transgression of Constitutional safeguards, and injustice by the government due to communal bias. Dr. Ambedkar's proposal for the appointment of an independent officer by the President at the centre and by the Governors in the provinces to report to the union and provincial legislatures respectively about the working of the safeguards provided to minorities was finally accepted. Finally, the Sub-committee on Minorities headed by H.C. Mookherjee recommended appointment of Special Officers at the centre and in the provinces to report the working of minority safeguards, was adopted in the Draft Constitution of 1947. These Special minority Officers was to be appointed by the President and the Governors at the centre and in the provinces respectively (Rao 1968, Vol. II: 396-401, Ansari 1996: 352, Chandhoke, 2002: 241). Thus, Article 299 of the Draft Constitution made provisions for appointment of a Special Officer for Minorities. Following partition, the proposal for Special Minority Officer was dropped and restructured as Special Officer for Scheduled Castes and Scheduled Tribes only under article 338 of the Constitution. However, the provision of Special Minority Officer was withdrawn from final Constitutional draft without much deliberation. Some attempts were made to address the concerns of linguistic minorities by establishing the Special Officer for linguistic minorities under Article 350 B and reorganizing states on linguistic lines and introducing tri-language formula. On the other hand, secularism was considered sufficient to address problems of religious minorities.

independence as well, judicial pronouncements have not been favoured their demand for minority status. For detailed discussion on this issue, see Sethi 2016.

II

Comprehending the Political Consensus on the NCM: Exploring Political Context and Parliamentary Debates

After independence, the demand to set up a commission for minorities, that could check the mounting incidents of violence and discrimination, was heard from the Christian community and the Muslim community (Mahmood 2016). However, there are no general evidences available to suggest that demand for such institution came either from linguistic or religious minorities in post independent India except a news item that appeared in The Tribune in which Catholic Union of India urged the Prime Minister Indira Gandhi to constitute a Minorities Commission (The Tribune 20 November, 1974). The idea of minorities' commission was revived through manifestos of political parties in the decade of 60s and 70s. It was first experimented in Uttar Pradesh in 1960 with the formation of one man Minorities Commission which was expanded with one chairman and nine other members in 1974. In 1971 Bihar set up a multi-member Minorities Commission. Gujarat also established a multi-member State Minorities High Powered Committee with a chairman, a vice chairman and twenty two other members in 1977 (Mahmood 2001: 20-21).

The exploration of political situations of late 1970s explains how the concern for institutional arrangement for the protection of religious minorities 'returned' in political discourse at the national level. However, it is difficult to discern the normative reasoning behind the creation of a Minorities Commission due to absence of any civil movement or demand responsible to trigger its formation and any public debate around this matter. Hence, not much information about the moment of inception of the national level Minorities Commission is available in official accounts and in the academic realm. Unlike, the National Commission for Women and the National Human Rights Commission which are the products of long civil movements, the Minorities Commission originated in a fractured political field as an electoral pledge subsequently culminating into an executive order. The 'Minorities Commission' was set up in 1978 by a government resolution (Government of India, Resolution No. II-16012/2/77-NID of 12.1.1978) issued by the Ministry of Home Affairs under the Janata Party's government.

The text of the Resolution reflected the intentions of the government and shed some light on the need of a Minorities Commission-

> Despite the safeguards provided in the Constitution and the laws in force, there persists among the minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote national integration, the Government of India attaches the highest importance to the enforcement of the safeguards provided for the minorities and is of the firm view that effective institutional arrangements are urgently required for the enforcement and implementation of all the safeguards provided for the minorities in the Constitution, in the Central and State laws and in Government policies and administrative schemes enunciated from time to time (ibid.).

Thus, the government of India set up a Minorities Commission to protect the rights and the interests of religious and linguistic minorities. The Commission was to be composed of one chairman and two other members. Special Officer as provided under Article 350 (B) was to work as secretory of the Commission. Under the Resolution, Minorities Commission was mandated to evaluate working safeguards provided to minorities in the Constitutional or legislated by the union and the state government, to recommend for their effective implementation, to look into the specific cases of deprivation of rights, to act as a national clearing house for information concerning condition of minorities etc. (ibid.). Nonetheless, a deeper analysis of the political conditions preceding establishment of the Minorities Commission unmask real intentions of the political leadership.

The unconstitutional proclamation of emergency and dismissal of fundamental rights by the PM Indira Gandhi in June 1975, probably supplied a background in which institutional mechanism for protection of citizen's rights took a new breath. The debate over group rights and differentiation returned to public arena provided by the unique political scenario of the late 1970s which signified an exceptional public awakening to reinstall the democratic set up. On 12 June 1975, the Allahabad High Court gave a judgment declaring Indira Gandhi's election to the Lok Sabha invalid. Though the Supreme Court ordered a partial stay on the decision of the High Court, it had restricted her from participating in the proceedings of the Parliament till her appeal would be finally decided. In response, Prime Minister Indira Gandhi declared emergency by invoking Article 352, citing internal disturbances as reason. The imposition of emergency aggravated masses and opposition who came together to restore the democratic set up. Meanwhile Indira Gandhi declared fresh elections in January 1977 which were to be held in March. Many major opposition parties; the Jana Sangh, the

Bhartiya Lok Dal, the Socialist Party, the Congress (O) and the Congress for Democracy etc. were united into the Janata Party under the leadership of Jayaprakash Narayan to get freedom from authoritarian rule and a re-installing democracy. The Congress party was defeated in the Lok Sabha elections and managed only 154 seats in the Parliament. The Janata Party with allies won 330 seats and enjoyed a clear majority in this election. But the Janata government was not ideologically cohesive and suffering from sordid competition for power and post which resulted into a split of Charan Singh. It lost majority in the Lok Sabha within eighteen months of its formation and consequently the Janata government fell (Guha 2007: 488-540). During the course of emergency and under the Janata rule, Guha observed that in a more formal sense, Indian democracy appeared being degraded and corroded, but in more 'social' view, Indian democracy was in fact being deepened and enriched (ibid.: 545).

The emergency made everyone more aware of the value of civil liberties. This context made available a valid ground on which institutional framework for protection of citizen's rights could be erected. After more than two decades of independence religious minorities could not be effectively included in the mainstream of the country. Minorities, particularly Muslims became disenchanted with the Congress because of compulsory sterilization program during emergency period. Disillusioned Muslims voted against the Congress contributing in its disastrous defeat (Guha 2007: 525) and in the splendid victory of the Janata Party.

In this background the Janata Party promised in its manifesto to establish an umbrella civil rights commission for the protection of citizen's rights including minorities, SCs/STs and other marginalized sections of society. On 9th May 1977, the government announced its decision to set up a civil rights commission. The government spokesman said that 'the commission will be an autonomous body competent to ensure that religious minorities, linguistic minorities, Schedule Castes and Scheduled Tribes and other socially backward sections do not suffer any discrimination and inequality' (Times of India 20 May, 1977). But later it came up with the announcement of setting up of two separate commissions-one for religious minorities and other for Scheduled Castes and Scheduled Tribes (Hindustan Times 16 January, 1978). It is not very clear why the Janata government came up with two separate commissions when it promised one umbrella civil rights commission. The difference in the nature of inequality,

discrimination, and dissatisfaction suffered by the minorities and the Scheduled Castes and the Scheduled Tribes seems to suggest the Janata government's reasoning for establishing two separate institutional arrangements to enforce and implement the safeguards provided to these communities in the Constitution at the first place. The Hindustan Times explains that the appointment of the Minorities Commission follows from the Janata Party's Promise of a civil rights commission in its election manifesto of 1977 Lok Sabha elections. It was then thought that the commission would be designed after one in the United States which protects the rights of the deprived sections, particularly of the Blacks. The umbrella civil rights commission would be the sole body safeguarding the rights and interests of all minorities, religious, caste or language, and that the existing Office of Special Commissioner of Scheduled Castes and Scheduled Tribes would be merged into it. But this caused misapprehensions, especially among some organizations of Muslims, and the government had set them at rest by establishing a separate Minorities Commission without disturbing the arrangement of the Scheduled Castes and Scheduled Tribes (17 January, 1978). The other reason seems to lie in the breakdown of post-emergency Hindu-Muslim 'Honeymoon' which lasted for one and a half year before the eruption of communal riots at Varanasi in October 1977. 'This disappointing incident than the pressure from the Janata Minority Forum led the Central government to finally constitute the Minorities Commission in January 1978' (Statesmen Weekly 21 January, 1978).

The chief ministers of most of the states were reported to prefer a unified civil rights commission on a separate minority's commission (Austin 1999: 450) along with the Jana Sangh components within the Janata Party who was antagonistic to the idea of the Minorities Commission which might be too solicitous to Muslims (ibid., Wright 1896: 2). While opposition of the Jana Sangh was natural because of their ideological considerations, the resistance of from the state chief ministers appeared odd with the fact that several states already had some sort of institutional arrangement for protection of minorities. Probably, they saw a national level Minorities Commission as one more central institution superimposed to keep the states in check.

Initially, the Minorities Commission was to safeguard the interest of both religious and linguistic minorities which was generally applauded. According to an article appeared in

Hindustan Times, including linguistic minorities within the preview of the Minorities Commission made its functions comprehensive and gave it a secular face:

> The government has been particularly wise to include within the preview of the commission the protection of the rights of linguistic minorities...The grievances of the linguistic minorities, present in almost all States, do not get adequate airing because Parliament does not even discuss the Commissioner's reports , which are themselves few and far between…National integration will be hampered and there will be trouble on the issue of the national language unless the sense of insecurity and deprivation among the different linguistic minorities, who may also qualify for the protection by virtue of their religion or caste, is removed. The functions of the new Commission are comprehensive and make the body the best institutional safeguard for minority rights and interest in present conditions (Hindustan Times 17 January, 1978).

However, in 1988 linguistic Minorities were separated from the Minorities Commission and put under the Office of Commissioner of Linguistic Minorities. The first Minorities Commission was constituted with chairman and two other members. The Special Officer for Linguistic Minorities under article 350 B of the Constitution was made secretary of the Commission. After the fall of the Janata government, the Minorities Commission completed its first term. The next Congress government did not take much interest in the Commission; it only extended its existence by granting the Commission a second term in 1984. However, the Janata government's approach towards the Minorities Commission was also not laudable. The First chairman of the Commission, Mr. Minoo Masani resigned from his position precisely because of the Commission's opinion on the Aligarh Muslim University Bill was ignored by the Janata government (Wright 1986: 3) and over differences regarding the status of and facilities for the Commission (Austin 1999: 451).

G. M. Banatwala highlighted half-hearted effort of the government in the creation of the Minorities Commission on the floor of Lok Sabha. Banatwala though applauded the government for establishing the Commission, he remarked that the primary objective of establishing the Commission, that was, to provide effective institutional arrangement to safeguard rights of minorities was not achieved. He argued that the Commission set by the government appeared most ineffective in absence of sufficient powers (Lok Sabha Debates, 1978: 244). The Minorities Commission appointed in January 1978, was proving weak and powerless institution due to constant neglect of the government, signifying the lack of political consensus. As mentioned earlier, Minorities Commission came into existence as a result of Home Ministry's resolution; thus was not debated in

the parliament at its very onset. Therefore, Political consensus was not obtained before its formation and no normative base could be advanced for this special provision. The Janata Government further showed some concern with regard to the Minorities Commission when it introduced in the Lok Sabha the 46th Constitutional Amendment Bill on 3 August 1978. The purpose of the Bill was to abolish the office of the Special Officer for Linguistic Minorities provided for in Article 350-B, and to add Article 338-A to make room for a Constitutionally sanctioned Minorities Commission (Mahmood 2001: 24-25). While introducing the Amendment Bill in the Lok Sabha, the Government in the 'Statement of Objects and Reasons' said:

> The Government is of the view that appointment of a Commission to safeguard the interests of all Minorities, whether based on religion or language would provide a more satisfactory institutional arrangement for achieving the desired objective. A Minorities Commission was, therefore, set up by an executive order. Such a Commission would, if set up in pursuance of Constitutional provisions; inspire greater confidence among the Minorities. (Quoted in Mahmood 2001: 27).

The Bill lapsed due to lack of interest showed by the members of the ruling coalition and apathy of the Congress then sitting in opposition (Mahmood 2001: 27). The government, however, made another attempt to grant Constitutional status to the Minorities Commission by bringing in the 51st Amendment Bill in 1979 with the same purpose and objects. This time the Bill was though debated in the Lok Sabha but failed to get the required support and could not be passed (ibid.). Thus, the first non-Congress Government failed in its attempt to grant the Constitutional status to the Minorities Commission.

When Indira Gandhi returned to power, she appointed Gopal Singh Panel on minorities, SC/ST and other weaker sections, without substantially taking recourses from the Minorities Commission and the NCSC/ST. Gandhi appreciated but not implemented the report of the Mandal Commission as well which was submitted in 1980. It appears that these steps were taken to refute the Janata effect and to re-establish the Congress as the vanguard of weaker and marginalized sections. Moreover, Gopal Singh report was also not implemented; PM Indira Gandhi devised famous 15 point programme to address concerns of weaker sections and minorities which later emerged as roadmap principles for the Minorities Commission to evaluate condition of religious minorities. The Congress government transferred the Minorities Commission from Home Ministry and

placed it under newly created Ministry of Welfare. Tahir Mahmood viewed this action of Indira Gandhi as a major departure in governments' policy and observed that "this was indeed a big ideological transition for the Commission which had changed its very nature and face. What was conceived and started as a rights enforcement mechanism was now perceived as a welfare agency" (2001: 33).

Indira Gandhi also made appointment of the chairman of the Minorities Commission as per her expediency. She appointed former Chief Justice Mirza Hameedullah Beg as second chairman of the Minorities Commission on 4th March 1981 and extended his tenure for a second term in April 1984 by Indira Gandhi. According to Tahir Mahmood because of closeness to Nehru family, his work in the Commission reflected the Congress ideology (Mahmood 2001: 52-62). Beg gave many deprecating remarks about the Commission which greatly reduced its credibility. It seems that, to defend Rajiv Gandhi's decision to open gates of Babri Masjid and pacify the dispute over it, Justice Beg proposed 'virtual nationalization' of the Babri Masjid which was severely criticized by Tahir Mahmood and other leading Muslim scholars. He also suggested replacement or merger of the Minorities Commission with the National Integration-cum-Human Rights Commission as the Congress was hardly bearing the Janata Party's established Commission; this proposal was also considered as anti-minority stand (ibid.) and invoked by the BJP to apposed extension of statutory status to the Commission in 1992. It seems that the connection between the Congress and the former Chief Justice Mirza Hameedullah Beg was not overemphasized by Tahir Mahmood as far as the working of the Minorities Commission was concerned under him. Although, Beg openly supported the Congress decisions and ideological positions[6], the Congress's policy towards the Commission was not appeared to be influenced by Beg's outlook on minorities and the design of institutional mechanism for protection of minorities. Beg's recommendation to replace the Minorities Commission with National Integration-cum-Human Rights

[6] Beg seems to share proximity to right leaning leaders in the Congress in his conceptual understanding of minorities and minority right. As the chapter one suggests that Congress too was not willing to grant concessions to religious minorities. Explicit right wing like RSS, BJP, and VHP etc. also demanded the abolition of the Minorities Commission or its replacement with Civil Rights Commission or National Integration-cum-Human Rights Commission. A. G. Noorani argues that these demands pose questions for the legitimacy of the very concept of minority in the Indian polity (1990).

Commission was not at all entertained by the Congress government.[7] During Beg's tenure, the Commission worked to shield the Congress government from the allegations of harassing minorities. Indeed, Beg criticised the superiority complex prevalent in the Sikh community in wake of Indira Gandhi's assassination and post-assassination, anti-Sikh violence of 1984 led by the Congress cadres. Nowhere in its report Beg's Commission mentioned culpability of the Congress and the government. Later when the Prime Minister Rajiv Gandhi was going to attend the Commonwealth Conference at Canada in 1987, Indian People's Association in North America (IPANA) publicized that it would organize a protest against Indian Prime Minister over treatment of minorities. Responding to this situation, Beg wrote a letter to Rajiv Gandhi stating the minority friendly provision made in the Indian Constitution and by the government to defend against the expected protest. These services rendered to the Congress by Beg were finally rewarded with *Padma Vibhushan* in 1988. Member Ven Kushok G. Bakula who aligned with Beg was awarded *Padma Bhushan* by the Congress government. The Congress government was not considered the above mentioned recommendations made by Justice Beg. Like most other chairmen of the Minorities Commission, his advice and opinion went unacknowledged on many occasions including that of infamous recommendation to nationalize' Babri Masjid, and replacement or merger of the Minorities Commission with the National Integration-cum-Human Rights Commission. Prominently, the Congress government's action and attitude on the Shah Bano and the Muslim Personal Law ruined the Commission's ambitious project of creating an appropriate public environment to codify personal laws and gathering contents for Uniform Civil Code. This point is extensively elaborated in the next chapter. But the way, Commission under him came in defence of Rajiv Gandhi government on Sikh riot established Beg as the Congress loyalist.

Although, the Commission was never dismantled after its creation, it was not taken seriously by successive governments and its face was distorted and powers were gradually curtailed. The Congress Government never tried to give it a Constitutional or statutory status before 1989 election campaign again on a fractured political field and as populist card. It is, nonetheless not less crucial that after Sikh riot, the Congress

[7] In the Tenth Annual Report, the Commission under the chairmanship of SMH Burney withdrew this recommendation (1987-88).

recognized the utility of the Commission as a face saving device at international level. This point is elaborated in chapter V.

The debate on Minorities Commission reopened in 1992 in a very changed context. The decade of 1980s and afterward, witnessed an unprecedented upsurge of identity politics based on communal mobilization around a dominant Hindu-Muslim identity and assertion of caste identities. The Mandal recommendations instigated a new era of caste assertive politics. 1980s witnessed incidents of communal mobilizations such as Sikh nationalism in Punjab, the Shah Bano controversy, the Ramjanambhoomi mobilizations and opening of the Babri Masjid gates for Rama's worship. Thus the ground for expansion of protection regime for human rights, rights of religious minorities, women, SCs/STs and OBCs were all set. The Congress and the Janata Dal promised to give Constitutional status to the Minorities Commission and to the National Commission for SC/ST in 1989. A proposal to grant statutory status to the Minorities Commission was made in the election manifesto of the National Front led by V.P. Singh. In pursuance of this promise, the V.P. Singh-led government planned to grant Constitutional status to the Minorities Commission, but the government fell before it could pursue this matter. It was the Congress-Left coalition government under Narasimha Rao, which introduced a Bill to that effect. There was also mounting pressure to upheld basic human rights of all citizens including minorities and marginalized sections from the international community. India being a member of the United Nations, was then in the process of signing United Nation's 'Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities' which was finally adopted on 18 December 1992, this seems to assert some kind of pressure.

Even at this time the normative justification for special institution for the protection of rights of religious minorities, was very weak. While introducing the NCM Bill 1992 in the Lok Sabha, the minister of welfare Sitaram Kesri cited the election manifesto of the Congress for 1991 elections in which the Congress showed commitment to provide Constitutional status to the Minorities Commission that would instil confidence in minorities (LSD 1992, Vol. XII, No. 48: 90-91). However he came with the proposal of simple legislative statutory status. Taking insights from Rochana Bajpai, I argue that in 1992 when debate to give Constitutional status to the Minorities' Commission returned on the political scene, again the old argument of national unity, national integration, and

secularism were invoked in the Parliament for contradictory purposes; either to oppose or support the National Commission for Minorities Bill.[8]

There was much contestation over whether 'religion' could be made a basis for any special provision given to minorities. Either supporting or opposing the National Commission for Minorities Bill, members of the Parliament made use of the Constituent Assembly Debates and the final provisions of the Constitution to justify their positions, signifying a kind of continuity of the debate over 'religion' and 'differentiation' for minorities. However, there are some visible shifts also that were like revival of the positions held the Constituent Assembly before the Partition, such as arguments favoring reservation in government employment for religious minorities. Unlike late 1940s debate, this time religious identity was not sought as a cause for demanding reservations. Moreover, questions of political representation of religious minorities were not at all raised. Few key normative issues could be identified, around which the debate in the Parliament formulated; Constitutional status of religion, definition of a minority, human rights and minority rights, backwardness of minorities and reservation, and unity of the country. This was the BJP who presented most stern criticism to the idea of creating an institution specifically for religious minorities. Apart from the Congress, the Janata Party also supported the Bill and demanded better crafted Bill and Constitutional for the Minorities Commission.

L.K. Advani of the BJP opposed the Bill and referred to the Constituent Assembly to show that after partition the Constituent Assembly concluded that nothing could be recognized on the basis of 'religion' and reservation would be given only to Scheduled Castes and Scheduled Tribes. Therefore establishing a statuary commission on the basis of religion is against the spirit of the Constitution (LSD 1992, vol. XII, No 48: 95-96). On the other hand Ram Vilas Paswan interpreted Constitution in support of special institutional arrangement for minorities. He emphasized that the issue of minorities was a matter of 'Constitutional responsibility', and from Article 25-30, Constitution had ample

[8] Moving away from the study of key political actors, Rochana Bajpai underline the importance of legislative language and policy debates for empirically understanding of the ideology and ideas and how the internal structure of ideologies affect the final policy outcomes (2011: X). By recasting the Parliamentary debates on the NCM Bill, I am trying to highlight the elements of public reasoning concerning protection of religious minorities and their rights in early 1990s. The entire logic of discussing this debate is to demonstrate how any special provision (measure of group differentiation) for religious minorities becomes a matter of contestation.

provisions for minorities. Therefore, Mandal Commission, Minorities Commission, Scheduled Caste and Scheduled Tribes Commission were in harmony with the spirit of the Constitution. He reiterated the Constituent Assembly's remarks of majority's responsibility to protect and mainstream the minorities (ibid: 119-124).[9] Similarly Mani Shankar Aiyar opined that the Constitution mentioned 'religion' very carefully. The preamble talked about freedom of religion, and Articles 15, 16, 25, 26, 28, 29 and 30 of the Constitution referred to religion consciously. The framers of the Constitution made it a foremost duty of the state of India to assure that no discrimination should happen on the basis of religion (ibid: 132).

To L. K. Advani 'religion' could not be made as a basis for the special treatment, therefore an umbrella commission for the protection of Human Rights of all citizens was a better option than forming a separate commission for religious minorities which could divide the country (LKS 1992: 105). He borrowed this idea from the former chairman of the Minorities Commission, Justice Beg, who advocated a comprehensive National Integration-cum-Human Rights Commission with various sub-commissions in charge to deal with the specific problems of SCs/STs, minorities and looking after all Human Rights issues of citizens in the Fourth Annual Report of the Minorities Commission. This way, he upheld a universalistic notion of rights and citizenship and rejected the need of differentiated treatment to socially-culturally diverse sections of society.

Unity concerns of the country kept dominating the entire debate over this Bill, for both sustaining and resisting it. While referring to the concerns of national unity, L. K. Advani said that

> I oppose it not only because of the content of this Bill, but I oppose it on more basic grounds. I regard it as one more example of the government mishandling of this issue which is ostensibly related to minorities but which I believe is very much linked up to the unity of this country….it will create more problems….all that it would is to promote divisiveness which is already there and what the appetite of separatist forces. This is my feeling and therefore it is that I oppose this Bill in *toto* (ibid.: 92).

He quoted D.D Basu to suggest that minorities were using their votes as bait to induce political leaders. And conceding to their demands would tear India into pieces with second Pakistan for Muslim majority areas and Christ-doom for Christian majority areas

[9] While withdrawing provisions of political representation, the Constituent Assembly asserted the majority's responsibility to protect minorities and play a role of 'big brother'(Ansari 1999, Rochana 2010)

(ibid: 99). In the similar vein, Prof. Rasa Singh Rawat of BJP, recalled trauma of partition and linked it with the Minorities Commission 'hardly has the nation forgotten the trauma of partition, that Sri Kesri has come up with the National Commission for Minorities Bill, which carries within its womb, the seeds of another partition and I vehemently oppose it' (LSD, Vol. XII, No.49 1992: 150). Contrary to this, Ram Vilas Paswan found that it was necessary to create an institution for protection of minorities to address their problems and concerns. Otherwise, they could go on a violent path to claim their rights which could prove dangerous for the unity of the country. He said that the Scheduled Castes, Scheduled Tribes and minorities would have two paths to follow to claim their rightful place; one was the Constitutional and other was violent. He said that

> If you shut the Constitutional way I would like to warn you on the floor of the House. The safety valve of the pressure cooker is opened a little when the water gets too hot….you have brought this Bill here to slightly loosen the valve of the pressure cooker……it will surly generate a lease of confidence onto the minds of minorities and when once that confidence is generated they will participate in nation building work and in work of making the country strong (LSD, Vol. XII, No. 48: 123-130).

Related with the issue of unity and integrity of the country, was the question of defining a minority grabbed much attention. Shri Shrish Chandra Dikshit opposed the Bill as it would lead to minoritization as increasing number of people would declare themselves minorities. Instead of integrating the nation, it would lead to fragmentation (LSD, Vol. XII, No.49 1992:123). He discarded majority-minority framework along with the concept of group rights. He said 'there should neither be a majority community, nor a minority community. There are no minority community rights and there are no majority community rights, there are only human rights…every citizen in the country should have equal status' (ibid: 117). L.K. Advani also attacked the way in which Bill proposed to define 'minority' to mean a community notified as such by the central government, giving unlimited power to the government to categorize any section of society as a minority. By taking resources from the former chairman of the Minorities Commission, Justice Beg, he emphatically argued that 'the concept of 'minorities' was injected into the body politics of this country by the British and you are following it up after 45 years of independence, after the Constituent Assembly had laid it to rest practically' (LSD, Vol. XII, No. 48: 100-104).

L. K. Advani was also apprehensive about the target group of this Bill and called it as one more strategy to appease the Muslim vote bank. 'This kind of Bill, he argued, is addressed in name, of course, to the Christians, to the Parsis, to the Sikh etc., but actually it is addressed to only one section. …it is not prompted by any earnest consideration of their interest. This is prompted by the *sordid* politics of vote bank' (LSD 1992, Vol. XII, No. 48: 98).

On the other hand, the Parliamentarians belonging to minority communities usually extended their support to the Bill, but some of them exhibited dissatisfaction because of very restricted nature of powers given to the Commission. They generally made comparisons between Minorities Commission and SC/ST Commission. For instance, Salahuddin Owaisi of All India Majlis-e-Ittehadul Muslimeen lamented on the dual standards of the Congress towards SCs/STs and Muslims. He said that

> I cannot support this Bill whole heartedly, because if the Government is really interested to set right the injustices done to the Muslim minorities, it should have given those very rights which have been given to the Scheduled Castes and Scheduled Tribes…but it appears that as per this Bill, the Minorities Commission is not being given those rights. As a result of it the Commission will present the reports only and will not be able to take any concrete steps for the welfare of the minorities. Thus this will create a feeling among the Muslims that a discriminatory attitude is being adopted towards them (Ibid.: 168).

A close analysis of the Parliamentary debates on the NCM Bill 1992 showed a re-entry of the claims of reservation for religious minorities which were turned down in the Constituent Assembly. But, this time, the arguments forwarded to advocate reservation of religious minorities in the government employment, were grounded in their socio-economic backwardness and their marginal political presence. A number of Parliamentarians made the case of reservation for religious minorities by taking recourse from the Gopal Singh Report and Mandal Commission Report. However, religious identity per se was not cited as a root cause of seeking reservations rather it was 'backwardness' equality and non-discrimination clauses of the Constitution that had dominated as principal justificatory basis. Nonetheless, the question of reservation in the institutions of political representation was not yet raised.

Secondly, a constant reference to poor condition of the Muslim and the Christian Dalits was made, many times by providing empirical evidences. It was argued that their erstwhile Hindu lower Castes conversion to Islam and Christianity could not improve

their social profile. Conversion has given them only a horizontal mobility in the social ladder; they still face the curse of their low caste status. Therefore, the demand to provide them with equal benefits of affirmative action as given to SCs/Sts was echoed again and again in the debate.

This debate reflects the nature of contestation over any special provision for religious minorities. The Parliamentary debate was focused on 'why a Commission for minorities', not on 'how the Commission would protect minorities'. Opponents of the Bill accused the supporters of special institutional arrangement for religious minorities of political manipulations, vote bank politics, and minority appeasement that ultimately harm unity and integrity of the country. Mohapartra makes a point that the contending political parties have not yet achieved minimum level of consensus on minority policy. This deficiency in political consensus is one of the reasons for making any offer of the special provision for religious minorities controversial (Mohapatra 2010: 232).

The reason behind granting Constitutional status to the NCSCST and not extending the same to the Minorities Commission seems to be rooted in consensus achieved for protection and the welfare of the SCs/STs in the Constituent Assembly. This consensus is reflected in strong legal and Constitutional basis to preferential policies and non-discrimination laws covering these groups. Contrarily, 'religious community' emerged as a reluctant category in the Constituent Assembly which made it difficult to legislate preferentially and protective institutional mechanism around religious communities, this is particularly so in case of Muslims and Christians minorities. Absence of legitimacy for religious communities and presence of legitimacy for historically disadvantaged groups in the Constituent Assembly become the source of state policies in post independent India. The arguments formed there still hold validity in the political fields after independence.

It appears from the reading of two crucial moments in the making of the NCM, fragmented political fields provide some sort of incentives to policy makers to consider and accommodate minorities in state policies. In 1978, when a conditional coalition was formed to undo undemocratic emergency, it had taken into consideration minorities in unconventional (un-Congress ways) and without going to extent of getting political consensus, the United Front converted Commissioner of SCs/STs into autonomous National Commission for SCs/STs

III

Birth, Institutional Design and Mandate of the NCM

The Government Resolution setting up the Minorities Commission initially provided the Commission with a chairman and two other members with three years term. The first Commission was constituted with Minoo Masani as chairman, Justice M. R. A. Ansari and V. V. John as members. The Special Officer for Linguistic Minorities as provided under article 350- B, was to function as the Secretary of the Commission. However, a new Office of National Commissioner for Linguistic Minorities was introduced[10] and Office of Special Officer for Linguistic Minorities was removed from Minorities Commission in 1988, turning it as a sole body for religious minorities. This removal could be seen in two ways. Firstly, the removal of linguistic minorities from the purview the Minorities Commission amounts to shrinking its jurisdiction and reducing it to the status of a helpless care-taker of religious minorities (Mahmood 2001: 33, Najiullah 2001: 68). In other way, this change could be understood as strengthening the Commission in terms of supplying functional specification to it because the concerns of linguistic and religious minorities are very much different. Therefore, removal of the linguistic minorities has enabled the Minorities Commission in a way to focus on the concerns of religious minorities only. Kapur and Mehta have observed that multiplicity of missions impairs bureaucratic incentives and erodes institutional autonomy (2005: 10). So many and different kinds of functions undermine effectiveness of any institution in its core functions, few but better articulated functions improve the institutional performance. However, in some cases, religious and linguistic identities overlap each other and religious minorities demand preservation of their languages. For instance, Sikh and their demand of redrawing of state boundary of Punjab on the basis of Panjabi language which was realized successfully. Not exactly the same, the demands of preservation and promotion of Urdu language spoken by majority of Muslims, and the Buddhists struggle for protection of Bhoti language also show how religious and linguistic identities overlap. The Minorities Commission, even after attenuation of its

[10] This was done by Ministry of Welfare Resolution No. IV. 12011/2/88 dated 30-03-1988 as appeared in the annual report of the Minorities Commission 1988.

jurisdiction on linguistic minorities keeps receiving representations on linguistic problems of religious minorities and tends to consider these linguistic issues.

The Commission had to be reconstituted soon as Minoo Masani resigned on 31 May, 1978. It was reconstituted with chairman and four members on 28th of July 1978. M.R.A. Ansari was escalated as chairman and Prof. V. V. John, Air Chief Marshal Arjun Singh, DR. Aloo J. Dastur, and Ven. Kushok G. Bakula as members (First Annual Report 1978: 1).

Familiarizing with the NCM Act 1992

This section gives plain details of the provisions of the NCM Act 1992 to develop a familiarity with the Act, contentions and controversies on these provisions are taken up in the last section exposing the structural flaws and conceptual haziness of these provisions.[11] According to Section 3 of the NCM Act 1992 as amended in 1995, the Commission shall consist of a chairperson, a vice chairperson and five other members to be nominated by the central government from amongst persons of eminence, ability and integrity, provided that five Members including the chairperson shall be from amongst the minority communities.[12] The chairperson and every member shall hold office for the term of three years from the date he assumes office. The chairman enjoys status and allowances of a cabinet minister. The Commission by using its power to regulate its procedure is authorized to constitute various expert committees to look into the issues of religious minorities.

The most crucial gain of the NCM act 1992 was that it empowered the Commission with the powers of a civil court which was not available earlier. Section 9(4) of the NCM Act provides the Commission while acting as a civil court in trying a suit, can summon and enforce the attendance of any person from any part of India and examine him on oath, require the discovery and production of any document, receive evidence on affidavit,

[11] For detailed Act see Appendix I.

[12] At this point I feel compelled to interrogate the views of the Constituent Assembly that rejected any kind of descriptive representation to religious minorities with the hope that any member of any community could represent the members of other religious communities. Ostensibly when institutions for the protection of vulnerable sections of society were created after independence, state relied on descriptive representation, for example, the idea a woman could best represent and comprehend problem of women, found place in the membership clause of Women Commission. Similarly, minorities could represent and understand their problem better, was evident from the fact that the Minorities Commission was constituted with the members on each notified religious minority.

requisite any public record or copy thereof from any court or office, issue commissions for the examination of witnesses and documents etc. However, the mandate chartered in the NCM Act may not be fully realized by these powers. Under section 9(1) Commission is mandated to evaluate the progress of the development of minorities both in the Union and in the States, monitor the working of the Constitutional and legal safeguards provided to minorities, recommend for protection of interest of minorities, look into specific complaints regarding deprivation of rights and safeguards of minorities, conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities etc. (NCM Act 1992). Moreover, the statute providing for the National Commission for Minorities adheres to the United Nation's 'Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities' of 18 December 1992 which states that 'States shall protect the existence of the National or Ethnic, Cultural, Religious and Linguistic identity of minorities within their respective territories and encourage conditions for the promotion of that identity'. It monitors the working of Constitutional and governmental safeguards, rights and laws made for minorities.

Under Section 9(1) (c) the NCM Act 1992, it is required for the Commission to produce an annual report and submit it to the central government who, as per Section 9 (3), place it before each house of the parliament together with the memorandum of action taken report, along with the reasons of non-acceptance of recommendations, if there is any.

Apart from the NCM's office of Delhi, 17 states have also established State Commissions for Minorities. The NCM works through the mechanism of visits, inquiries, investigations and recommendations.

Complaints in the NCM: Who Complains and Why

Looking into the cases violation of rights and safeguards of minorities, is one of the most important function of the Commission. Before it was empowered with statutory status, it used to handle many complaints though with limited achievements. From 1978 to 1993, total 3963 complaints were received. In years 1978, 1979 and 1992-93, details on the number of complaints were unavailable as the Commission was under formative and transformative processes. Complaints were received from both individuals and organizations. In the decade 1980s, handicap caused by the absence of investigation

agency forced the Commission to rely on the reports from authorities who were already approach by the representationists or root cause of the grievance. In order to discharge the mandate satisfactorily, the Commission repeatedly requested the government to grant statutory status or at least provide power of investigation under the Commissions of Enquiry Act. Even without these powers Commission hear few cases in person, sent duly authorized members to visit the spot to determine the facts. The Commission could not be transformed much by the extension of statutory status as powers of investigation or investigation agency were not added through 1992 Act. Only it has acquired the quasi-judicial powers.

In spite of its structural inadequacies, the Commission receives loads of complaints from both individuals and organizations. These broadly pertain to five key areas concerning minorities; security issues, discrimination and deprivation faced by minorities, and socio-economic and educational backwardness of minorities. The First statuary Commission of 1993-1994 received total 360 complaints. Since then, numbers of complaints have tremendously increased reflecting mounting discrimination and violence against minorities and also increasing awareness about the Commission among minorities. However, the Commission does not entertain the complaints which are *sub judice* i.e. pending before any court or any quasi-judicial body and complaints for which ordinary judicial, quasi-judicial or administrative remedies are available elsewhere but have not been availed by complainant without any reasonable justification. But, the members of the Commission and a few petitioners informed that it the Commission does not fellow very hard and fast rule when it comes to resolve grievances.

A subject wise stratification of complaints is given below. But it should be noted that the Commission has not kept records of subject wise stratification of complaints for every year consistently. Therefore, only available records are given here. This stratification lacks uniformity as to what are the subject matters of complaints. Only in recent years subject wise stratification become consistent and uniform in respect to their yearly publication and identification of subject matter. From year 2006-2007 began a tabular representation of the complaints received and classification of them into region, community and subject matter wise manner. The Commission received quite a huge number of complaints making it impossible for it to attend to them individually. Therefore, the Commission evolved new guidelines to register grievances with the NCM

to ensure more urgent and genuine complaints could not get ignored (NCM Annual Report, 2006-07, p. 34). This also implies that the NCM restricted the entry of all sort of complaints including repeated, sub judice, just copies to the Commission and the complaints other legal remedies are easily available.[13]

Subject wise complaints from 2002[14]

Year	**Education matter**	**Service**	**Law & Order**	**Economic**	**Harassment on Communal Lines**	**Wakf /Religious properties**
2002-03	128	198	535	44	370	95
2003-04[15]	144	185	548	46	379	97
Year	**service**	**Law & order**	**Economic**	**Wakf matters/religious properties**	**Miscellaneous**	**Total**
2006-07	298	600	12	63	1043	2016
2007-08	203	673	48	58	526	1508
2008-09[16]						
2009-10						

Subject Wise Categorization of Complaints (2010-2016)

Year	**Education-al**	**Service**	**Law & Order**	**Econo-mic**	**Cultural Rights**	**Religious rights**	**Wakf**	**Others**	**Total**
2010- 11	271	377	1081	75	18	173	30	350	2,375
2011- 12	215	354	1,199	79	17	99	70	406	2,439
2012- 13	224	295	963	57	9	71	66	442	2,127
2013- 14	248	343	1,190	71	20	110	87	570	2,639
2014-15	125	202	938	23	1	36	53	615	1995
2015-16	127	216	813	29	1	89	68	612	1955

Source: http://ncm.nic.in/Complaint_Monitoring_System.htmlAccessed on 12/01/2017

The contents of complaints indicate nature of discrimination suffered by religious minorities. It is evident from this data that law enforcement and law and order issues are dominating concern such as encroachment in religiously reverent lands of minorities, burning and defamation of holy literature, publication of literature hurting minorities,

[13] Although, the statement, 'Commission encourages complainants to exhaust all other methods of redressal available to citizens of the country before reaching to the Commission' (NCM regulations 2010) sound unsympathetic to minorities. However, in practice, the Commission encourages complainants to seek its intervention with much procedural flexibility.

[14] The data on subject wise complaints is given in three different tables because the subject wise stratification complaints was not found to be consistent in all annual reports and new subjects or renamed subjects keep appearing in reports. Some consistency could be found only from 2010 onwards.

[15] Annual reports for the years 2004-05 and 2005-06 have not published data on the subjects of complaints.

[16] No records of subject wise division of complaints were published for the year 2008-09 and 2009-10 in the annual reports.

attacks of clergies, communal clashes, and harassment by police. Employment or service related issues such as discrimination in employment in public and private sector, denial of promotion, arbitrary transfer, adverse confidential reports and non-payment of salaries etc. form second major set of complaints. Complaints of miscellaneous nature draw the Commission's attention on second number. Education related matters such as non-recognition of minority managed institutions by the government, unlawful interference in the management of these institutions, and discrimination in admission to educational institutions are third most annoying issue for minorities. The Complaints related to economic matters, for instance, discrimination in disbursement of loans etc. reflect fourth set of problems faced by minorities. Complaints associated with denial of religious rights form fifth set of deprivation suffered by minorities. Wakf related matters approximately fall on the same ladder. Least numbers of complaints are concern with cultural rights of minorities. The content of these complaints show an unsympathetic approach of bureaucracy, interference of state in minority institutions, lack of positive state support to minorities, atrocities of police and other state agencies towards minorities. The mounting number of complaints is indicative of significance of the Commission for minorities and inadequacy of available instruments of justice to religious minorities. In spite of this, the Commission is not always able to help them in absence of clear laws pertaining to discrimination against religious minorities. At the same time, Commission could not publish annual reports in absence of chairperson as happened during 1992-1993.

A community wise stratification of complaints from 1978 to 2016, is given below-

Community wise stratification of complaints[17]

Year	Muslim	Christian	Sikh	Buddhist	Parsi	Others	Total no. of petitions received	Total no. of petitions acted upon
1978[18]							Not revealed	
1979							Not revealed	

[17] These stratification details are taken from the annual report of the Commission. No other source was available.

[18] First two annual reports are haphazardly organized and do not have even a content page. The record of complained/ petitions received was also absent.

1980	294	48	23	15	3	58	700 (500 individual grievances)[19]	441
1981-82[20]	137	44	19	7	2	12	517 (240individual grievances)[21]	221
1982-83[22]								72
1983-84[23]							274 (153 individual grievances)	110
1984-85	180	29	19	6	---	21	255 (169 individual grievances)	156
1985-86	141	24	11	5	2	45	228 (143 individual grievances)	148
1986-87	158	25	27	2	1	51	265 (213 individual grievances)	188
1987-88	166	28	21	3	---	17	235 (77 individual grievances)	102
1988-89	265	51	26	5	1	---	348[24]	299

The decade 1990s had more haphazardly prepared Annual Reports particularly they lacked community and subject wise stratification of complaints. For this reason, three sets of tables are given for decades 1980, 1990 and 2000. In the initial years of 2000, Annual Reports remain fragmented in providing information on subject matter of the complaints and communities who complain. Thus, these Annual Reports are clubbed together with the reports of 1990s.

[19] The Commission received total 700 representations, 500 contained individual grievances and 200 were of general nature concerning issues faced by minority communities at large. The Commission investigated into 441 cases.

[20] Since this report, all the annual reports appear corresponding to financial year (1981-1982: 1).

[21] Out of total 517 representations received by the commission, 240 were individual grievances and 277 were related to general grievances of minority communities. The Commission acted on only 221 representations. 296 cases were dropped after preliminary examination because representations were not addressed to the commission and no serious grievance involved, matter was outside the preview of the commission, other redressal mechanism were available or such mechanisms had already been used, and similar representation is already under consideration by the Commission (Fourth Annual Report 1981 to March 1982: 26). From the 5th Annual Report onwards two more clauses were attached to reject any representation (a) if the representation id too general or too vague (b) if the matter is *sub judice* in a regular court of law. This is worth noting that after creation of these non-eligibility clauses, the number of representations received have reduced drastically.

[22] Again records of complaints/ petitions received were not available for this year.

[23] For this year, community wise stratification of complains was not done.

[24] Numbers of individual and organizational complaints were not separately given.

Complaints in the Decade 1990

1989-90	381 (243 individual grievances) 138 org	195
1990-91	385 (275 individual grievances) 110 org	196
1991-92	375 (240 individual grievances) 135 org	195
1992-93	No report, chairperson not appointed (process to give statutory status was under progress in the Parliament)	---
1993-94	360 (215 from individuals,145 org)	190
1994-95	390 (230 from individuals, 160 org)	210
1995-96	560 (360 from individuals, 200 org)	Not revealed
1996-97	859 (629 individual, 230 org)	549
1997-98	About 2000 (no specific details of no of complaints from individual and org)	Not revealed
1998-99	No details mentioned in the annual report	Not revealed
1999-00	1868 (1001 from individuals, 867 org	Not revealed
2000-01	2478 (1425 from individuals, 1053 org)	Not revealed
2001-02	2590 (1470 from individuals, 1120 from org	Not revealed

From 2006 onwards, Annual Reports acquired some consistency in terms of publishing data on the subject matter and community complaining. That is why Community Wise Categorization of Complaints (2006-2016) is given below-

Community Wise Categorization of Complaints (2006-2016)

Time period	Muslim	Christian	Sikh	Buddhist	Jain	Parsi	Others	Total
2006-2007	1389	123	299	29	-	8	158	2006
2007-2008	1045	166	151	39	-	33	74	1508
2008-2009[25]								

[25] Community wise stratification not given for 2008-09 and 2009-10.

2009-2010								
2010-2011	1,635	225	215	70	-	9	224	2,375
2011-2012	1,473	202	200	53	-	9	232	2,439
2012-2013	1,508	199	150	35	-	19	225	2,127
2013-2014[26]	1,988	188	185	45	8	13	211	2,639
2014-15	1436	119	131	34	60	10	205	1995
2015-16	1422	145	121	32	49	11	175	1955

Source: http://ncm.nic.in/Complaint_Monitoring_System.html

This data shows that the largest numbers of complaints come from Muslim community which not only indicates their numerical superiority over other religious minorities but also extent of their systematic exclusion and disadvantages. The second largest numbers of complaints come from the followers of 'other religions' who are in minuscule numbers and are not recognized as national minorities. The number of complaints from the Sikh and the Christian communities are more or less same and constitute third chunk of complaints. The complaints from the Buddhist community forms fourth set of complaints. Least numbers of complaints were received from the Parsi and the Jain communities reflecting their microscopic numerical strength.

IV

Meeting with Structural Paralysis and Normative Predicaments

The NCM has been given a wide remit of functions pertaining to protection, safeguard and promotion of rights and interests of religious minorities. These may be categorized as evaluative, watchdog, investigative, adjudicatory, and advisory functions. However it is important to question, whether the NCM is actually enough powerful to carry these functions out and what are ground realities regarding its ability to perform these functions. It is evident from the Parliamentary debates that the NCM was not established on the basis of political unanimity or full political consensus. Legislators spent much of their energies in justifying or opposing special institutional mechanism for minorities. The NCM Bill faced severe criticisms from the protagonists of Hindu nationalism who constantly showed fear of next partition if a separate institution for religious minorities

[26] The Commission was conscious to the grievances of the Jain community since its inception. From this report onwards, the Commission began recognizing 'Jainism' as a separate category and entertained their complaints likewise. Jains are notified as a national minority only in January 2014.

would come into existence. Lack of political will is also evident from the fact that the Bill was destined to give only ordinary legislative status, not Constitutional status as given to the NCSCST.

A noticeable tendency to compare the mandate and powers of the Minorities Commission with other statuary commissions was there among the supports of the Bill who wanted more effective and efficient Commission than what was proposed in the NCM Bill. Numerous structural errors in the proposed institution were pointed out in debate over this Bill that could not remove at the onset of statutory Commission. These structural deficiencies have later manifested in the working of the NCM causing structural paralysis in carrying out its mandate. There were at least five key structural and normative issues that were raised in the Parliament; Constitutional status, appointment of chairman, independent investigating agency, participation in planning, and criterion to define minority. In case of the NCM, structural and normative predicaments are found to be interrelated as normative vagueness led to the creation of structurally weak institution.

Firstly, the absence of Constitutional backing to the Commission is found to be negatively affecting its working as state authorities do not always respond to the summons and provide information when demanded by the Commission (Mahmood 2001, Hasan 2009, Mohapatra 2010, Najiullah 2011). The unbinding nature of the decisions and advices of the Commission speak out its weakness as a protective institution. Therefore, attempts were made to arm it with Constitutional status. The Constitutional Amendment (46^{th}) Bill 1978 which included provision of Constitutional status for Minorities Commission and Commission for NCSCST lapsed. Again the Constitutional Amendment (65^{th}) Bill granted Constitutional status to the NCSCST in 1990, the Minorities Commission was left out as V. P. Singh government fell. The Congress promised to extend a Constitutional status to the Minorities Commission, but it came with the Minorities Commission Bill 1992 which empower the Commission with an ordinary legislative status only. Neither a strong reason to establish special institution for protecting religious minorities was given by the Congress Party while introducing the NCM Bill 1992. The Constitutional Amendment Bill 2004 for upgrading the NCM with a Constitutional status is still pending in the Parliament. However, V. P. Singh, among others demanded a Constitutional amendment to empower the future Commission with

the Constitutional status as available to the NCSCST while discussing the NCM Bill 1992 (LSD 1992, Vol. XII, No. 49: 192).

Secondly, the overriding power of the central government to appoint the chairman and members incited severe criticisms from a number of parliamentarians and academicians. Instead of appointing the chairman and members of the Commission by the central government, Shri Rajgoplan Naidu Ramaswamy proposed that they should be elected by the Parliament, and the Central Government might have power to select the chairman from those members (LSD 1992, Vol. XII, No. 48: 184). However, final version of the NCM Act 1992 reads that 'the Commission shall consist of a Chairperson, six members to be nominated by the central government from amongst the persons of eminence, ability and integrity provided that five members including chairman shall be from amongst minority communities. The term of the office is three years for the chairman and for the members'. Later, the post of a vice-chairman was introduced by 1995 amendment. There were also demands for extending the tenure of the chairman and members of the Commission from three to five years. These provisions lead to politically inflicted appointments that adversely affect its independent working (Najiullah 2011: 68) and dilute credibility of the members and chairman in public eyes that perceives them as political appointees (Jayal 2006). Contrary to this, the provision concerning appointment and removal of the chairman and members of NHRC is designed more carefully. Section 4 (1) of the NHRC Act provides that the chairman and the members of the NHRC shall be appointed by the President on the basis of recommendations of a committee consisting of Prime Minister, Lok Sabha Speaker, Deputy Speaker of Rajya Sabha, leader of Opposition in both the Houses of Parliament and Home Minister. This kind of appointment procedure at least creates possibility of curbing the chances of political affiliations to flourish in the institution on the one hand, and ensures independence and credibility of the institution on the other.

Moreover, the NHRC and the NCBC prescribe qualifications for the post of the chairman and members. As per section 3(2), the NHRC Act requires that the post of the chairman shall be filled by the person who is or has been a Chief Justice of the Supreme Court, among other members; one member shall be who is or has been a Chief Justice of the High Court, two other members shall be appointed from amongst persons having

knowledge or practical experiences in matters relating to human rights.[27] On similar lines, section 3(2) the NCBC Act stipulates that the NCBC shall consist of a chairman who is or has been a Judge of the Supreme Court or of a High Court, a social scientist, two persons having special knowledge in matters relating to backward classes, and a member secretary who is or has been an officer of the central government in the rank of secretary to the government of India. Still appointment of retired judged is a matter of criticism (Kapoor and Mehta 2005).

Whereas the NCM Act does not insist on specific qualifications for its chairman and members leaving its doors open for all sorts of persons, not necessarily having sufficient knowledge of minority issues. Therefore, the profile of members and chairman of the Commission varied from Supreme Court judges, to IAS officers, to academicians, journalists, literary figures to even politicians.[28] Appointments of the chairman and members are generally done as Tahir Mahmood held, 'to accord political favour to individuals seeking post retirement settlement or just a comfortable placement in Delhi, rather than as an exercise in the interest of minorities' (2001:198). Generally, members and the chairman denied having prior information about their appointments (Mahmood ibid., Khan 2016, Davar 2016, Habibullah 2017, Ahmad, 2017). Moreover these are drawn from elite sections of minorities; upper caste and upper class people. None of them ever experienced disadvantage for being a minority.[29] Likewise the removal procedure of the members and the chairman does not ensure independence of the Commission in any meaningful way. The power of removing the Chairperson and members is mostly in the hands of Central Government, if that person (I) becomes insolvent, (II) is convicted and sentenced to imprisonment for an offence which in the

[27] The post retirement appointment of the judges is considered transparent but problematic. There is always a fear of destruction of statutory autonomy because of inter-temporal incentive incompatibility (Kapur and Mehta 2005: 10).

[28] Praveen Davar who was a Congress leader said that it is not feasible to lay down strict criteria of specific field from where member should be drawn. Indeed it is good to have people from all kinds of experiences and from all walks of lives. He further said that sufficient experiences in public life because of political background (congress leader) are actually facilitating one's role as member of the NCM. He pointed out that 'nobody knows better than a politician what the problems of people are' (Davar 2016).

[29] In response to researcher's question whether they (Habibullah and Ahmad) faced discrimination because of being Muslim, both responded in negative. Habibullah said that there was no question of discrimination in class he comes from. Ahmad said with emphasis 'never, ever, never ever', reflecting upper class's immunity from discrimination that is lived by general masses on quotidian basis. However, Tahir Mahmood described his experience of deep seated bias against Muslims when he was holding the chair of the NCM. Mahmood mentioned two occasion in which he communicated with foreign delegates in Arabic that provoked the Ministry of External Affairs to ask for an explanation from Mahmood (2016: 111-112).

opinion of the Central Government, involves moral turpitude, (III) becomes unsound mind and stands so declared by a competent court, (IV) refuses to act or becomes incapable of acting, (V) is without abating leave of absence from the Commission, remains absent in three consecutive meetings of the Commission, (VI) or in the opinion if the Central Government has so abused the position of the chairman or member as detrimental to the interests of minorities or the public interest. In this scheme of appointment and removal of the chairman and members, the Central Government plays really a central role. On the other hand, the NHRC Act provides for specific removal process for the chairman and members that reduces the influence of the Central Government and facilitates its autonomous and independent functioning. The appointment of the former Chief Justice Mirza Hameedullah Beg is noteworthy case in this regard. It appears that he was appointed and was given second term extension by the PM Indira Gandhi to mitigate the contribution of the Janata government. The Janata government attempted to surpass the Congress's way of minority protection by creating a separate protective and promotional institution for religious minorities, clearly challenging the way in which the question of religious minorities was taken up by the Congress. In this background, the appointment of Mirza Hameedullah Beg was made, who almost diminished this institution by recommending replacement or merger of the Minorities Commission with the National Integration-cum-Human Rights Commission.[30] During his seven years tenure from 1981-1988, the Commission became inactive and almost invisible in the minority discourse (Mahmood 2001: 52-53).

The NCM is not equipped with an investigative agency which is essential for performing its investigative role. This is the third most annoying structural deficiency faced by the NCM. In the Parliament, Several members questioned the efficacy of the Commission to carry out its investigating functions without an investigating agency. The function to look into specific complaints regarding deprivation of rights and safeguards of minorities and taking up such matters with the appropriate authorities is basically investigative, but the NCM is not equipped with any investigating agency to enquire into the complaints of discrimination and deprivation of rights. As a result, it has to rely on government agencies that on many occasions are predators of discriminatory activities against

[30] This recommendation had appeared in fourth annual report of non-statuary Commission in year 1981-1982: 92-99.

minorities (Mohapatra 2010). In its quest to get out of this structural paralysis, the NCM recommended the central government again and again to arm itself with an investigating agency on the similar lines as the NHRC, the NCSC, the NCST, and the NCW have.

Fourth structural weakness of the Commission arises from its detachment to the socio-economic planning of the country which thwarts its role in socio-economic development of religious minorities. Susheela Gopalan of CPI (M) highlighted the importance of linking the Minorities Commission with the planning process of the country. She wanted a provision that could ensure participation of the proposed Commission in the Planning Commission to chalk out programs beneficial to minorities as existing in the case of the Women's Commission. Taking resource from the disheartening experiences of the Women's Commission and SC/ST Commission, she emphasized the need to give all essential powers to the proposed Commission to function properly (LSD 1992, Vol. XII, No. 48:147-148). Ram Vilas Paswan suggested that like the NCSCST, Minorities Commission should be consulted and should be given participation in all the planning and socio-economic development programs to be made for minorities (ibid.:130). But the final draft of the Act has not incorporated these suggestions. Although, under section 9 (1) (a), the NCM has given the responsibility evaluate of the progress of the development of minorities under the Union and States and under 9 (1) (f) it has to conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities. Not connecting the NCM with the wider Planning process of the country restricts its advisory role in the matters concerning minorities.

Fifth is comparatively a conceptual difficulty of marking a group as minority. The central government holds the paramount authority to decide minority status of a community at national level under this Act, which came under severe criticism from both supporters and opponents of the Commission. No criterion was proposed to determine minority status under the Act 1992. No effective mechanism was devised to recognize regional minorities. It was left to the state governments to delineate minority groups at state level. The question what constitutes a minority and what are the outcomes of minority status have been contentious since the formative years of the Constitution. Tejani argues that before independence, the question of caste and religious minorities was considered together. Minorities were to be protected through reservation, decided on the basis of relative 'backwardness' of communities in comparison with the general

category. It was the issue of reservation around which caste and religious minorities were separated and a meaning of secularism was found in the Constituent Assembly.

Bhogendra Jha wanted extension of this to Jammu & Kashmir as to deal with problems of Muslim minority of Jammu, Laddakh, and Srinagar (LSD 1992, Vol. XII, No.: 179). Digvijay Singh also argued that Jammu & Kashmir should be brought under the preview of the Commission so that the plight of Hindu minority of this region could be heard, and the government could become free from allegations of appeasing Muslim minorities only (LSD 1992, Vol. XII, No. : 114).

Lack of precise definition and law on religion based discrimination moreover hampers its mandate to implement Constitutional right of non-discrimination on the basis of religious affiliations. Zoya Hasan has pointed out that in absence of a clear definition and law on religion based discrimination it is difficult to establish that particular grievance arises from discrimination and is not a result of general administrative apathy (2009: 68). Other administrative issues such as insufficient funding and insufficient trained legal staff are other issues that thwart effective working of the Commission.

V

Broken Threads in the Web of Institutions: The NCM and the Other Statutory Commissions

The NCM is a part of larger web of institutions created to safeguard, protect and promote the rights and interest of different sections of Indian society viz. the NHRC, the NCSC, the NCST, the National Commission for Backward Classes (NCBC), the NCW and the National Commission for Safai Karamcharis (NCSK) etc. On many occasions, functional areas of these institutions overlap with each other. These commissions are expected to work in collaboration with each other to promote equality and freedom of different segments of Indian citizenry. To develop this prospect, the chairpersons of the NCM, the NCSCST, and the NCW are made ex officio members of the NHRC (Section 2 (2) the NHRC Act 1993).Under Section 3 of the NCSK Act 1993; presence of a women member is mandatory in NCSK. As per the Section 3 (2), The NCW Act 1992, the NCW is obliged to have one member each from the Scheduled caste and Scheduled tribe. Logically, these commissions should also have a member from the NCM or the NCM

should have one member each from these commissions as minorities are integral part of these segments of society. For instance, all religious minorities have members belonging to category ST, the Sikh and the Buddhist communities also have members belonging to SC category, women are there in all communities, and a section of minority communities works also as Safai Karamcharis. Contrary to this, many times these commissions oppose each other and not very often they work in collaboration. For instance, NCSCST opposed the NCM's recommendation to include Muslim and Christian Dalits in SC list which would have also erased the inconsistency in SC policy by removing religious criteria of inclusion as SC. Obstinately, NCSCST questioned the *locus standi* of the NCM in interfering in the issue that strictly comes under the domain of NCSCST (Hasan 2009: 214).

On occasions, more than one commission gets engaged in a case where the issues pertinent to their mandate are involved. One of the suitable examples is Gujarat riots of 2002 which began in the aftermath of Godhra incident of 27 February 2002 in which the Sabarmati Express was attacked and set on fire, resulting in large-scale communal violence throughout the state. Communal clashes in Gujarat presented a very challenging situation where violation of various rights was coupled with negligence of authorities to deal the matter appropriately and impartially. Understanding the gravity of situation, three commissions, the NCM, the NRHC, and the NCW made interventions as per their mandate and role. The NCM was first to came into action citing 'danger to national unity and integrity' as a cause. The NHRC took *suo moto* action arguing that 'the recent events have resulted in the violation of fundamental rights to life, liberty, equality and dignity of citizens of India as guaranteed in the Constitution'. The NHRC exerted comparatively more pressure on the state government of Gujarat due to its power to investigate and enquire into the cases of man rights violation. While the NCW focused only on the atrocities committed against women.[31] However, it was quite possible and plausible for these commissions to work together and supply strength to each other in facilitating venerable citizens to access justice and right. The functional areas of these commissions are closely linked but the absence of proper channels of communication and statutory obligation of collaboration, result into overlapping in many cases. Therefore this web of

[31] The comparative record of activities of the NCM and NHRC is drawn from their annual reports of the year 2002-2003. The NCM also published a special report covering Gujarat riots.

institutions suffers from deficits in the absence of connecting links that undermine their efficiency to address grievances of targeted groups.

The NCM also functions in the presence of other institutional arrangements especially generated for minorities with competing claims of representing minority interests, and having more or less similar functions. Like the NCM, the National Minorities Development and Finance Corporation (NMDFC), the National Commission for Minority Educational Institutions (NCMEI), the Maulana Azad Education Foundation (MAEF), and Central Wakf Council also are created to cater specific needs of minorities. Several states have established State Minority Commissions (SMC) or State Minority Boards (SMB) to look after minorities at state level.

The NMDFC established in 1994, operates under the aegis of Ministry of Minorities Affairs through 'State Channelling Agencies'. The chief objective of the NMDFC is to promote economic and developmental activities for the benefit of 'Backward Sections' amongst the minorities**.** The· occupational groups and women are preferred while issuing loans. The target groups for the NMDFC are the persons belonging to minority communities and living below double the poverty line. At present families having annual income of less than Rs. 40,000 in rural areas and Rs. 55,000 in urban areas are categorized as below double the poverty line. While it was formed on recommendations of the NCM, it does not have formal organizational connections to the NCM. Therefore, the NCM recommended in its 5th Annual Report to link the NMDFC with the NCM to enabled them to function together as integrated parts of the same institutional mechanism. But government rejected this recommendation arguing that the NMDFC is a public undertaking established under Company Act 1956 and the NCM is a statuary body, hence their role and functions are quite distinct. Thus, there is no requirement of linking them. The NMDFC provides concessional funding to minority candidates for setting up of self-employment ventures. In fact, functions assigned to the NCM under Section 9 (1) (particularly (a) evaluation of the progress of the development of minorities under the Union and states, (f) conducting studies, research and analysis on the issues relating to socio-economic and educational development of minorities, and (h) making periodical or special reports to the central government or any matter pertaining to minorities and in particular the difficulties confronted by them) would be more effectively discharged if the NCM would be connected in the NMDFC.

Established in 1989, Maulana Azad Educational Foundation also functions under the Ministry of Minority Affairs. The Foundation was set up to promote education amongst the educationally backward minorities in particular and other weaker sections in general. The General Body of the Foundation consists of 15 members out of which six members are ex-officio, including the President who shall be Minister of the Ministry of Minority Affairs and rest nine members are nominated by the President. The management of the Foundation is entrusted with its Governing Body, which consist of six members (including President, MAEF) selected from amongst the members of the General Body. Strangely, no one from the NCM is made ex-officio member in MAEF nor it has any organizational or consultative links with the NCM.

The Government of India constituted the NCMEI, under Section 3 of the Ordinance No. 6 of 2004 promulgated on the 11th November, 2004 which was accorded statuary status through the NCMEI Act, 2004. The Commission is mandated to look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice as provided in Article 30 of the Constitution and any dispute relating affiliation to a scheduled University and report its findings to the Central Government for its implementation; and, to advise Central and any State Government on the questions related to the education of minorities may be referred to it and to do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission. This Commission is also a quasi-judicial body and has been endowed with the powers of a Civil Court. It is headed by a chairman who has been a Judge of the Delhi High Court and two members to be nominated by Central Government. It does not have any consultative and organizational link with the NCM.[32]

The functional areas of NCMEI and MAEF are concerned with educational rights of minorities. Whereas the NCM has a duty to monitor the working of the safeguards for minorities provided in the Constitution and in laws enacted by the Parliament and the state Legislatures which obviously includes educational rights of minorities. It also has advisory role in effective implementation of these rights. This is worth wondering why the NCM, set up as an apex body for safeguarding minority rights and interests, is not

[32] Interestingly, 'Guidelines for Determination of Minority Status, Recognition and related Matters in Respect of Minority Educational Institutions under the Constitution of India' was first prepared by the Minorities Commission and appeared in its Ninth Annual Report for the year 1986-87.

connected to these two institutions. Even, the NCMEI and the MAEF which deal with educational empowerment of religious minorities, are not connected to each other. The Central Wakf Council along with the State Wakf Boards may perform an important role in carrying out welfare activities at least for Muslim community, are also not sufficiently assembled with other institutional mechanisms for minorities including the NCM. While these institutional mechanisms are scheme oriented and have little to contribute to major policy issues concerning minorities, the NCM has a bigger role to play in policy formation. Its concern is much more than just minority rights as it also works for safeguarding general fundamental rights given to minorities. In fact, this is the violation of general rights of minorities like right to life, equality, freedom and freedom of religion that creates more havoc and a sense of insecurity and alienation among minorities. In spite of the presence of institutions to look after specific rights, safeguards, and implement welfare policies for minorities, the Commission receives significant number of complaints pertaining to these rights, safeguards and welfare policies clearly indicating its significance.

Last but not the least, the creation and working of SMC&Bs reflect serious problem of links, coordination, and sometimes cooperation. They do not work as extended arms of the NCM in states rather conflicting provisions of their Acts hinders efficiency of the NCM. A study of increasing violence against minorities by National Council of Churches in India found that a discrepancy between the violence data available in NCM and at SMCs. Study explained that baring Punjab and West Bengal, all other SMCs were not recorded complaints of violence for the year 2014-15 (2016: 19).

Recognizing the problem of deficit links between commissions, the Ranganath Misra Commission recommended the establishment of a 'National Committee consisting of Chairpersons of the NHRC, the NCW, the NCBC, the NCST, the NCSC, the NCM, the NCMEI, the NMDFC, the CLM, the Central Wakf Council and the Maulana Azad Foundation along with nominated experts for monitoring the educational and economic development of the minorities' (2007: 155). It has included various recommendations in its report made by the NCM earlier.

Although the NCM conducts studies to evaluate progress and development of religious minorities, successive governments have given this responsibility to high power commissions and committees (Mahmood 2001) without sufficiently involving the

Commission. Many functions as described in clause a, c, f, and g of section 9(1) of the NCM Act, 1992 are on occasions performed by government appointed high power commissions and committees like the Gopal Singh Panel and Sachar Committee. Only Ranganath Misra Commission consisted of a former chairperson of the NCM, Prof. Tahir Mahmood, in its panel. Their Reports seem to be more celebrated than that of the reports produced by the NCM.

Conclusion

This debate around the making of the NCM reflects the ambivalent nature of contestation when it comes to the creation of minority specific policy. The opponents of the Bill proposing the setting up of a Commission accused the supporters of the Bill of political manipulations, vote bank politics, and minority appeasement which would ultimately harm unity and integrity of the country. The deficiency at the level of political consensus is one of the reasons for making any offer of the special provision for religious minorities controversial (Mohapatra 2010: 232). Any move towards minority specific policies immediately becomes controversial and perceived as prominent threat to the national unity, integrity and security. The reason behind granting Constitutional status to the NCSCST and not extending the same to the Minorities Commission seems also to be rooted in political consensus achieved for protection and the welfare of the SCs/STs in the Constituent Assembly and not accumulated in case of religious minorities. This consensus is reflected in strong legal and Constitutional basis to preferential policies and later enactment of non-discrimination laws covering these groups such as SCs/STs Prevention of Atrocities Act 1989 etc. Contrarily, 'religious community' emerged as a reluctant category in the Constituent Assembly which made it difficult to legislate preferentially and protective institutional mechanism around religious communities, this is particularly so in case of Muslims and Christians minorities. Absence of legitimacy for religious communities and presence of legitimacy for historically disadvantaged groups in the Constituent Assembly become the source of state policies in post independent India. The arguments advanced there still hold validity in the political fields after independence.

This chapter has presented an overview of the Commission in terms of institutional design and how the design itself has been circumscribed by the lack of political

consensus and will of political actors. Shallowness of the State policies towards religious minorities is clearly reflecting in the way in which the NCM came into being and structural and normative challenge it has been facing since then. The debate on the NCM Bill and its subsequent operation are suggestive of incompleteness of the normative and conceptual ground work to protect basic citizenship rights of religious minorities.

The next chapters will provide an account of actual performance of the Commission in dealing with the cases concerning deprivation of rights of minorities and offering its own discourse on minorities. They unravel the Commission's stand on some select incidents which give us insight into the deeper conceptual questions underlying the rights of religious minorities.

Chapter III

Freedom to Profess, Practice and Propagate Religion: Minorities, Conversions, Personal Laws and Excommunication

Right of freedom to profess, practice and propagate religion[1] is most basic right available to citizen[2] to opt religion and religious identity of their own choice. Like all other citizens, religious minorities derive strength of their religious identity from the Articles 25-28 of the Constitution. In the earlier phase of deliberations, many members of the Constituent Assembly proposed to restrict meaning of religious freedom to permit only religious freedom to *worship* than to *practice* including members of minority communities like Minoo Masani[3] and Tajamul Husain arguing that religion was a personal affair. This view was supported strongly by others, including Loknath Mishra, who took the view that the 'right to propagate' was divisive (CAD VII: 817-818). At the end, a broader meaning of religious freedom to *practice* religion was adopted. Likewise, demand of explicitly permitting propagation of religion was accepted though on the face of fierce criticism as Christianity and Islam were essentially proselytizing faiths (Shiva Rao II: 201-208). This was done in compliance with the wishes of minorities particularly Christians who argued inextricability of propagation in Christian faith (Bajpai 2011: 60).

What supplies religious freedom complexity is the fact that it is not merely an individual right, but is equally granted to communities both majorities and minorities. Under Article 26 (b), community is empowered to manage its own affairs in the matter of religion. In other words, community is authorized to determine proper manners of worship as well as constituents of religious practice including personal laws (Mahajan 2002: 43).[4] This

[1] The clauses of religious freedom were not made absolute and subjected to various limitations. Article 25 permits state intervention in the interest of public order, morality and health; upholding other fundamental rights, introducing social welfare and reforms, and regulation and restriction of any economic, financial, political or secular activity associated with religious practices (Baxi 2016: 86-87).

[2] The right to profess and practice religion was stretched to include all persons, not limited only to citizens (Rao 1967).

[3] It is noteworthy that Minoo Masani was became the first chairman of the Minorities Commission. He is also known for his unequivocal support for UCC. But he resigned from his position due to ignorance of the Commission's views on Aligarh Muslim University Bill 1981.

[4] Although untouchability was abolished and temple doors are made open for all, in judicial pronouncements right of community to regulate religious practices has been upheld. For example, the

community autonomy often conflicts with individual's freedom of religion and right of minorities within minorities inviting state intervention.

This tussle is reflected in the controversies around anti-conversion laws, minority personal laws, and rights of religious denominations within minority communities. However, during the CAD, a general consensus was that reforms in minority personal laws would not be introduced without the consent of the concerned community. Speaking on Article 44[5] Ambedkar assured minorities that they should not be apprehensive that state would use its powers under this Article to wither minority personal laws (CAD VII: 781-782). Freedom to *practice* religion was kept open to state intervention in favour of enacting laws for social welfare and reform; reforms in personal laws are case in point which faced open confrontation in the Shah Bano case and politics afterward. Similarly, freedom to *propagate* religion came under majoritarian scanners immediately after the constitution was promulgated but the sense of crisis over conversion and free propagation was heightened after the Meenakshipuram conversions. At Meenakshipuram village, Tirunelveli, Tamil Nadu around 300 Dalit families were converted to Islam in 1981on the pretext of caste related discrimination and atrocities. Likewise, the question of preference to community's authority to suppress individual's freedom was debated in the context of the Bohra[6] community's practice of excommunication.

The decade of 1980 witnessed heightened contestation over freedom to *practice* religion which was erupted into around the Shah Bano case leading to the passage of Muslim Women (Protection of Rights on Divorce) Bill 1986. Freedom of conscience and propagation of religion by minorities came under threat in the context of attempts to enact anti-conversion Acts and conversions happened in Meenakshipuram in the same decade. The unfolding of events in Shah Bano case was so significant that they seemed

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Supreme Court upheld Godwa Saraswatha Brahmin temple's practice of not allowing member of certain castes to participate in religious ceremonies. Referring to communities right to manage practices, the Supreme Court maintained that certain religious matters like "construction of a temple, installation of images, conduct of worship, and distinctions between different categories of worshippers are determined by ceremonial law" (Mahajan 2007: 44-45, Smith 1963: 112-113).

[5] Article 44 of the Indian constitution gives directive to the state to secure uniform civil code for all its citizens. It reads that 'the state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India' (Baxi 2016:116).

[6] Bohra community is also known as Dawoodi Bohra. It is an Ismaili branch within Shia Muslim community. The spiritual leader, of Bohra community is known as da'i who exercises stringent control over members of the community. The dissent/disobey to the authority/direction of da'i may result in social boycott or excommunication of members.

to have altered the course of state action in community affairs which undermined the case of UCC and defied the aspirations of universal citizenship interpreted in terms of gender equality. Similarly, conversions happened in Meenakshipuram which incentivized enactment of more anti-conversion laws causing shrinking of the right to profess religion of choice, and effectively de-legitimizing right to propagate religion. This chapter examines overviews of the Minorities Commission's action and approach towards these crucial events with the underlying features of its intervention. It explores the marginalized and neglected discourse which evolved in the Minorities Commission on fundamental questions of right to practice and propagate religion with their complicated relationship with individual's religious freedom.

The two sections of the chapter are designed around the chronological order of events. They are also arranged in a manner so as to deal with more basic right of individuals to choose and profess any religion along with group right of propagation first (as in case on conversion) than group right to practice religion (personal laws and management of religious affairs of the community) on the trajectory of group rights in India. The first portion of the chapter deals with religious freedom to choose any religion in the larger context of anti-conversion laws as limitation on both freedoms of conscience and of propagation. The second section of this chapter explores the normative stand taken on cultural rights of minorities by the Rajiv Gandhi government in putting forward Muslim Women Bill 1986 and to examine Minorities Commission's viewpoint on the issue. The third section takes up the issue of the Bohra community to analyze how the Commission formulates its position on community's right to manage internal affairs which circumscribes individual's religious freedom.

I

Free Conscience and Freedom to Profess Religion: Propagation and Conversions

Conversion used to happen in medieval, pre-colonial, and colonial India which had overt or covert support from Islamic and Christian powers. During the deliberations in the Constituent Assembly, a consensus was achieved on creating a secular state that would not establish any state religion and consequently be neutral on the issues of conversion.

While restricting its own role in conversions and proselytization[7], it gave citizens and religious groups the right to freely propagate their religion. Minorities, scheduled castes and scheduled tribes are finding it difficult to enjoy rights relating to religious freedom as a result of atmosphere of growing intolerance and violence against them if they propagate or opt for conversions. The right to profess, practice or propagate one's religion as provided by Article 25 of the constitution, on many occasions, have been circumscribed by the freedom of religion laws (in reality anti-conversion laws) enacted by several states of the Indian Union. Chapter V would give evidences that how proselytization has been de-legitimized and propagation of religion would cause violation of one's right to life as happened in the case of Graham Staines.[8] This chapter is, however, concerned with ideological shifts in state policy related to religious freedom and propagation and discourse offered by the Minorities Commission in this regard.

Undoubtedly no grounds exist to justify conversions brought about by violence or other equally illegitimate means of coercion as they violate the principle of freedom of conscience guaranteed by the Indian Constitution. But the anti- conversion legislations go far beyond the protection of this right, and indeed, in no way appear to be motivated by the desire to protect the freedom of conscience. Instead, the danger of 'discriminatory abuse in their application' is very real (South Asia Human Rights Documentation Centre 2008). After few years of independence, attempts were instigated to restrict freedom of propagation at national level. Restricting conversions on ill perceived grounds not only limits people's power to use their conscience to follow certain religions not certain others. More importantly, in the Indian context as evident from the history of conversions that political power or lack of it had been a determining factor in the conversions. In most of the cases, conversions had taken place as part of the proliferation of an ideology which questions the *status quo* by using religion instrumentally to challenge existing social structures. The lower castes in the caste hierarchy have used religion through the act of conversion against the upper castes (who have used religion to

[7] Very often the term conversion and proselytization are used interchangeably. George Mathew underlined the difference between these two terms. Generally proselytization means persuading people to of one religion to adopt another religion mostly due to socio-economic and political inducements not due to spiritual illumination. Whereas, conversion is a positive term denotes spiritual-psychological conversion of a person hitherto divided and consciously wrong (Mathew 1982).

[8] In January 1999, Grahem Staines along with his two young sons was burnt alive by a mob led by Dara Singh, a Bajrang Dal activist on the pretext that Staines was engaged in converting tribal of Manoharpur of Keonjhar district of Orissa into Christianity.

maintain *status quo)* to change their social position (Mathew 1982: 1071). According to George Mathew, three events up to 1980 aroused troubles for free propagation of religion that too against conversions into minority religions. First was; Madhya Pradesh government appointment of Niyogi Commission[9] that was made to inquire into the proselytizing activities of Christian missionaries, suggested restrictions on them (1982: 1030). Recommendation of the Niyogi Commission included withdrawal of missionaries whose primary object is proselytization, prohibition by law such medical and other professional services as inducement for conversion, circulation of literature meant for religious propaganda without approval of the state government should be prohibited; programs of social and economic uplift by non-official or religious bodies should receive prior approval of the state (ibid.). Second event was the conversion of Ambedkar along with half a million Harijans into Buddhism on 14th October 1954 (ibid.: 1031); this event encouraged many more such mass conversions. In between these two events at least two anti-conversion bills were introduced at the national level in the Parliament; the Indian Conversions (Regulation and Registration) Bill, 1954 and the Backward Communities (Religious Protection) Bill 1960, both defeated in the Parliament due to lack of adequate support. The third event was O. P. Tyagi's freedom of religion Bill 1978 (ibid.: 1031).[10] The Bill was intended to protect Scheduled Castes, Scheduled Tribes, minors and women from conversion due to force, inducement or by any other fraudulent means.

In a prominent case challenging the validity of the Madhya Pradesh and Orissa Acts which were enacted before the creation of Minorities Commission, Chief Justice A.N. Ray in Reverend Stainislaus v. State of Madhya Pradesh (AIR 1977 SC 908) and Yulitha v. State of Orissa and others ruled that propagation is different from conversion. Adoption of a new religion is freedom of conscience, while conversion would interrupt

[9] Appointed on 14th April 1954, Niyogi Commission submitted its report on 1956. This report enraged Christian community and had affected upcoming Kerala elections leading the Congress party's defeat.

[10] However at least three state Orissa, Madhya Pradesh, and Arunachal Pradesh have already enacted their anti-conversion laws in the name of 'Freedom of Religion Bill' in 1967, 1968 and 1978 respectively. Chhattisgarh inherited its Freedom of Religion Act 1968 from Madhya Pradesh. All of these legislations have been perceived as serious threats to religious freedom of religious minorities and weaker sections, but the concern of this chapter is mostly limited to exploration of Minorities Commission's comprehension and response on religious freedom in relation to religious minorities. Due to this limitation, this chapter would not take up anti-conversion laws in existence prior to creation of Minorities Commission. Gujarat anti-conversion Act came in 2003 and Himachal Pradesh legislated its anti-conversion Law in 2006. Anti-conversion laws ostensibly named in phrases meaning "freedom of Religion" Acts and Laws, such as Madhya Pradesh Dharma Swatantraya Adhiniyam 1968 and the Orissa Freedom of Religion Act 1967. In this chapter they uniformly call them anti-conversion laws or legislations.

on 'freedom of choice' granted to all citizens alike. After examining the different meanings of the word 'propagate' in Article 25(1), Justice Ray expressed the view that 'what Article 25(1) grants, is not the right to convert another person to one's own religion by exposition of its tenets.' Commenting on this judgment, Justice P. Jaganmohan Reddy opined that since the Court did not comment on the definitions in the two Acts of the expressions, namely, allurement, fraud, force, inducement, fraudulent means, etc., it was not possible to say whether these definitions affected the fundamental rights of the minorities to propagate their religion. Moreover, the court significantly overlooked the freedom of religion of the person getting converted. Conversion is equally the right of the person who is sought to be converted; as such it is of no consequence to him if it is not a part of the freedom of propagation of the religious group to which conversion is made, provided he is not subjected to force/fraud and inducement (The Hindu 17 December 2002).

By the occurrence of the third event, Minorities Commission had been already come into existence and registered its strong opposition towards O. P. Tyagi's Freedom of Religion Bill. Commission received a large number of representations from Christians and Muslims protesting against the said Bill. Commission's stand was also divided on the Bill. Majority View of the Chairman M. R. Ansari, Prof. V. V. John and A. J. Dasture observed that "if the Bill became law in its present form it will become potent means of harassing persons exercising no more than their fundamental right in regard to the profession, practice and propagation of their religion (Second Annual Report 1979: 7)." Two other members, Chief Marshall Arjun Singh and Ven Kushok G. Bakula were not convinced with this view. Chief Marshall Arjun Singh was against conversions on moral ground, he felt conversion led to social tension and harmful for already communally sensitive country like India. He proposed minor suggestions in the wordings of the Bill to make it better and acceptable to everyone, such as deletion of the phrase "inducing threat of divine displeasure" and addition of the word "material" before inducement wherever it occur (ibid.: 48-49). Ven Kushok G. Bakula presented alternative argument to support the Bill. He believed that only educated (intellectual) people can effectively understand religious philosophy, so they can consciously choose to convert. But as far as illiterate people are concerned that majority of Indian are, do not possess that enlightenment about their own religion, how to expect them to understand other religions and convert to them

(ibid.: 50). He further argues that "if no nefarious means are resorted to by an individual or agency to effect conversion, then there is no apparent reasons for them to view Bill with suspicion (ibid. 51)."

In majority view of the Commission article 25 which guarantees freedom of conscience and free profession, practice and propagation of religion, confers absolute right and may not be restricted except for the preservation of public order, morality and health. But Tyagi's Bill had not urged restrictions in the interest of public order, morality and health. In fact the purpose of this was to prevent conversions of Scheduled Caste. Commission emphasized that

> The statement of objects and reasons appended to Shri Tyagi's Bill refers to the need for protecting people particularly those belonging to Scheduled Castes and Scheduled Tribes from conversions sought to attained by threat, undue influence, allurement or wrongful incitement. Neither the prevalence of such nefarious practices nor the inadequacy of law to deal with them, has been established.....On the contrary, the text of the Bill indicated an effort to list a new sort of crimes, relating to religious conversion, based on widely inclusive definitions of what would constitute the use of force, threat and inducement (ibid.: 44-45).

Indeed, defined so broadly essential dogmas involve in religious propagation were *attempted to criminalize conversion*, for instance, the Commission noted, "the threat of divine displeasure[11]" which is a part of harmless religious appeal would become a cognizable offence under this Bill. "Inducement", is so expansively defined that not only any economic benefit but even spiritual and intellectual enlightenment could be interpreted as inducement. While commenting on Tyagi's Bill, Commission also criticized Arunachal Pradesh Freedom of Religion Act 1978 which coincided with commission's birth and similar legislations of Madhya Pradesh and Orissa. Commission seems convinced with former Chief Justice Hidayatullah and K. K. Mathew who found certain sections of Arunachal Pradesh Freedom of Religion Act 1978 unconstitutional. Commission quoted Chief Justice Hidayatllah's suggestion that the "Supreme Court's judgment in Orissa and Madhya Pradesh cases puts the narrowest of narrow interpretations on the word 'propagate' and right '*has been reduced to vanishing point*'… 'the case needs to be reconsidered' (ibid.: 45)." [12]

[11] By including the "threat of divine displeasure" in the definition of force, state legislatures who enacted anti-conversion laws suggest that individuals are incapable of exercising sound judgment particularly so in case of Scheduled Castes and Scheduled Tribes (South Asia Human Rights Documentation Centre 2008).
[12] Emphasis supplied.

Although, the Bill remained unconsidered in the Parliament and the storm around the Bill subsided because the Janata government resigned even before it could take up the Bill for consideration, it stained the image of the ruling party as, non-secular. A majority in the party defended their position by saying that it was only "a private member's bill". But the Janata party had to pay the political cost for it as religious minorities were further alienated from the party and the Congress (I) exploited it (Mathew 1982: 1031).

Meenakshipuram mass conversions, that followed Tyagi's Bill chronologically, have many more underlying arguments to oppose anti-conversion legislations even beyond religious freedom of individuals and communities. It exposed certain anxieties of scheduled castes facing degraded social treatment by upper castes and their conscious effort to move away from this degraded social status. The purpose of using this particular case of conversion is to highlight the problematic of restricting religious freedom of weaker sections like scheduled castes and scheduled tribes in exercising conscience in professing any religion of their choice.

A cursory factual history is like this. Meenakshipuram was a small village in Tirunelveli district of Tamil Nadu, 5 km from Shencottah town, bordering Kerala. It had about 200 Harijan families. About 1,300 Harijans lived in that village; economically they were relatively better off. Many of them were educated; some worked in government departments including police and school. On February 19, 1981, more than 1,000 'Harijans' of the village converted to Islam and changed the typical Hindu name of their village from Meenakshipuram to Rehmatnagar. It was reported that at that time the mood of the 'Harijans' in the district as a whole favored conversion. From the time of this incident until September 1981 there was a wave of conversion throughout Tamil Nadu. 'Harijans' in Meenakshipuram wanted to convert to Islam for some time. Many sought the permission of the South Indian Muslim Association in Tirunelveli, but it had asked the Harijans to, wait. Later it gave consent. Abdul Hasan Shathali Sahib, a noted Muslim scholar of Palayamkotti, Tirunelveli, presided over the conversion ceremony. He taught them the Muslim pledge of faith and converted them to Islam. The Collector and Deputy Inspector of Tirunelveli visited the palace to ensure peace there.[13] Two sections of armed reserve police were installed in surrounding villages to avoid any breach of peace (Fourth Annual Report 1981-82: 33).

[13] This narrative of Meenakshipuram conversions has been taken from the reports of the Minorities Commission, Newspapers and Mathew's description of the incident.

This mass conversion was a conscious effort on part of scheduled castes of the village. The life long suffering of scheduled castes under oppressive and stagnant hierarchical caste system which never allowed scheduled castes to feel like human, not to mention recognition as fellow citizen supplied the background and essential incentives for these conversion. 'Harijans' who were dependent on Maravas (People of dominant upper caste of the region) had a feeling that they were not being treated by upper caste Hindus as equals and believed that they would be elevated socially if they were converted to Islam (Fourth Annual Report 1981-82: 33). Although Commission could not undertake its own independent inquiry to find out the truth of the allegation made in media about the dubious causes behind the conversion due to lack of funds and equipped staff, the Commission had to believe the statement of converted Harijans who stated that they had not embraced Islam under any compulsion but on their own will (ibid.).

Mathew underlined the following four factors leading to conversions in Meenakshipuram and other places in Tamil Nadu: (a) an awareness of their own degraded condition and (b) an urge to escape from the social degradation. He says that presence of these two is evident from the fact that the economic condition of the villagers in Meenakshipuram or other places where conversions took place was not worse than that of their brethren elsewhere. In Tirunelveli the SC literacy rate comes nearer to the all India average. (c) There was a feeling of the inadequacy of the political process and the impossibility of *sanskritisation* and (d) the presence of an alternative as Harijans of these places had found an alternative in Islam to move 'from the status of scum to the status of human beings'. Further, "the victims of a dominant community's exploitation often find it advantageous to use a religion other than the religion of their victimizers as an instrument to enhance social position" (Mathew 1982: 1032-1034).

Those who converted were fully aware of the fact that they would lose the constitutionally ensured concessions and benefits for scheduled castes (ibid.). As per the prevailing rules in case of conversion, scheduled castes converts will lose concessions which they normally receive from the state. They were to lose free education up to post matric stage, scholar-ships from Central and state governments for higher studies, books and special hostel facilities quotas in educational institutions; reserved government jobs, quicker *pattas* for land and grants and loans for houses and agriculture. But for the community now, human dignity was more valuable than concessions. "We would make

slow progress as human beings rather than make quick progress as second class citizens (ibid.)." it appeared from Tayagi's Bill and other anti-conversion legislations that individuals from weaker sections were not capable of understanding and managing their 'religious' ideas and they lack agency for transforming their social status, particularly if they are from lower castes, women and minor.

After these conversions, there was a sudden arousal of sensitivity of equality concerns for scheduled castes all over the country. The governments, both at the Centre and the state, political leaders and Hindu organizations saw deep and unsuspected political motives underlying the whole issue. The main explanation offered at all India level asserted that these conversions were an effort politically to destabilize the region through increasing the number of Muslims to *out-number* the Hindus, and pan Islamic fundamentalist revival and the boom in the oil-rich Arab countries were behind the conversions in India (Mathew.: 1071). It was also observed that-

> The motive behind anti-conversion spat is to keep scheduled castes within the Hindu fold, which would itself amount to bribery, inducement and undue influence and it clearly militates against Article 27 of the constitution ... "It is ironical that those who are accusing Harijans of falling prey to material inducements do not think twice about the propriety of using tax money to prevent their conversion" (Syed Shahabuddin cited in ibid.).

The endeavors to keep scheduled castes within Hindu folds were not an innovation of post- independent politics. During the national movement and in constitution framing stages conscious attempts were made to keep and integrate them within Hindu folds (Tejani 2007).[14] Till the early stages of constitution making, scheduled castes were considered as a part of minorities at large. But at the later stages when comparative worth of preferential policies towards minorities were under consideration, scheduled castes were taken out from minority category and placed separately to enjoy benefits of these policies which were delegitimized for other minorities, particularly religious minorities after their exclusion from this category (Tejani 2013). Tejani argues that the debate around reservation and identification of its beneficiary groups, therefore, led to the deletion of schedule castes from the list of minorities, making it unclear what recognition of minority status was intended to achieve in post-colonial India (2013: 211). This divorce along with the Presidential Order 1950 problematized conversions and

[14] For details see (Tejani 2007). Tejani has discussed in detail how the lower castes travelled the journey 'from untouchables to Hindu' during the national movement. This point is elaborated in chapter I of the thesis.

religious freedom. Barring concessions available to scheduled castes under Presidential Order 1950 in case of conversion, particularly to minority religions, indeed indicate bias against conversions.

Minorities Commission's views on religious freedom were included religious conversion but with caution. It stated that

> Although, under our constitution conversions are not only permissible but may be desirable from lower grades of thought and feeling of higher one, yet preaching of hatred and bigotry, involved in conventional patterns and campaigns for conversion, do not seem to the Commission to serve a nationally useful purpose (Fourth Annual Report 1981-82: 34).

In the same Annual Report, Commission published a possible draft on 'Declaration of Religious Freedom', prepared and adopted by the Commission in keeping pace with controversies around place of religion in secular country like India. The Commission proposed separation of sphere for state and religious activities as a necessary condition of a diverse society, it suggested that

> Neither state, as the law making and administrating organization of society, nor voluntary religious organizations, should interfere with the activities of each other….a wall of separation between these spheres of activity, on of secular state and the other of voluntary religious and social organizations, must be recognized (ibid. 13).

This statement implicitly interrogates state legislations over conversions. Similarly, the High Power Panel on 'Minorities, Scheduled Castes, Scheduled Tribes, and Other Weaker Sections' under the chairmanship of Dr. Gopal Singh had commented on arbitrary nature of anti-conversion legislation and its implication for right of religious propagation. The Panel emphasized that these Acts "virtually aimed at depriving the minorities from exercising their constitutional right of religious propagation" (1983: Para 20). The Minorities Commission repeatedly criticized anti-conversion Bills while expressing opinion on four Bills concerning religious freedom moved in the Parliament. Those were 'Freedom of Religion Bill 1985 moved by Shri S. M. Bhattam, the Constitution (Amendment) Bill 1987 moved by Shri Shantaram Naik, the Prevention of Religion and Religious Institutions Bill 1987 moved by Shri M.C. Bhandare, and the Constitution (Amendment) Bill 1987 moved by Shri M.C. Bhandare. The Commission believed these proposed Bills were suffering from similar shortcomings which were there

in O. P. Tyagi's Freedom of Religion Bill 1978. Commission opined that force of law should also be not used to prevent conversions or force one to adhere to a particular religious faith.

> Apparent freedom to conscience and the right to freely profess, practice and propagate religion could cloak any attempt to *coerce people even through law to adhere to any particular "religion"*…..force or threat of injury of any kind including "threat of divine displeasure" or "social ex-communication" or "fraud" and "inducement", and the term "minor", used in section 2 of this Act, have not only been already defined in other enactments but are controversial….therefore, apart from being redundant, the objects of Section 2 could be frustrated and declared unconstitutional (Tenth Annual Report 1987-88: 213-14). [15]

Moreover Commission referred to its own resolution on 'Declaration of Religious Freedom' which had clubbed together essence of Indian constitution with certain internationally recognized documents on religious freedom. Commission suggested that the framers of these separate Bills could endorse the Commission's resolution on Declaration of Religious Freedom (ibid. 212).

In 2003, when Commission visited Gujarat, Christian representatives attracted its attention towards various anti-conversion laws including proposed Gujarat 'Freedom of Religion'. V. V. Augutine, member of the NCM, clarified to them a basic difference between conversion Bills passed in Madhya Pradesh, Orissa and Tamil Nadu and the conversion Bill proposed in Gujarat. He explained that conversion Bills of Madhya Pradesh, Orissa and Tamil Nadu required intimation about the conversion after conversion has taken place, but in Gujarat Bill prior permission of concerned District Magistrate is required for conversion. The NCM also explained that it has pointed out this problematic clause to the government of Gujarat and suggested to remove this clause. But no action was taken as the matter become sub-judice (Annual Report 2003-04: 16).

In 2008, the NCM organized an interactive meeting with members of Parliament on 'State Laws on Religious Conversion and its Impact on Right to Freedom of Religion'. The Chairman, Mohammad Shafi Quraishi emphasized the need to examine state legislations on religious conversions as they have the effects of impinging on the freedom of conscience of a person to belief in any particular religious faith. Their apparent intention is to stop conversions by force, fraud and allurement. He also pointed

[15] Emphasis supplied.

out that international instruments like Universal Declaration of Human and International Covenant on Civil and Political Rights recognize freedom of conversion, although, India lacks clear provisions referring to conversion on these line (Annual Report 2007-08: 15). Speaking on this event, Rahman Khan, Deputy Chairman of Rajya Sabha, said that "state laws on conversions take away the spirit of Article 25 of the constitution" (ibid.: 16).

The Karnataka Regional Catholic Bishop's Council drew the Commission's attention towards the report of inquiry on attacks on churches that took place in 2008-09 by the Justice Somasekhara Commission. The Christian community was frustrated with certain findings and recommendations of the Inquiry Commission. According to the Council, the Somasekhara Commission failed to identify the culprits and organizations responsible for attacks on Christians. Council was especially critical to the recommendation of strict check on church activities through legislations, exclusive police stations to deal with religious conflicts and allegation of conversion as against the tenets of secularism and freedom of religion. The NCM brought this matter to the notice of PM for assuring constitutionally guaranteed rights of minorities (NCM Annual Report 2010-11: 44-45). In the same year, the NCM reiterated that sweeping powers given to the District authorities to conduct enquiry and to grant or withhold permission to those seeking convert from one to another must be reviewed and modified to ensure non-encroachment on constitutionally guaranteed rights. On the intention of ant-conversion legislations, the Commission said if their aim is to prevent the use of force and fraud in conversion, same provision must be applied on re-conversions (ibid.: 42-23) as persons who once sought conversion are often forced or allured for reconversion.

The Commission criticized anti-conversion laws almost at all occasions. The basic normative argument if offered was that these laws were against the spirit of individual's right of religious freedom. At no place, it could indicate that anti-conversion laws had implications for propagation that stands as a group right. Religious minorities have been demonized as disintegrators who allure weaker sections of Hindu community to increase their own numerical strength. Due to existence of such laws, right wing fringe organizations have successfully delegalized right to propagate religion. This aspect was not fully addressed in the discourse evolved in the Commission.

II

Freedom to Practice Religion, Personal Laws and Thrust for Uniform Civil Code: Failing of a Grand Project

The judgment delivered by the Supreme Court in Shah Bano case raised storming debate on the status of Personal Laws and Uniform Civil Code (henceforth UCC) contextualizing secularism which heightened contestation over primacy of group rights over individual rights in case of Muslim women. The Minorities Commission, entrusted with safeguarding rights of minorities, had been working in the direction of achieving some kind of uniformity in the field personal laws of minority communities by removing their unjust and outdated provisions. The Commission in the first half of 1980s was following the logic of the consensus on UCC and Personal Laws agreed in the CAD that suggested a slow and gradual achievement of the UCC (Jha 2002: 3178).[16] As evident from the readings of annual and special reports, the personal law discourse carried out by Minorities Commission was dominated by the concerns for democracy, secularism, national integration and communal harmony during the first half of 1980s. These concerns remain key feature of Commission's attitude towards most of minority problems in its impending course of action.[17]

In the beginning, the Commission was very enthusiastic to work out suitable environment for enactment of UCC. In the first half of 1980s, the annual and special reports were filled with this enthusiasm. But Shah Bano controversy put this project on hold, indeed, stretched the debate to the level of impossibility of amendment in the Muslim personal law. It is worth investigating that how the Minorities Commission

[16] One of the most contentious issues in freedom of religion clauses was status of personal laws and inspirations of UCC in the CA. To ensure equal benefits of laws to all citizens regardless of usage and customs bases on religion was the driving force for arguments proposing UCC against Personal Laws. In order to make this inspiration more effective, Rajkumari Amrit Kaur, Minoo Masani and Hansa Mehta proposed transfer of UCC clause from directive principles to fundamental rights (Jha 2002: 3178). On the other hand, Pocker Sahib and Mahmood Ali Baig Bahadur believed that freedom to practice religion was meaningless without protecting Personal Laws and wanted inclusion of one's Personal Laws in fundamental rights. Baig Bahdur reasoned that secular state should not mean imposition of common laws, 'citizens belonging to different communities must have the freedom to observe their life and their personal laws should be applied to them' (quoted in ibid.). The final consensus however was on an intermediate position, according to that the goal of UCC was to achieved slowly (ibid.)

[17] The NCM's Vision Statement says that the National Commission for Minorities, with utmost zeal and dedication, shall uphold its constitutional mandate upon which the Commission had been established. The Commission shall endeavour to protect the minorities constitutional, legal and civil rights; and their liberties. The Commission shall also ensure that the minorities do not transgress the rights of members of the majority community in any manner.

placed itself in the contestation pertinent to group rights of Muslims in rights of Muslim women in the larger debate on UCC and personal laws in the context of the Shah Bano controversy. As subsequently elaborated in the chapter, after the Shah Bano controversy, a significant shift could be found in the Commission's approach toward attainment of UCC. Now, the Commission did not simply clubbed inspirations of UCC and reforms in personal laws together; but tackled the issue of reforms separately without necessarily invoking UCC which could enrage minorities. However, UCC was remained a high goal to be achieved even if it could be achieved by separately reforming personal laws of minority communities. Bodies like All India Muslim Personal Law Board (AIMPLB) etc. had already become quite active to protect personal laws which came into existence in 1972 against state proposals of upgrade adoption laws. Thus, the Commission seemed to progress cautiously on its UCC and reforms in personal laws agenda. To unravel the entire picture, it is vital to know what kind of discourse Commission offered before and during the Shah Bano controversy.

In its second annual report, the Commission suggested amendments in the Parsi Marriage and Divorce Act 1936 (1979: 11). Detailed studies were undertaken by the Commission, views of scholars and experts were gathered to prepare a favourable environment to amend personal laws, especially of Muslims, with a view to implement UCC. Fifth Annual Report published at least three such studies related to the possibilities of making changes in Muslim personal law (1982-83: 276-357).

The Minorities Commission published a 'study of the general character of personal laws' in its annual report for 1982-1983. The basic question of the study was whether article 44 of the constitution providing UCC was in conflict with the religious tenets of Islam, Sikhism, Buddhism, Christianity or Zoroastrianism. This study was done in the context of the problem in enacting general laws such as Adoption of Children Act without exempting religious minorities (Annual Report 1982-1983: 18-28) from its purview. The study was done by Justice M. H. Beg, chairman of the Commission himself, in the context of Islamic jurisprudence and Muslim personal law. He opined that the 'Muslim jurisprudence neither makes the whole body of Muslim law so rigid so as to be regarded as untouchable, nor are its principle irrational, progressive, and so incapable of responding to needs for change'. The arguments he forwarded were perfectly conciliated

with the central government's position[18] on personal laws that 'the personal law, which affects only a segment of the lives of its members, the law should not be changed by general legislation unless and until a majority of members of the community or group affected itself wants a change' (ibid.: 25).

In 1984-85, government and some members of the Parsi community sought the Commission's view on Adoption of Children Bill 1980. The Commission proposed amendments to the Adoption of Children Bill 1980 to facilitate the Muslims and the Parsis to adopt children without restricted by existing concerned personal laws. Parsi community was struggling with dwindling population that presented a real danger of community extinction. One of crucial reason for negative growth rate of community was their personal law prohibiting conversion, adoption and inter-religious marriages. The NCM had been highlighting the need to bring positive changes in the Parsi personal law to make it more flexible to allow conversions, adoptions and inter-religious marriages along with the essential scientific and administrative support.[19] In response, the central government answered that 'it is the consistent policy of the central government not to interfere in the personal laws of minority communities unless the necessary initiative for the same comes from a sizeable cross-section of the concerned community itself'. As no such initiative is being received from the community, the government did not consider it appropriate to introduce any reform in Parsi personal law.

Commission's recommendations on Adoption Bill came under severe criticism from conservative Muslims who argued that application of Adoption Bill on Muslims would conflict with *Quranic* injunctions, directives of the Prophet and the Muslim personal law. However, Justice Hameedullah Beg did not find the criticism tenable, taking resources from adoption laws of Tunisia, Malaysia, and Turkey; he argued that if there was a real conflict with direct *Quranic* prohibitions, these countries could not possibly authorize adoption as they did. These predominantly Muslim populated countries have the option

[18] Mostly the Congress party occupied the role of central government till 1980s which viewed that "the changes in Personal Laws by legislation should be made only when public opinion of the community governed by them demands such a change" (cited in Fifth Annual Report 1982-83: 25).

[19] The Parsi community does not allow and accept conversions. To be a Parsi, one has to be born as Parsi. Even, children born out of inter-religion marriages are generally not recognized as Parsi. In Practice, there is gender discrimination in acknowledging a child Parsi who is born of inter-religion marriage. Parsi identity (religion) descends through father. Thus, the children of Parsi fathers and non-Parsi mothers are sometimes recognized as Parsi. But a child born from Parsi mother and non-Parsi father cannot be admitted into Parsi faith. In other words Parsi men can have inter-religion marriage with chances that their children would inherit Parsi faith. Contrary to this, in case of woman marrying non-Parsi man, her children cannot inherit Parsi faith.

to adopt a child in accordance with the provisions of a law enacted for this purpose (Seventh Annual Report 1984-85: 23-34).

Meanwhile, Shan Bano controversy surfaced and dominated the public discourse on rights of minorities and of Muslim women. Before venturing into normative issues involved in this case, it's imperative to be familiar with the facts of the Shah Bano case. Shah Bano Begum was married to Mohammad Ahmad Khan in 1932 and had five children out of this marriage. Mohammad Ahmad remarried in 1946 with Halima Begum. In 1975 Shah Bano began living separately from her husband because of quarrel over domestic issues. In April 1978, Shah Bano filed a petition in the court of the judicial magistrate of Indore against her husband under section 125 of the Criminal Code (Cr PC) asking maintenance of Rs 500 per month from Mohammad Ahmad Khan as she was unable to maintain herself. The section 125 CrPC 1973 provides for the maintenance of wives, children and parents. Under 125 (1) in case a person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself, Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife, to give allowance for maintenance not exceeding five hundred Rupees per month.[20] This provision was applicable on all citizens irrespective of their religious faith. The lower Court ordered such relief to Shah Bano in response to which Mohammad Ahmad Khan divorced her by triple irrevocable *talaq*. Thus, she ceased to be his wife under *shariat* law, and he was no more obliged to pay maintenance to her as he already deposited the sum of *mehr* in the Court during the period of *iddat*[21] that was Rs 3,000 and had paid her a sum of Rs 200 for two years as maintenance. Magistrate directed Khan to pay a sum of Rs 25 per month as maintenance. Shah Bano appealed in the Madhya Pradesh High Court, asking for an increased amount of maintenance Rs 179 per month as Mohammad Ahmad Khan earned an annual income of Rs 60, 000. Against this petition, Mohammad Ahmad Khan went in the Supreme Court arguing that since Shah Bano ceased to be his wife due the *talaq* granted by him, he was not obliged to pay maintenance beyond the period of *iddat.* Since he had already

[20] Mohammad Ahmad Khan vs. Shah Bano Begum and Others, Criminal Appeal No.103, SC, 23 April, 1985. The description of facts of the case is taken from here.

[21] *Iddat* is the period of approximately three month under Islamic law, during this period a divorcee and a widow cannot remarry. Former husband pays the maintenance during this period in case of divorced women.

paid *mehr* money to Shah Bano, which according to him was the money payable on divorce within the meaning of Section 127(3) (b)[22] of the Cr PC which rejects wife's claim of maintenance, no further maintenance order could be imposed on him.

The Supreme Court, then, had to decide whether section 125 was applicable on Muslim women (as marriage, divorce, and secession etc. fall under Personal Laws) and the nature of *mehr* as amount payable at the time of divorce. The Court found that definition of "wife" in section 125 of Cr PC is applicable on every divorced Indian woman irrespective of her religion. In this context "wife" included a woman who had been divorced by, or had obtained a divorce from, her husband and had not remarried. Therefore a Muslim woman who is divorced by, or has obtained divorce from, her husband and has not remarried, thus, comes under the preview of section 125 of Cr PC. The Court, moreover, interpreted *mehr* as a payment which the husband has to make in consideration of marriage (as a mark of respect for wife) and it is wholly detrimental to consider it as an amount payable to the wife on divorce.

On these grounds the Court dismissed Mohammad Ahmad Khan's appeal and upheld Shah Bano's right to claim maintenance from her ex-husband under Section 125 of the Code of Criminal Procedure. The Court also directed him to pay the costs of the appeal to Shah Bano that was Rs 10,000 and allowed Shah Bano to appeal under 127 (1) of the code for increasing the amount of maintenance granted to her on the proof of a change in the circumstances as envisaged by this section. At the same time the Supreme Court criticized the government for not doing anything to implement UCC as given in Article 44 of the constitution and directed the government to do so. Court observed that "article 44 of our Constitution has remained a dead letter. There is no evidence of any official activity for framing a common civil code for the country. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies" unaware of ongoing personal law reform discourse with the Minorities Commission.

[22] 127(3) Where any order has been made under Section125 in favour of a woman who has been divorced by, or has obtained a divorce from husband, the Magistrate, if he is satisfied that-
(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order-
(i) in the case where such sum was paid before such order from the date on which such order was made.
(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman.

For Muslims, this judgment was an attack on cultural autonomy of the Muslim community. A countrywide agitation erupted against this decision on the grounds that (1) the interpretation of section 125 of Cr PC by the Supreme Court had challenged some of the section of Muslim Personal Law and *shariat* (2) the sole authority of Muslim *ulemas* to interpret Quran came under threat by the Court's interpretation of certain verses of the Quran (3) the Court's allegedly disparaging remarks about the degradation of women in Islam and the Muslim husband's unfettered right of divorce; and (4) the Court's observation regarding immediate legislation for a uniform civil code (Mody 1987: 940).

The country wide unrest among Muslims brought the Congress government under pressure and it decided to pass Muslim Women (Protection on Divorce) Bill 1986 upholding cultural autonomy of Muslim community but undermining women's rights overriding the Supreme Court's judgment. According to this Act, now Muslim women are outside the preview of section 125 of Criminal Procedure Code. The Act defined the term "divorced woman" as a Muslim woman married and divorced according to Muslim Law (Section 2[a]). Under this law, former husband of a divorced woman was obliged to pay *mehr* at the time of divorce and alo maintenance to his ex-wife for the period of *iddat* only. The worst feature of the Act was that if a divorced woman was unable to maintain herself after the period of *iddat*, the responsibility of her maintenance would be borne by her natural family i.e. by her parents, children or by the relatives who are entitled to inherit her property upon her death. If she had no relatives or they did not have the means to pay maintenance to her, magistrate might direct the State Waqf Board to pay the maintenance as determined by him. This provision of the Act reduced the status of a divorced woman to that of a dependent in her family.

Analyzing ramification of the judgment and enactment of Muslim Women Bill for India's consociational ethos, Lijphart has argued that the Supreme Court's directions of withering away minority personal laws and their replacement with UCC clearly defied long standing consociational accommodation of minorities in the sphere of law (2001). Despite the fact that enactment of the Muslim Women Bill brought consociational consensus back reversing the Court's decision, it placed consociationalism under pressure by giving a new lease of life to the foes of personal laws (2001: 343). Thus, bringing back insecurities of the Muslim community on the forefront, which was seen during the CAD. In the CA, issue of personal laws was perceived as a matter of religious

freedom and freedom to *practice* religion as part of secular principle by the members of Muslim community. Mahboob Ali Baig Sahib Bahadur believed that any interference with the personal laws of minorities would go against the claims that the state was going to be secular, which would not interfere with the religious rights of the people. Mr. Hussain Imam explained that

> …….the personal law of the minorities should be safeguarded. The majority need not have the safeguard, because they are the majority, and nothing can be passed in the legislature without their full consent and concurrence, whereas, the minority have not got this privilege and therefore it is necessary that the personal law of the Muslims and other minorities who so desire should be preserved from interference by the legislature without the concurrence of a vast majority of the members thereof (CAD VII Monday 8 November 1948).

The secular state was elaborated as equal citizenship rights for all and emerged as main argument after Shah Bano case. Secularism found place in public debate whenever the issue of amending personal law surfaced and utilized for contradictory purposes. The Shah Bano case and Muslim Women Bill 1986 captured a range of issues such as individual right of a woman citizen, protection of vulnerable section (women) in a community, group rights of a community to cultural autonomy, secularism and state intervention in religion etc. Opponents of the Bill found it anti-secular because it violated the guarantee of equality before law and non-discrimination between individuals on the grounds of religion as provided in the constitution. Ostensibly, the Shah Bano case has been identified with Indian state's preferential treatment of minority cultures and with minority appeasement. At the same, it was considered as a movement from weak to stronger multicultural policies granting Muslims greater autonomy in matters of family laws (Bajpai 2011: 178). This amounts to shift in a way in which Congress elaborated secularism in the CA as exclusion of religion from the political domain for national unity to equal respect for all religions constructed in terms of state deference to religion and protection of the rights of minorities (ibid.: 191).

Thus, the Muslim Women Bill could be seen in two ways; one as expansion of group rights of minorities (Lijphart 2001) and other as curtailment of rights of vulnerable sections within minority groups (Jayal 2001). This expansion has paradoxical contents, hence, produced paradoxical effects for the support of special provisions for religious minorities. Though Congress tried to justify its move to exempt Muslim community in matters of personal law on the ground of justice and argued that secularism requires

special provisions for religious minorities, its arguments remained underdeveloped. This stand taken by the Congress party represented shift in the position it had taken in the Constituent Assembly. Where national unity was the pre-eminent consideration and realization of UCC was an aspiration to be achieved (Bajpai 2011: 222-223).[23] Jayal argues that the Muslim Women Bill endorsed the idea of primacy of cultural autonomy over equal citizenship, nonetheless excluded a section of citizenry (read Muslim women) from universally available rights of citizens (2001: 209).

It appears that the Minorities Commission working mostly under the Congress governments espoused similar understanding for UCC and personal laws. The project of developing consensus on UCC was with the Commission since its inception but was ruptured by the emergence of Shah Bano controversy in the public domain and later by enactment of the Muslim Women Bill 1986. Its efforts were directed towards reforming personal laws of all major minority communities to aggregate some sort of consensus of UCC. Its discourse had little to do with issues of cultural autonomy and women's rights and was closely aligned with the problem of secularism interpreted as national integration. Taking a safe stand on Shah Bano case and subsequent Muslim Women Bill, Commission cleared its position-

> Commission is not meant for projection the views of members of groups or minority sections (that work can be performed better by voluntary organizations and individuals who represent the electorate in States and Central Legislators), but to tender advise and make recommendations with a view to developing our secular traditions and integrating the welfare of minorities with national goals. ...all studies and research carried on by it or on its behalf must keep in view development of secular traditions and promotion of national integration[24] (Eighth Annual Report 1985-86: 226).

Holding its response to the Muslim Women Bill, the Commission said in a press release that the piece of legislation was defective but Parliament alone could remove these defects. "But to expect an assessing and advisory body to express its view publically on a matter before a full public debate on it is not fair' (ibid.: 224). The controversy around Shah Bano case and enactment of Muslim Women Bill paralyzed and raptured the

[23] Enactment of Muslim Women Bill produced mixed political cost for Congress. The Congress established itself as champion of minorities but subjected to criticism for appeasing minorities, turning secularism into pseudo secularism, and disregarding national unity at the same time. This enabled the BJP to emerge as defender of real secularism, gender justice and protector of national unity (Bajapi 2011: 222-223).

[24] The fact should be kept in mind that by this time Commission was not a statuary body.

discourse evolved by the Commission on personal law reforms and UCC. Justice M. H. Beg looked upon the Shah Bano controversy with the possible elements of political opportunism-

> recent attempts by political leaders and theologians, possibly afraid of losing support with unreasonable dissent and a false show of strength that uncompromising positions seems to create…..convey the impression that Muslim Personal Law itself is really rigid and unbending as to be incapable of anything other than breaking under the pressure of forces now shaping the destinies of all the people around the globe (Eighth Annual Report 1985-1986: 228).

On aforesaid reasons for agitation and unrest among Muslims were taken up by the Minorities Commission and attempt was made to enlighten Muslims over the issue of Muslim personal law. While doing so, Commission employed normative backing of democracy, secularism, and national integration was supplied to arguments favoring reforms. With respect to the claim that interpretation of section 125 of Cr PC by the Supreme Court had challenged some of the section of Muslim Personal Law and *Shariat* and on the question of the authority of Court to interpret Quran and *Shariat*, Justice M. H. Beg argued that

> The Muslim Jurisprudence, contrary to common misconception, is dynamic and elastic and responsive to the needs of a modern society if it is properly understood in way in which many Indian Judges have interpreted it, on the other hand, if rigid and literal theological interpretations of the parts of Quran is adopted, overlooking other very emphatic parts of it, Muslim Personal Law and jurisprudence will become monstrously rigid and undemocratic and incompatible with the principles of our constitutional laws (Eighth Annual Report 1985-1986: 228).

If the Courts were to be barred from interpreting Quran, one of the most basic source of Muslim personal law, the Muslim personal law would become unenforceable by the courts, except when somebody wanting courts to apply it would produce a *fatwa*[25] from some *Maulavi* (ibid.: 229) or by implication a parallel Islamic judicial system be established.

The Commission recognized poor condition of Muslim women in case of divorce when Beg designated the anger and agitation over the Supreme Court's decision as immoral and cruel as far as divorced women was concerned, as these miserable women needed

[25] The literal meaning of *Fatwa* is opinion which given by Muslim clerics of matters having religious aspect involved. But usually *fatwas* has effect of religious ruling in India. Ending supremacy of Fatwa, the Supreme Court ruled in 2014 that *fatwas* issued by *shariat* courts or muftis had no legal sanctity, asserting that the defiance of fatwas will have no civil or criminal consequences (The Times of India July 8, 2014). However, in the lives of Muslim community, it is difficult to reduce importance of *fatwa*.

protection under 125 of Cr PC and found it against Quranic injunctions of treating women with kindness (ibid.: 230). Beg interpreted agitation against Shah Bano judgment as unpatriotic. He concluded that

> I am convinced that agitation against the Supreme Court's view in Shah Bano case is completely unjustified and misdirected. Indeed it could be interpreted as *unpatriotic hostility* to our system. It certainly does not fit into constitutional scheme meant for establishing: Justice: Social, Economic and Political (ibid.).[26]

While arriving at such conclusions, the Commission did not seem to be informed by the logic of cultural autonomy (which was of course suppressive of rights of women) whose protection is a celebrated idea under consociational theories (Lijphart 2001) and explained as broader right to practice religion during the CA (Jha 2002). Perhaps, the Commission underestimated the currents of identity assertion and sided with individualistic notions of equality and justice in the guise of gender equality. Beg mentioned at one place that 'a somewhat desperate search for a group 'identity' only could be disastrous'.

The Rajiv Gandhi government designed Muslim Women Bill 1986 in haste and without consulting the Minorities Commission. Although the role of the Commission was marginal in shaping the discourse on personal laws of minorities during Shah Bano controversy and making of Muslim Women Bill, it made serious attempts earlier to generate consciousness regarding possibilities of codification of personal laws of minorities including Muslim personal law. Before the eruption of this controversy, the Commission had done some intensive studies and proposed changes in personal laws of Muslims, Christians, Parsis and Sikhs. It seems that complete negligence of the Commission by the central government during Shah Bano controversy and in the process of preparing Muslim Women Bill made the issue more complex to resolve. The Commission could have been better utilized by the government for aggregating Muslim views. The government though referred the matter of reforming Muslim personal laws to the Commission after the Shah Bano judgment, could not wait for the process proposed by the Commission to obtain viewpoints of different sections of the Muslim community.[27] In order to ascertain the views of all those interested in in Muslim *Shariat*

[26] Emphasis added.

[27] The Commission asked for two year long time to finalize everything about personal laws as such a matter required expertize and detailed study, with limited finances it was bond to take more time (Eighth

and to formulate its own views, the Commission circulated a questionnaire to 300 addresses including Muslim MPs. Meanwhile Muslim Women Bill was introduced in the Parliament to pacify countrywide unrest on judgment, and this study was left incomplete (Eighth Annual Report 1985-1986: 30).[28] The Bill reaffirmed Muslim community's right to cultural autonomy (Lijphart 2001) even though religious *practices* contradicted principles of gender justice within community (Jayal 2001).

The Commission could not fix its stand in drastically changed circumstances and shifted normative support to personal laws as affirmation of cultural autonomy of religious minorities on the line of the Congress discourse of secularism and minority rights of that time. Still unlike the celebrators of democracy and secularism, the Commission was deeply uncomfortable with the idea of prioritizing cultural autonomy of the Muslim community over gender justice and rights of divorced Muslim women whose numbers were electorally insignificant.[29] This negligence upset Commission's potential to affect and shape minority's viewpoint and probable role of a flag bearer of minority interests. This frustration could be seen in the statement given to media by Chairman when the Commission was asked to express its views on the Muslim Women Bill 1986, which it had refused give. Justice Beg said that

> The Commission neither represents the Central Government nor voices Central Government's policies with regard to religious and linguistic minorities. Its terms of reference constitute it into only an assessing and advisory body….it is for this reason I am stating that the Commission has not considered the Bill at all so far….it will impartially consider its provisions on merit when it is properly called upon to do so (ibid.: 224).

However many more studies had been done and some were underway relative to personal laws of minority communities with the Commission even after Shah Bano case. It reflected upon the Indian Divorce Act 1869 which discriminates against Christian women seeking divorce by putting more stringent conditions in comparison of men if they apply for dissolution of marriage. Christian women may petition for divorce on the

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Annual Report 1985-1986). But the government could not wait for such a long time and urgently needed solution that finally came as Muslim Women Bill.

[28] As this study could not be completed, questions posed in the questionnaire may be found relevant (See Appendix III).

[29] Jayal argues that the debate on Bill was overwhelmingly constructed 'democratic ideal in majoritarian terms' for even minority community. Wishes of 'majority *within* the minority community' were respected as legislators claimed that 80-99 percent Muslims supported *shariat* thus the Bill, which was meant to protect 'male minority rights'. The Muslim divorcees, whose number was electorally so insignificant (0.01 percent), were thought too miniscule to be considered for government's solicitation (2001: 207-208).

grounds of 'incestuous adultery, bigamy with adultery, adultery coupled with cruelty or with desertion of wife for two years upward, rape, sodomy or bestiality, change of religion and marriage with other women'. The Commission found these conditions violated the guarantees incorporated in Articles 14 and 15 of the constitution. Thus, the Commission desired "uniformity in principle" of divorce in agreement with the Law Commission's suggestion that section 10 on the Indian Divorce Act 1869 should be substituted by section 13 of the Hindu Marriage Act (ibid.: 31) that provided for similar conditions of divorce for both men and women of the Christian community.

In the year 1987-88, Commission received two representations from Parsi organizations to support their sand on Parsi personal law. Commission after proper study of both versions of the drafts decided in favour of one.

Statutory Commissions adopted more careful approach towards this issue. These Commissions never proposed any reform or amendment in existing personal laws, but when any minority community came forward with the demands of progressive amendment its personal laws, the Commission applauded such initiative and reinforced the community. In 1994, the Christian community came forward with the drafts of the Christian Marriage Bill, the Indian Succession Amendment Bill and the Christian Adoption and Maintenance Bill. These draft Bills were outcomes of prolong consultation and deliberations within the community including different denominations, churches, women organizations and human rights groups (NCM Annual Report 1995: 21-22). While endorsing the draft Bills, the expressed its pleasure over Christian community's effort-

> The Christians had set an example of an agreed change in their personal laws which other communities should emulate and come up with proposals of reform in their respective personal laws particularly those whose affecting gender discrimination. The reforms should be based on principles of rationality, morality and humanism (ibid.).

When the Supreme Court directed the Law Commission to consult the NCM in *Sarla Mudgal* case to resolve the issue of personal law reforms and UCC, the Commission adopted Cautious response to the Court's call. In conscious a manner, the Commission recognized that enactment of UCC was very complex an issue.

> it seems that time is still not ripe to legislate for a single uniform civil code in the country…personal laws can be rationalized to bring them in tune with the present requirements of assuring human dignity, human rights, and to remove gender discrimination…possibly

> uniform civil code will have to wait enactment of separate rational personal laws of the minority communities which itself is a challenging step, requiring persuasions, tact and acceptance by each religious group (NCM 1995-96: 75-77).

Presently the Commission follows this approach. This statement suggests how the Commission has shifted its earlier passionate outlook to cement personal laws into single UCC ignoring criticisms coming out from communities concerned.

III

Tussle between Group and Individual's Religious Freedom: Excommunication and the Commission

While minorities plea for the Constitutional safeguards to protect their cultural uniqueness from majority's assimilative tendencies, Asghar Ali Engineer argues, that evidences from experiences show that minority communities tend to be discard similar claims of smaller minorities within, that also inspire for certain safeguards against the larger community. In fact, the "'majority' within a minority is, on the contrary, quite ruthless in denying or suppressing these rights of the minority within its own fold" (1997: 1881). Moreover, constitutional provision related to minority rights are very often dominated by a clique in the larger community that denies democracy and religious freedom to smaller sections within the community (ibid.). The state and the Judiciary tend to align with majority within the minority community usually represented by a clique. The case of Bohra community is illustrative of this trend. [30] How internal autonomy of the community crashes smaller minorities and individual rights comes out quite drastically in case of Bohras. Before going into the complexity of the matter, it is necessary to be familiar with the community and its practices.

Bohras form a well-knit and inward-looking community who are Isma'ili Shi''ah by faith. The community is strongly dominated by their religious leader known as the 'Da'i' meaning 'summoner to the faith'. In fact, not Da'i' but Imam is the highest authority in Bohra community who comes from the lineage from Fatima, Prophet Mohammad's daughter. As Imam is supposed to be secluded from public, the Da'i represents for him. Earlier Da'is were considered very pious and god-fearing and promoters community's

[30] Bohra is basically a trading Muslim community and concentrated in urban pockets of various Indian states. Bohra population is nearly one million in India and spread in Maharashtra, Gujarat, Madhya Pradesh and Rajasthan. They are also found in Calicut, Madras, Cochin, Calcutta, Hyderabad, and in other cities. The account of the Bohra community presented here is derived from (Engineer 1997: 1881-1883).

welfare. But this did not remain so in the context growing wealth of the community after the arrival of British rule. Da'is started regulating the trade and evolving new taxation guidelines that in turn made them richer. They tighten the control over community and opposed modern education as it would lead to development of critical thinking in the community which might led to questioning their position. So the first victims of Da'is authority were who opened modern schools for Bohras, four of them punished with *salam band or Barrat*, meaning social boycott and excommunication respectively. The priestly family gradually opted for princely lifestyle and started describing themselves princes. If anyone from the community addressed them otherwise, was punished. Da'is started to describe the community as '*abd-e-Syedna/amat-e-Syedna*' meaning slave or female slave, that the community was actually made. The lives of Bohras were governed by Da'is from birth to death; thing like marriage, naming and starting a business could not be done without their permission. All Bohras have to maintain a tab declaring their assets annually and have to ensure their presence in the study circles to get green card to enter into mosques and religious places. Non-payment of seven religious taxes and absence in the study circles would invite serious punishment. Disobeying Da'i's regulation would result into socio-economic boycott including boycott from one's family. Boycotted or excommunicated person is not allowed to attend his family's funeral or wedding. If anyone maintains any kind of relation with excommunicated person, it is also punished with excommunication. Engineer describes right-less condition of Bohra citizens as

> The Bohras, though formally governed by the Indian Constitution, enjoy no fundamental rights at all. What all is guaranteed by the Indian Constitution and implemented by the government of India, is taken away by the Bohra high priest. A Bohra has neither freedom of speech nor freedom to act according to his conscience. The Bohra Da'is establishment is a government within the country's government (1997: 1881).

Gradually, a reformist section has emerged in the Bohra community that wanted to dilute authoritarian regime of Da'is with its four demands; (a) democratization of local Bohra *jamat*, (b) accountability of Da'is for collected taxes, (c) not interference of Da'is in personal and secular lives, and (d) voluntary payment of religious taxes. But, reformist Bohras along with their supporters were excommunicated and physically assaulted. A commission of inquiry was constituted by Citizen for Democracy run by Jayprakash Narayan, the Nathwani Inquiry Commission named after its chairmanship of Narendra

Nathwani a retired judge. The Commission confirmed infringement of basic human rights of the members of Bohra community and their subjugation by priestly leadership. The moreover found that threat of excommunication is used to control their everyday life activities. The Commission recommended enactment of anti-social boycott measures on the line of the Ajmer Dargah Act (cited in Engineer 1997: 1881-1883, cited in Eighth Annual Report 1995-86: 35). The reformist Bohras were neither getting the support of the larger Muslim leadership, the state nor the judiciary. The rights of Syedna and Da'is were supported under right to manage religious affairs; reformist Bohras are suppressed in the name of maintaining community discipline.

The Bombay Prevention of Excommunication Act, 1949, (BPEA) forbids excommunication or expulsion of anyone from the community to which one belongs. Syedna Taher Saifuddin expelled one member of the community which was declared void under the BPEA 1949 by the Bombay High Court. The Court upheld the validity of the Act depriving Syedna's right to manage religious affairs of his community. The Court argued that excommunication had infringed individual's right legal rights and privillages. Analyzing through the lenses of secularism as separation of religion from state, Smith found the Bombay High Court judgment undesirable interference in community's affair. Smith further said that Bombay Act was appropriate only to the extent it discouraged arbitrary power of denomination over its members. But it would be difficult to do without disturbing internal discipline of the community (1963: 110-111). Syedna challenged the validity of the BPEA, 1949 on ground that it violates religious freedom guaranteed under Articles 25, 26 of the constitution available to religious denominations. The Supreme Court upheld Syedna's authority to excommunicate on the ground that as a head of Dawoodi Bohra community Sardar was obliged to maintain unity and discipline in the community and declared the Act void (Sardar Syedna Taher Saifuddin Saheb vs State of Bombay 1962 AIR 853). To preserve unity and discipline, if needed Syedna may take necessary steps including excommunication. The act of Excommunication is permissible as long as it had a religious cause behind.

While, the Judiciary and successive governments sided with authoritative leadership of the community, the Minorities Commission expressed its will to consider the matter. The Commission received several complaints from the members of Bohra community against the religious head, Syedna Mohammad Burhanuddin Sahib's interference in their secular

lives by threat to use *baraat*. In this context, the Commission also considered the report of the Nathwani Inquiry Commission. Engineer sent a representation requesting the Commission to recommend enactment of law suggested by the Nathwani Inquiry Commission. The Minorities Commission requested to the Secretary to Syedna Sahib to communicate his views on the various allegations made by Engineer. But, he wrote back that grievances of dissident group of Bohras could not be entertained. Asghar Ali Engineer led this Bohra Reformist movement and was assaulted by the community leadership on four occasions (Ibid.).[31] Minority reformist Bohras were considered as instrumental in inviting 'governmental interference' in the affairs the community by priestly class (Engineer 1997: 1883).

Knowing Commission's engagement with reformist, Shri Asad Madani, MP, wrote a letter to the Prime Minister on April 4, 1984 which was forwarded to the Commission asking its exact position on the matter. In his letter, Madani expressed anxiety over Commission's involvement Bohra reformists. He felt that "it may be like opening a Pandora's box if the Minorities Commission is to take notice of dissident groups in the various minority communities" (cited in Eighth Annual Report: 35-36). The Commission replied to that letter and maintained that

> Important questions relating to exercise of civil rights as well as religious freedom within and outside Bohra group call for decision. It is possible that the Commission may give the opinion that the parties should resort as they can, to regular courts after setting out questions arising for decision and its views and recommendations as required by terms of reference which if accepted, may prevent litigation (ibid.)."

In February 1986, the Ministry of Welfare forwarded a memorandum submitted by Engineer on the problems of Bohra community addressed to PM. In the memorandum, he alleged financial irregularities by the priestly family of the community and demanded legislation on the line of Ajmer Dargah Act to regulate finances. He also sent a draft Bill of Prevention of Social Disabilities to curb ruthless exercise of excommunication. The highlighted the significance of reformist Bohras case in relation to broader freedom of religion. The Commission remarked that

[31] Engineer himself was a victim of excommunication. His mother moved out of his house to secure her ties with the community. While his wife and children stood with him and got excommunicated (https://www.thequint.com/women/2016/06/07/bohra-leader-breaks-his-silence-on-female-circumcision-in-india.assessedon22/07/1016). On his excommunication, Engineer attempted to restore his freedom of conscience and profess religion and accessed every possible remedy.

> the question arising out of the grievances made by the dissenting Bohras is extremely important for minorities as well as for the entire country for the reason that the fundamental rights mentioned in the constitution do not give rights to members of any community, individually or collectively, to regulate the opinion or conduct of dissident groups. It does not give any rights to individual, however important they may be in a community, to prevent dissidence within that community on the matter of 'religion' only or properly deemed to be 'religious' only (Ninth Annual Report 1886-87: 33).

The Commission seems to endure individual member Homi J. H. Teleyarkhan who was entrusted to assess the Bill, commended the draft in his report which was endorsed Commission (ibid: 33). Teleyarkhan reasoned that Bill might be an outcome of the conflict within Bohra community, it inspired to the ideal to override pristine purity for democratic purposes rooted in the constitution. He emphasized the need of state intervention and said that it should not stand by and watch such intransigence but the state should ensure that constitutional rights be practiced in reality (ibid.: 214). The Bill in his views rightly dismissed the factors like wealth and social influence in causing social disability to anyone. Bill clarified that disagreement and dissent should not result in discrimination in treatment to dissented (ibid.).

Finding the Commission sympathetic towards reformist Bohras, Asghar Ali Engineer directly sent a representation to the Minorities Commission when Rajasthan government had prevented reformist Bohras to enter into Galiakot Shrine, and allowed Syedna Sahib to visit the Shrine and treated him as state guest. Engineer insisted the Commission to intervene in the matter and take the issue to the Prime Minister. In response Commission wrote a letter to state government of Rajasthan August 11, 1987 (Tenth Annual Report 1987-88: 87), however no reply was received. Bohra Youth Association presented a memorandum to the PM in 1989, reiterating long demands of reformist. Again the Ministry of Welfare forwarded the memorandum to the Commission. This time, the Commission withdrew its sympathy towards reformist under the pressure of the central government. The Commission reasoned that "it could not take sides in the internal dissensions within a minority community (Twelfth Annual Report 1989-90: 75)."

Bohra priestly class known for maintaining close relationship with governments of the time, thus successfully influence policy outcomes at least concerning Bohra community. The earlier reasoning offered by the Commission was reflective of its traditional attachment to individual rights.

Conclusion

This chapter has shown that that acclaimed minority rights; right to propagate religion and to maintain cultural autonomy are under pressure to comply with majoritarian norms. On the other hand individual's religious freedom is also not spared by the majoritarian tendencies. These very rights were secured by the minority communities in bargain of relinquishing political and economic safeguards. Christians managed right to propagate religion in exchange of withdrawal of their demand for special political safeguards (Bajpai 2011). Right to govern through personal laws was pushed hard, particularly by Muslim minority, in the CAD as an expression of broader interpretation of right to practice religion (Jha 2002). Although the Commission's recommendations on anti-conversion laws could not made any difference and such laws are continuously legislated by the different states, they give clues of individualistic interpretation of freedom of religion in the Commission's discourse. It has interpreted religious freedom of conscience and free profession of religion as individual's freedom. Most of the discourse on anti-conversion legislations was centered on individual's right and one's ability to choose a religion. The discourse does not appraise propagation as crucial aspect group right of essentially proselytizing communities. The Commission has utilized lot of its energies to establish that Muslim and Christian communities were not engaged in converting of Dalits, they chose to convert on according to their wish and conscience.

On the other hand, Commission's stand of personal laws reflects anxiety for national integration. The discourse evolved by the Commission, was not appeared to be informed by the nuances of the debate happened in the CA. In most of the studies undertaken by the Minorities Commission showed strong support of UCC and a tension for national integration if it could not be achieved. It seems that for the Commission, cultural autonomy granted to minorities has generated crisis for equal citizenship as far gender justice was concerned. The Commission appeared that over emphasis on cultural autonomy over national integration had hampered progressive modernization of minority personal laws and blocked the cause of gender justice. UCC was the only available remedy against ill cultural practices that have endangered Indian conception of secularism interpreted as equal citizenship and national unity. The discourse offered by the Commission does not appear to carry the notion of cultural autonomy as assurance

against imposition of majority norms but as a problem of secularism. Before Shah Bano controversy, Commission's efforts in the direction of preparing suitable environment for UCC were very enthusiastic, but with the passage of Muslim Women Bill, the grand project failed miserably. In drastically changed situation, Commission lowered minimized zeal for UCC but it remained its cherished goal.

Individual freedom of conscience and to profess religion is compromised to protect community's freedom in Bohra's case. Reformist Bohras really put question marks on the extent of community dominance over the lives of individual members. Initially the Commission came with its well-known zeal of individual rights and supported the claims of reformist Bohras. But in compliance with central government's position on the issue, it came in support of right of religious community or denomination to manage its internal affairs even consciously knowing the stake of individual rights. This position fits well with Gurpreet Mahajan's argument that Indian secularism is characterized by preference to 'equality between groups/communities' and simultaneous negligence of individual freedom (2007: 44).

Chapter IV

Minorities, Discrimination and Quest for Equality

Granville Austin passionately argues that the Indian Constitution is essentially a social document. The fundamental rights given in Indian Constitution are to foster social revolution by creating an egalitarian society where all citizens would be equally free from coercion or restriction by the state or by society, and where liberty would not be a privilege enjoyed by few (1966: 65). Article 14 of the Indian Constitution establishes equality before law' and promises 'equal protection of the laws within the territory of India' (Bakshi 2016: 19). Article 15 of the Indian Constitution prohibits discrimination; (1) 'the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (2) no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to use of shops, restaurants, wells, roads, and other public places' (ibid.: 35) . Non-discrimination provisions of Indian Constitution are not just intended to protect citizens from discrimination by the state but also ensure state's protection of its citizens against society led discrimination. To warrant social equality Constitution has abolished untouchability through article 17 and made it a punishable offence. These Constitutional guarantees have been supported with elaborate legislations like the SCs/STs (Prevention of Atrocities) 1989, 2015, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redress) Act 2013 and the Equal Remuneration Act 1976, and the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 and 2016. These elaborate legal instruments developed for Scheduled Castes and schedule tribes, for women and physically disabled have limited success in eliminating discrimination against these targeted. Although, these legislations are not fully successful in curing discriminatory and derogatory practices against these vulnerable groups in view of emerging fresh forms of discrimination, humiliation, harassments and violence, they offer certain civil, criminal and welfare remedies to facilitate their inclusion and mainstreaming in the society. But there exists no such legislation to protect religious minorities against

discrimination happening on the ground of their religious identity or facilitate their access and inclusion in the state and society.

Minorities are often let-down by the state officials, banks, housing societies and employment agencies amounting to discrimination on the ground of religion without fear of punitive action. In this context, it is interesting to analyze alternative ways minorities opt to counter discrimination and reclaiming equality, approaching Minorities Commission is one such alternative. This chapter examines the case of religious minorities claiming their right to equality and non-discrimination in the absence of anti-discrimination law for them and how the Commission works as facilitating agency.

To ensure mainstreaming and empowerment of historically disadvantageous sections such as Scheduled Castess and Scheduled Tribes, the Constitution had brought them under the net of preferential state policies through quotas in government jobs, educational institutions and reservation of seats in seats in the legislature. In contradiction to its goal of social revolution, the Constitution has excluded similar sections from religious minorities from the purview of preferential policies.[1] Thus, the first focus of the chapter is on implicit discrimination embedded in the Constitution itself against right to equality of opportunity given in article 15 (4) and 16 (4) with special reference to the Presidential Order of 1950. It captures the existing ambiguities of the state policy in relation to addressing socio-economic and historical disadvantages prevalent among religious minorities and why secularism as interpreted in the political fields does not offer equality to minorities when religious identity emerges as a source of discrimination. To grasp the complexities of this issue thoroughly in the context of state policy, I have analyzed how the NCM comprehends these issues and what recommendations it has formulated to deal with them and also what responses it obtained from the state. Moreover this section traces the NCM's stand on the Mandal Commission and identification backward classes among religious minorities along with the emerging discourse in the context of the Sachar, the Ranganath Misra, and Kundu Committee Reports. These reports opened up the bounded discourse on socio-economic backwardness among religious minorities with the legitimization of socio-religious category for preferential policy making.

[1] The chapter one has explained at what terms differentiated provisions were extended to SCs and STs and why the same could not become available to religious minorities.

The second section deals with complaints of covert/implicit discrimination in secular matters that reached the NCM and to identify the sites of discrimination operating in everyday lives of minorities and how the NCM responded to them. In the same section, harassment of minorities on their religious identity by the state agencies and society is analyzed. The last section builds a discussion around the need of anti-discrimination laws which would enable the Commission and the minorities to combat discrimination.

As stated in chapter two, the Minorities Commission was created on the consciousness that the Constitutional guarantees of equality and non-discrimination were not sufficient to create those conditions in which minorities could practically enjoy their rights. Therefore, a watchdog institution was considered necessary to oversee the implementation of these Constitutional safeguards. It was converted into a statutory body in 1993 under the National Commission for Minorities Act, 1992 with the aim of 'instilling confidence in the minorities'. The NCM is given a wide remit of functions pertaining to protection, safeguard and promotion of rights and interests of religious minorities. These may be categorized as evaluative, watchdog, investigative, adjudicatory and advisory functions. Although the Commission is not equipped with investigating agency and backed by anti-discrimination laws, it utilizes its adjudicatory powers to resolve complaints of deprivation of rights. Upcoming sections would give an account of how the NCM utilizes its powers in performing evaluative, watchdog, investigative, adjudicatory and advisory roles in the context of combating direct and indirect discrimination against religious minorities.

Methodologically, the first section is constructed by using representations from organizations/individuals demanding removal of discrimination by extension of preferential policies to Scheduled Castes converts of minority communities. The second section progresses with the contents of petitions received from individuals/organizations reclaiming equality in quotidian terms. While in the first section advisory and recommendatory role comes to the forefront, it is quasi-judicial powers of the Commission come that come to play in the second section. Before going into the details its imperative to look at procedural issues involved in registering complaints at the NCM.

Procedure for Filing Complaints/Petitions

As per the section 7 (3) of the NCM (Procedures and Processes) Regulations 1997 as amended in 2010, the Commission classifies all received complaints into three categories; (a) regular petitions invoking judicial powers of the Commission (b) complaints seeking Commission's intervention for redressal of specific grievances (c) complaints seeking Commission's intercession for securing particular facility / remedy /relief permissible under law. A petition put under category (b) and (c) may at any stage be transferred to category (a). Under the section 7 (4) of the Regulations, when a petition comes to the Commission, whether from an individual or organization, after examining the merit of the matter, Commission asks the petitioner to fill a Form 'B' (I) and return within a specified period. This form is in fact an acknowledgment and complaints are formally registered only after receiving form 'B' from the complainant. If any complaint is to be rejected at early stage on above stated reasons, acknowledgement will mention the same.[2] A Form 'B' (II) requires the complainants to fill personal particulars including basic information of the persons/authorities against complaints are made. In this form, a complainant has to clarify why they think that their grievance or problem is mainly due to their affiliation to a minority community. Complainant has also to mention what he/she expect the Commission to do.[3]

According to section 7 (5), complaints of category (a) shall be decided by the full Commission or as directed by the Bench of the Commission. The Commission decides the petition using its judicial powers as given in clause 9(4) of the NCM Act read with relevant provisions of Civil Procedure Code 1908. Complaints of category (b) and (c) are marked by the chairperson to any member or officer for being taken up the matter to appropriate authorities. The complaints of this category may be directly received by the members, shall be taken up to appropriate authorities under the intimation of the Commission/Chairperson as provided in section 7 (6) of the NCM Regulations 2010. While acting upon a complaint, the Commission 'receives evidences on affidavit' questioning impugned action of the persons/ authorities against whom the complaint is

[2] In an informal conversation, the Research Officer explained the actual track of complaints. He said that even if the lower ladders of administrative body find a complaint not worthy enough for the Commission's consideration, in this situation they have to send it to the top levels of members and chairman with their note indicating reasons of rejection. At last it the members and the chairman who finally decide to reject any complaint.

[3] See Appendix III.

being filed in the Commission by using Form 'C'. When persons/ authorities don't send reply, then Commission sends reminder to them using Form 'C-1'. Moreover, under the section 7 (7), the Commission takes *suo moto* cognizance of any general/ special grievance relating to a minority individual/ group/ institution/ organization, on the basis of media reports or otherwise, without any specific complaints having being received in this regard (NCM Handbook of Laws, Rule and Regulations, 2010: 40-41).

Procedure for Hearing

Not all cases/petitions/complaints require hearing invoking judicial powers of the Commission because the authorities concerned have taken cognizance of the matter by acting suitably, and their replies have been found satisfactory by the Commission. Hearing takes place only when the Commission does not find replies sent by the concerned authorities satisfactory then Commission sends summon notice as contained in 'Form D'. Once a hearing is called both sides should come in person or send their representatives to defend their said position in initial replies. After analyzing evidences produced by both parties, the Commission formulates and conveys its decision to them.

I

Secularism, Historical injustice and Religious Minorities: Dalit Muslim and Dalit Christian

The right of religious freedom as granted by the Constitution of India (Articles 25-28) can be called as the bedrock of a secular democratic state as it has guaranteed freedom of religion to profess and practice any religion to all of its citizens whether of majority or minority. Simultaneously, the Constitution forbids all kinds of discrimination including one based upon religion under article 15. Moreover, it has made the pursuit of equality as one of the cornerstone of the state policy. D. E. Smith made a point that the 1950 Constitution should have resulted in a clear and uniform policy of treating citizens. 'Like should be treated alike' as Article 15 (1) has provided that state shall not discriminate against any citizen on the ground of religion and caste etc. (1963: 322). Similarly, Article 15 (4) provides for state intervention for the advancement of any socially and educationally backward classes of citizens or for Scheduled Castes and the Scheduled

Tribes. Further, Article 16 (4) reads 'Nothing in this article shall prevent the State from making any provision for the reservation of the appointment or post in favour of any backward class of citizens which in the opinion of the State, is not adequately represented in the services under the State' (Bakshi 2016.: 39). Several measures have been taken to remove social and economic disabilities of weaker sections by making provisions for compensatory or positive discrimination. Marc Galanter divided preferential policies of compensatory discrimination into three broad categories. Firstly, policies that involve preferences in redistribution of scarce state resources such as reservation in government jobs, legislature etc. The second involves redirection of public funds to enabling purposes such as scholarships, concessions in fees etc. Thirdly, the enactment of protective legislations against social discrimination and atrocities based of caste (Galanter 1994). Smith has argued that post-independence state practices indicate selective identification of beneficiary groups for this purpose and deliberately keeping some other group away from the list of Scheduled Castes for the purpose of preferential policies. Interpretation of Article 341 has produced almost opposite result in accordance to which the Presidential Order of 1950 was promulgated (Smith 1963: 332). The Order had initially restricted the benefit of reservation in public services and legislatures only to the Hindu disadvantageous groups identified as Scheduled Castes (ibid., Galanter 1994).

As the chapter one has shown, it had become clear during the Constituent Assembly Debates that erstwhile Untouchables of Hindu community would be the only target groups for compensatory policies in independent India ignoring similar sections existing within minority communities. Therefore, the Presidential Order of 1950 limited the benefit of reservation in public services and legislatures only to the Hindu Scheduled Castes, but four Sikh backward castes were also considered in exchange of withdrawal of Sikh demands of political representation (Galanter 1994: 119, Bajpai 2010). Galanter argued that religion (Hinduism) has been made a qualification for preferential treatment leading to the entrenchment of the Hinduism and consequently discriminating against other minority religions (1994:119). The Presidential Order 1950 identifying Scheduled Castes clearly states that 'no person professing a religion different from Hinduism shall be a deemed member of a Scheduled Castes' (1950). The Order 1950 was broadened to include few castes from Sikhism and (neo) Buddhism in 1956 and in 1990 respectively,

both religions of the Indian origin. Their inclusion in the Scheduled Castes list was rooted in the logic used in the construction of the 'Hindu' in the Article 25 b Explanation II. Explanation II clarifies that 'reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly' (Bakshi 2016: 84). Even before these amendments were made, several states have had extended Scheduled Castes status to Dalits of these two religions but special benefits enjoyed by the Dalit Christians under the colonial rule were withdrawn after independence (Smith 1963: 322-326) and Dalit Muslims were never considered for this purpose.

The legal precedence on defining Hinduism has been ambiguous leading to application of Hindu law on numerous socio-religious categories. 'Heterodox practice, lack of belief, active support of non-Hindu religious groups, expulsion by a group within Hinduism-none of these remove one from the Hindu category' (Galanter 1994: 119). Only conversion from Hinduism to Islam and Christianity causes loss of caste for the purpose of preferential policies along with loss of Hinduism. Galanter has given ample evidences from the analysis of the judicial decisions concerning status of caste in case of conversion from Hinduism to non-Hindu religions. His analysis revealed the Judiciary's unwillingness to recognize 'intactness of caste' after conversion, flow from the court's identification of caste as part of sanctified order of Hinduism. Caste and Hinduism are considered dependent on each other to the extent that abandonment of the Hinduism means abandonment of caste (1994: 132) and return to Hinduism means return to caste.

The subsequent amendments in the said Order in 1956, and in 1990 expanded to include only the Scheduled Castes of the Sikh and Buddhist origin, respectively, and denied the same to the Muslim and Christian Dalits, which is a complete disregard to the promise of equality and non-discrimination based on religion in matters of state policies as guaranteed by the Constitution. But the root of this discrimination lies in making of the Constitution itself. While political safeguards for religious minorities were withdrawn stating its dangerous divisive effects, minorities could not push their demands for socio-economic safeguards hard enough leading to withdrawal of these provisions (Tejani 2013). Religious identity of minority communities was given precedence over their backwardness and socio-economic inequalities. State intervention was justified for Scheduled Castes and Scheduled Tribes on the grounds of historic inequality; same was

not done for the similar section among religious minorities. Community identity emerged as more dominating and forceful theme that preservation of community identity was preferred over socio-economic and political rights (ibid. Jha 2002). In fact, religious minorities failed to argue successfully against their own marginalization and backwardness which was ultimately reflected in the Constitution. Thus, non-intervention in religion (i.e. protection of the religious identity of minority community) rather than positive intervention to eliminate socio-economic inequality was defined as a secular state (Tejani 2013: 219).

Many studies done on the existence of castes among the religions of originated religions, found caste as a key feature of all major religions in India including Islam and Christianity.[4] Denying the benefits of preferential policies to the Muslim and Christian Dalits is found to be a complete disregard to the promise of equality and non-discrimination in matters of religion as guaranteed by the Constitution. Moreover, the inbuilt punishment for converting to Islam or Christianity is the loss of Scheduled Castes label necessary to enjoy the benefits of preferential policies which are not available to Dalits belonging to religious minorities. Incentives in case of the Dalit Muslims or Christian Dalits returning to the fold of Hinduism/Buddhism/Sikhism are evident from the fact that the person can reclaim the attendant benefits denied to him by virtue of his or her earlier conversion to Islam or Christianity. This has become the site of struggle for Dalit Muslims and Christians who have challenged the Constitutional validity of Para 'three' of the 1950 Order. The main point of this argument by the sections demanding Scheduled Castes status is that the denial of Scheduled Castes status to Dalit Muslims and Dalit Christians constitutes a violation of Articles 14 (equality before the law); 15 (prohibition of discrimination on grounds of religion); and 25 (freedom to profess and practice any religion) of the Constitution. Regaining preferential benefits, thus, means allurement of preferential benefits to revert to his/her original religion; allurement is something that many states have intended to control through anti-conversion legislations, but the question of return to Hinduism remained unproblematic. The NCM has pointed out this anomaly and recommended that if the intention of ant-conversion legislations is to prevent the use of force and fraud in conversion, same provision must be applied on

[4] For detailed discussion see Imtiaz Ahmad, ed. (1978) *Caste and Social Stratification among Muslims in India*, Manohar Book Service, New Delhi.

re-conversions (ibid.: 42-23) as persons who once sought conversion are often forced or allured for reconversion or could be simply allured for the preferential benefits.

The implications of non-recognition of Scheduled Castes among Muslim and Christian are not only limited to the unavailability of benefits of preferential policies, it also oblivion of the fact that these groups also suffer from the practices of Untouchability. Studies suggest that Dalit Christians like all Dalits meted out similar degrading treatments from the upper caste Hindus (Kumar and Robinson 2010), Dalit Sikhs and Dalit Muslims meet analogous fate. James Massey, (2007), a former member of the NCM who has closely worked with the Dalit Christians, found evidences of social segregation of Majhobali (Dalit) Sikhs and Dalit Christians who were living at the outer peripheries of a village called Zafferwal in District Gurdarpur, Punjab. Dalit castes among Muslims also suffer from similar practices of social segregation (Imtiaz Ahmad 1978, Aftab Alam 2014). Non-recognition of the persistent practices of untouchability among Dalit Christians and Dalit Muslims deprive them from seeking safeguards available in the Scheduled Castes/Scheduled Tribes Prevention of Atrocities Act 1989.

In its very first report the Minorities Commission paid attention to the lack of employment and educational opportunities to minority communities. It recognized the plight of members of Christian and Buddhist Dalits who were deprived from the benefits associated with Scheduled Castes before conversion (1978: 9-11). During the third year of its working, Commission received representation from Scheduled Castes converts of Muslim, Christian and Buddhist communities for continuation of privileges similar to those enjoyed by the Scheduled Castes of Hindu and Sikh communities. The Commission advocated their claims on practical grounds. It had *prima facie* observed that 'Since the Christian, Muslim and Buddhist of Scheduled Castes origin continue to suffer from social and economic disabilities even after their conversions; there should be no objection to availing of the concessions admissible to them before conversion' (Third Annual Report 1980: 31).

In the year 1981-82, the Commission received a large number of representations from various individuals and organizations associated with Christianity, Buddhism and Islam complaining that the Constitutional provisions and orders granting concessions, privileges and facilities only to Scheduled Castes of Hindu and Sikh origins, were discriminatory as they have excluded any person who professes religions other than

Hinduism and Sikhism from the preview of these concessions and facilities (Fourth Annual Report 1981-82: 55). Responding to these representations, the Commission kept its earlier position intact. The Commission maintained that religious conversion could not brought vertical mobility to the Scheduled Castes in the society so they should be considered Scheduled Castes for practical purposes. It recorded that

> Scheduled Castes could not be liberated even after their conversions to Christianity, Islam and Buddhism and continue to suffer from same caste and class prejudices. These converts remained underrepresented in legislative and other bodies and their voice is never heard and thus their sufferings are not mitigated. The Kaka Kalelkar Commission appointed by the government of India, Nettor Commission and Kumara Commissions of Kerala and the Backward Classes Commission of Andhra Pradesh also recognized the fact and recommended, in their reports that *such converts should be regarded as members of Scheduled Castess for all practical purposes despite their conversion*[5] (ibid.: 55-56).

The Commission emphasized that several state governments had extended one or the other kind of facilities to these converts by including them into the category of backward classes. However, the nature and kind of concessions and facilities differed from one to another state with overriding income criterion for determining the eligibility to these concessions and facilities in the most cases. The Commission found that recognizing Scheduled Castes converts as OBCs is better than labeling them as Scheduled Castes again, it has insisted that

> This seems better than continue them as members of Scheduled Castes which they are technically *cease to be*. In fact, conversions are said to have taken place to escape a humiliating classification and status. *Should these be re-imposed*? Is that not the effect of continuing to treat them as members of Scheduled Castes (ibid. 56)? [6]

Instead of delving into the reasons behind granting special facilities to the Scheduled Castes who were erstwhile Untouchable s, the Commission seems to misunderstand the category Scheduled Castes as revealed by the above statement. Constitutional provisions related to equality, non-discrimination and abolition of Untouchability aimed at transforming traditional social status of the Scheduled Castes. They are called Scheduled Castes because certain castes identified as Scheduled Castes for the purpose of preferential treatment. Moreover, it was the Presidential Order 1950 which was not considered Scheduled Castes converts of Christianity, Islam and Buddhism as Scheduled Castes although their social reality remained the same; conversion had not provided them

[5] Emphasis added.
[6] (Emphasis supplied).

vertical social mobility on caste hierarchy, they live at the same place with the same people in the same society (Ahmed 1978). Further, the Commission recognized how denying these benefits worked as deterrent against freedom of religion as many Scheduled Castes converts opt to reconvert to regain these benefits (Fourth Annual Report 1981-82: 55-57). In this regard the Home Ministry informed the Commission that the demands of Scheduled Castes converts to Christianity and Buddhism were pending for consideration and certain benefits was extended to neo-Buddhist which were available to them prior to conversion. The Commission proposed that Scheduled Caste converts to Christianity and Islam should also be, at least, given benefits made available to neo-Buddhist (ibid.: 58).

Meanwhile the Gopal Singh Report 1983 recognized the reality of Christians and neo-Buddhists claims of Scheduled Caste status and advocated similar benefits and concession for them. Panel argued that

> The Christians and the Neo-Buddhists need the same kind of concessions for their converts from the Scheduled Castes as are offered to the Hindus and Sikhs. Their plea, we recommended, should be headed with utmost sympathy. They to suffer from the same economic handicaps and social neglect and isolation as the Hindu Scheduled Castes (1983: viii).

The Panel though not considered the issue of Dalit Muslim separately, argued that preferential policies should be made religion neutral as identification of beneficiaries was found to be religion biased. It had pointed out that while no concession could be given to any particular section of population on the basis of religion as the country was secular, but the most deprived section of population given concession, namely, Scheduled Castes solely on the basis of religion (ibid.: 109). Zakaria Rafeeq, a member in the Gopal Singh Panel, said that the report of the Panel was 'eye opening' it pointed out that the economic condition of Indian Muslims was worse than that of Scheduled Castes and recommended strong policy interventions including reservations for their upliftment (1995: 163). The Panel's analysis that Scheduled Castes category as identified under the Presidential Order 1950 was contingent upon religion amounting discrimination, did not inform the Minorities Commission's views on this matter. The Commission continuously advocated policy concessions to Dalit Muslims, Dalit Christians and Neo-Buddhist, but never questioned their exclusion from preferential net as a case of policy discrimination.

This matter again surfaced in the year 1990, when the Commission received a representation from Evangelical Graduates' Fellowship of Hyderabad, stating how

Andhra Pradesh government passed an order (H. O. Ms. No. S. W. (J) dated 08/03/1990) which discriminated against Scheduled Castes who choose to convert into Islam and Christianity, in fact imposed limitations on their freedom to profess religion of their choice by placing economic threats. According to the Order a person who has secured appointment in the government service on the basis of his Scheduled Castes status but later choose to convert to any religion other than Hinduism or Sikhism during his service tenure, his/her appointment should be cancelled immediately and all the benefits and concessions including Constitutional safeguards meant for such caste person shall be withdrawn forthwith. Evangelical Graduates' Fellowship alleged that 'it was a clear case of religious discrimination and a threat on Scheduled Castes employees who embrace Christianity or Islam or any other religion' (Fourteen Annual Report 1991-1992: 64). In this connection the Commission communicated its views to the Ministry of welfare and to the National Commission for Scheduled Castes and Scheduled Tribes (NCSC/ST), pleading a humanitarian consideration to Scheduled Castes converts of Islam and Christianity. It conveyed to NCSC/ST-

> in the view of the fact that the benefits of certain social welfare and educational schemes had been extended to the Scheduled Caste converts to Buddhism, known as neo-Buddhist, the Commission was of the view that the same benefits should be extended to Christianity and Islam, and accordingly, the concessions and benefits of non-statutory nature may be extended to them on *humanitarian grounds* (ibid.: 65).[7]

The SC/ST Commission replied, basing its position on the Presidential Order 1950, only persons professing either Hinduism or Sikhism could claim Scheduled Caste status. Therefore, the government of India was not able to extend benefits to Scheduled Castes converts to Buddhism (ibid.). But the Ministry of Welfare informed the Commission that a Bill for according similar benefits for neo-Buddhists as available to Scheduled Castes was next to be introduced in the Parliament in upcoming session, later bar on Scheduled Castes converts to Buddhism was removed by the Ministry of Welfare under Circular No. 12016/23/90/-SCD (ibid.: 66-67).

Inspired by the inclusion of Neo-Buddhists in the Presidential Order of 1950, Archbishop of Delhi sent a representation to the Commission requesting to include Scheduled Castes converts to Christianity on the same line as happened in case of neo-Buddhists. The Commission acting upon this appeal, requested on April 1990 to the Ministries of Home

[7] Emphasis added.

Affairs and Welfare to intimate about the government policy in this regard, but they choose to mute with 'no reply'. Again in September 1991, the Commission sent similar requests to these Ministries with a note to associate the Commission in taking decisions pertinent to minorities and to expedite the decision regarding extending facilities to Scheduled Castes converts to Christianity and Islam (ibid. 67). The consequent outcome remained 'no reply'.

This series of communication between Commissions and Ministry of Welfare indicate how overlapping jurisdictions and lack of coordination among the Commissions and government departments lead to a state of confusion, and how the government reserved the most crucial role in designing policies for disadvantaged sections without consulting institutions meant for their protection and advancement. Moreover, inability and reluctance of the NCSC/ST to expand the preferential net to include persons of converted religions became clear from this incident. In this case, both, the NCSCST and Minorities Commission were kept uninformed about the upcoming policy for neo-Buddhists which became under the jurisdiction of these bodies. Such actions of the government, in fact, seems to achieve political benefits in targeted groups but reduce reliability of institutional mechanisms created for them by ignoring their views or by simply reserving 'no reply'.

After the Commission received statutory status, some Christian institutions representing Dalit Christians drawn Commission's attention regarding the problems faced by them as irrespective of their socio-economic conditions they lose benefits of affirmative policies on conversion to Christianity (NCM Annual Report 1995-96: 32-33). Again, the Commission invited the attention the Ministry of Welfare in this regard and made a recommendation pointing to the legal anomaly of the Scheduled Caste category and exclusion of similar vulnerable and deprived sections of Christian and Muslim communities. The Commission made the point-

> When a Scheduled Caste/Schedule Tribe person converts to Buddhism, he continues to enjoy the privileges/facilities as a Scheduled Caste/Schedule Tribe, while SC/ST converts to Christianity or Islam are deprived of such benefits…the Commission thus recommends…that the SC/ST converts to Christianity or Islam Should continue to enjoy the benefits as SCs/STs at par with SC/ST converts of Buddhism so as to remove this anomaly (ibid.: 177).

In a note sent to the government, chairman of the Commission, Mahmood emphasized inconsistency and discrimination in the identification of groups entitled to preferential

policies and highlighted the fact that special provisions for religious communities is not against the spirit of the Constitution. All the "special provisions made for Scheduled Castes are, in effect reserved for Hindus, Sikhs and Buddhists" Advocating extension of these provisions to Dalit Muslims and Dalit Christian, he argued that if these provisions are Constitutionally valid and not contradictory to the Article 15 (1) and (2) which clearly prohibit discrimination on the ground of religion, thus, on the same footing backward sections within religious minorities would also not contrary to Article 15 (1) and (2) (Mahmood 1997: 21-22). The NCM wanted to conduct extensive study on the theme but due to financial constrains could not do so.

It is worth noticing that judicial response on the question of Dalit Muslim and Dalit Christian facing similar social disabilities that of Hindus, has been largely negative, weakening their case. Judiciary always turned down the demand of SC status of these sections on the basis on the Presidential Order 1950. This issue was raised by Rajesh Ranjan through a Calling Attention Notice on 'the need to include Dalit Muslims, Dalit Christians and certain other backward communities in the list of Scheduled Castes/ Scheduled Tribes and provide reservation benefits to them' in the Parliament on 18 December 2003. In response, the Minister of Social Justice and Empowerment Dr. Satyanarayan Jatiya said that the Scheduled Castes list was prepared in consultation with the Registrar General of India and the NCSC/ST. Both of them rejected the need of inclusion of Dalit Muslims, and Dalit Christians in the list of Scheduled Castes/ Scheduled Tribes to provide reservation benefits to them. The Registrar General of India argued that recognition of caste stratification among Dalit Christians could become a matter of international controversy as it would appear that India was imposing caste system on the Christian community. Moreover, he opined that there would be serious discontent among the Muslim community if some sections of the community were recognized at par with those of Hindu castes on the ground untouchability as Islam denounced any such practice in principle. Thus, caste recognition and reservations could not be justified in their case. The NCSC/ST also did not find confirmation of Scheduled Castes status to Dalit Muslim and Dalit Christians justified (Jatiya 2003). It is worth mentioning that the Ministry of Social Justice and Empowerment was not consulted the NCM.

In 2006, the findings of the Sachar Committee came out which extensively documented and socio-economic and educational backwardness of the Muslim community providing a kind of legitimacy to the earlier claims of special socio-economic provisions for the community. The Committee confirmed the presence of caste divisions in the Muslim community as *ashrafs*; equivalent to Hindu upper castes, *ajlafs*; corresponding to Hindu OBCs, and *arzals*; equivalent to Hindu SCs, the (2006: 193). However the question of Dalit Muslims or *arzals* was not given in its terms of reference, the Committee recommended that *arzals* should be absorbed into the Scheduled Castes list or they should be placed in a separate category of Most Backward castes carved out of the OBCs (SCR 2006: 195). This recommendation was neither explicitly accepted nor rejected but put on hold by the Government (http://www.kscminorities.org/pdf/SacharCommitteeStatusReport.pdfAccessedon10/05/2015) reflecting ambiguous accommodation of minorities in policy framework of the state. Thus, state again showed its unwillingness to extend preferential benefits to Dalit Muslims entrenching its policy vagueness towards minorities.

On the other hand, NCM under the chairmanship of Hamid Ansari entrusted Satish Deshpande, a Professor of Sociology in Delhi University, to study the contemporary status of Dalit Muslims and Dalit Christians in terms of their material well-being and social status, their comparative situation with the non-Dalit segments of their own community as well as the Dalit segments of other communities. Moreover, the study was to find out whether the disabilities suffered by these groups justify state intervention within the spirit of the Constitution as interpreted by the Judiciary, and in keeping with evolving national norms (2008: viii). This study was proposed by the Commission only when the Sachar Report was already came in public domain an was acclaimed for challenging the old taboo 'religious communities' as ineligible subject for public policy. Even during 1980s and 90s, the Commission desired to undertake a study, as done by the Sachar Committee, on the socio-economic status of minorities. One of the proposed studies of the Commission in 1980s was focused on the socio-economic status of Scheduled Castes converts to Islam, Christianity and Buddhism, but failed to initiate any such study due to lack of funds (Tenth Annual Report 1988-99). The cause behind inability to initiate such studies might also due to the unavailability of legitimate grounds

of policy formation for religious minorities which became available after arrival of the Sachar Committee Report.

Deshpandey's study found that 'Dalit Muslims are the worst off among all Dalits, in both the rural and the urban areas' (ibid.: ix). They are totally missing in the prosperous income group in urban spheres. The study suggests that there exists 'a significant gap between Dalit Muslims, and Dalit Christians and Dalit Sikhs', and Dalit Hindus share almost similar material status and poverty levels with Dalit Muslim (ibid). Sikh Dalits may be placed at number one position in terms of affluence; Dalit Christians follow them who are relatively better off than Dalits of other religious communities (ibid.). The report categorically endorsed Scheduled Caste status for Dalit Muslims and Dalit Christians:

> *…there is no compelling evidence to justify denying SC status to DMs and DCs.*[8] If no community had already been given SC status, and if the decision to accord SC status to some communities were to be taken today through some evidence-based approach, then it is hard to imagine how DMs and DCs could be excluded. Whether one looks at it positively (justifying inclusion) or negatively (justifying non-inclusion), the DMs and DCs are not so distinct from other Dalit groups that an argument for treating them differently could be sustained. In sum, the actual situation that exists today – denial of SC status to DMs and DCs, but according it to Hindu, Sikh and Buddhist Dalits – could not be rationally defended if it did not already exist as a historical reality (Deshpande 2008: 81).

Deshpande has argued that the objections raised against the recognition of Dalit Muslims and Dalit Christians were based on political calculations and pragmatism rather grounded in principle (ibid.: 82). The report simultaneously presented an overall picture of Muslim backwardness. When it compared material wellbeing of Dalit and non-Dalit Muslims, it found less inter castes differential in among them. In other words, Muslim community as a whole was found to be worse off in comparison with other communities and their condition was somewhat like Dalits. As a result intra-community differential was least in the Muslim community especially in the urban spaces. On the other hand intra-community differential was greatest in Christian community reflecting the presence of upper caste Christians in affluent class (ibid.: ix). That is why, a section of Muslims wants reservation for whole community. The Commission endorsed the report.[9]

[8] Emphasis original.

[9] Upper caste priestly class of both Christian and Muslim communities have been antagonistic to the demand of Scheduled Castes status for Dalit Christians and Dalit Muslims as it would lead to identification of castes within these communities which would to break down homogenous community identity.

The Rangnath Misra Commission, which was appointed 29 October 2004, before the appointment of the Sachar Committee, and submitted its report on 10 May 2007. This Commission was given broader terms of reference pertaining to preferential policies that included suggesting 'criteria for the identification of socially and economically backward sections among religious and linguistic minorities' and to recommend measures of their welfare including reservations. Further, the terms of reference were modified to include an assessment of paragraph 3 of the Presidential Order 1950 that declares only Dalits of Hindu, Sikh and Buddhist religions can be included in the Scheduled Caste list to become beneficiaries of preferential policies. The Commission was to made assessment in view of 50 % ceiling on reservations and also the possibilities of inclusion in the list of Scheduled Castes (2007.: 1-2). Thus, Misra report made such recommendation that further made the case of inclusion of religious minorities within the purview of preferential treatment. It had suggested more concrete steps in form of reservation scheme for religious minorities as it recommended wide-ranging affirmative action, including quotas for Muslims, Christians and other religious minorities in educational institutions, government jobs and employment, and proposed that the Scheduled Caste net be made 'fully religion-neutral' (2007). It recommended that 15 percent seats should be earmarked by law for the minorities in non-minority educational institutions, in government jobs of cadres and grades under the Central and State Governments, and in all government schemes like Rural Employment Generation Programme, Prime Minister's Rozgar Yojna, Grameen Rozgar Yojna, etc. And within this 15 percent, 10 percent were to be reserved for the Muslims in accordance with their 73 percent share the total minority population at the national level) and the remaining 5 percent for the other minorities (ibid: 150-55). It submitted its report in 2007 but the government did not show much enthusiasm in implementing its recommendations and was kept in secrecy for two years and revealed it in 2009. One interesting fact about this Commission was that its recommendations echoed the NCM's recommendations made from 1995 to1998 as former chairman of the NCM, Tahir Mahmood was also membered in the Misra Commission. Most of the report was written by him (Mahmood 2016: 218). The Post-Sachar Evaluation Committee repeated the recommendations of the Misra Commission to ameliorate the condition of Muslims. It highlighted the fact that 'lack of political will'

was the most important predicament in policy inclusion of Muslims in general, Dalit Muslim and Dalit Christian in particular (2014).

Irrespective of Religion: The Mandal Commission and Expansion of Affirmative Action to Other Backward Classes

The chairman of the Sub-Committee on Fundamental Rights, Sardar Patel himself supported the inclusion of word 'classes' in place of "minorities" on the ground that 'Minorities is included in the classes'. K.M. Munshi also argued that classes include minorities. Father of the Indian Constitution Dr. Ambedkar was also of the view that classes include minorities. The Supreme Court considered the speeches of members of the Constituent Assembly while pronouncing judgments on the reservation provided to backward classes. However, reservations for minorities on the basis of their backwardness were not found sympathetic considerations from the Judiciary. Thus the implicit or vague language used in the Constitution gave scope to the Judiciary to interpret the term 'class' or 'classes' in either ways i.e. inclusive or otherwise of minorities.

At the all India level, the issue of OBCs was attempted to be addressed by instituting two backward classes' commissions with the mandate to evolve the criteria of backwardness, identify social groups on that basis and suggest measures to ameliorate their condition. Of the two, the report of the first commission (Kaka Kalelkar Commission 1955) was rejected by the Union government for having used 'caste' and not the economic criterion for identifying backward classes. The report of the second backward class commission (Mandal Commission) was partially implemented in 1991 more than a decade after it was submitted.

The second round of extension of preferential policies (OBC reservation) has been closely associated to the Mandal Commission which submitted its report in 1980. By the time, the Commission entered into fourth year of its career, the Report of Backward Classes Commission (Mandal Commission) had arrived and became a matter of public debate. The Ministry of Home Affairs sought Commission's opinion on the question whether adoption of different criteria for identifying backwardness of classes of people amongst Hindus and non-Hindus, is vitiated in law due to discrimination (Fourth Annual Report 1981-82: 11). While responding to this query, Commission found that different

criteria were used to identify backward classes among Hindus and Non-Hindus, and made it clear that caste could not be made the test of backwardness amongst non- Hindus whose religion does not permit caste classifications.[10] Moreover, it found Mandal Commission's recommendations constitutionally unacceptable as 'they did not disclose justifiable discrimination bearing a rational relationship to the object of such discrimination, which should always be removal of backwardness'. Further, the findings were against the intention of the Constituent Assembly which was intended to identify backwardness in other communities on the grounds other than caste or community (ibid.: 196). The Minorities Commission argued that 'the classification of citizens based on caste of the citizens may tend to perpetuate the caste system itself' (ibid.: 188). On the basis of readings of several Supreme Court judgments, Minorities Commission reasoned that occupation and place of habitat coupled with poverty might be a more viable way of identifying social backwardness. (ibid.: 188-189). Besides, it was very critical to the Mandal report in terms of its methodology and criteria developed to identify backwardness. The Commission finally concluded:

> The classification adopted, in the case of Hindu citizens are distinct and different from classification among the non-Hindus. The predominance of caste, as the basis of the classification among Hindus of supposedly backward classes and an attempt to introduce something similar for non-Hindu classes has failed in want of data. The inter se classification in both Hindu and Non-Hindu sections of population seems arbitrary, and even apart from the failure to lay down uniform principles of identifying backwardness within each section of Indian citizens, are also vitiated by failure to justify the classification by rational connection with the object of it, which is removal of backwardness (ibid.: 197).

The Mandal Commission's report unambiguously stated that state assistance should be given to all genuinely backward sections of people irrespective of religion or caste which many thought would end discrimination against the poor among the minorities. The Commission at least established a 'religion neutral' if not 'caste neutral' criteria to identify the beneficiaries of affirmative action. It was implemented after a decade of its submission that too partially. At that juncture the face of the Minorities Commission was

[10] It is strange to note that the non-statutory Commission believed in pervasiveness of caste system among Muslims, Christians, Sikhs and Buddhists as it recommended inclusion of Scheduled Caste converts into list of Scheduled Castes on humanitarian grounds. When the caste was made criterion to determine backward classes by the Mandal Commission, the Minorities Commission found that 'caste could not be made the test of backwardness amongst non- Hindus whose religion does not permit caste classifications'. These two positions on caste among non-Hindu or minority communities reflected ambiguous understanding of the Commission on this issue (Fourth Annual Report 1981-82: 170).

completely changed, it was now constituted with different members and chairman whose orientation signified a shift in the Commission's attitude towards the Mandal report and the relationship between caste and social status. Now the Commission was reasonably positive with caste criterion of the Mandal but dissatisfied with the meager benefits for weaker sections in minority communities (NCM Annual Report 1993-94). Besides the Kaka Kalelkar and the Mandal Commission at the centre, various state governments instituted their own backward classes commissions and have evolved distinct approaches to grant reservation to backward classes. West Bengal, Kerala, Uttar Pradesh, Bihar Karnataka, Assam, Jharkhand, Punjab, Himanchal, Andhra Pradesh, Gujarat, Delhi, Maharashtra, Chhattisgarh and Tamil Nadu have evolved their own backward classes commissions to include Muslims on OBC list to varying degrees (SCR 2006: 198-99). The NCM in its statutory avatar, endorsed caste based identification of beneficiaries for the purpose of preferential policies both as Scheduled Castes and OBCs.

Key features of the discourse proposed by the non-statutory Commission concerning Scheduled Castes converts of minority religions during 1980s and in early 1990s carried reluctance and minority religious community as problem in secular state. It could not come out of the legitimacy crisis[11] created by the preferential scheme under the Presidential Order of 1950 and was not able to challenge this scheme in any meaningful way. It could not take resources from 1956 and 1990 amendments in the Presidential Order of 1950 which included more Sikh and neo-Buddhist castes into the ambit of preferential policies. Therefore, its arguments could not reach to the level of sophistication from where it could advocate continuation of benefits to Scheduled Castes converts to Islam and Christianity on the constitutionally valid grounds and recommended continuation of benefits on *humanitarian grounds* only. On the other hand, the statutory Commission began strongly advocating similar benefits to Scheduled Castes converts to Christianity and Islam on more legally sound basis. Under Sardar Ali Khan and Tahir Mahmood, the Commission pointed out this constitutional anomaly. Tahir Mahmood who because of his expertise in Law forwarded this case rigorously,

[11] It is necessary to repeat that the Presidential Order 1950 wanted a claimant of Scheduled Castes to compulsorily profess either Hindu, Sikh or Buddhist religions, creating legitimacy crisis for demands of Scheduled Castes converts to Islam and Christianity be treated at par with Hindu, Sikh, neo-Buddhist Scheduled Castes.

Mahmood later became member of the Ranganath Misra Commission 2007 that recommended making Scheduled Castes net 'religion neutral'.

There are various other ways in which state agencies and society practice discrimination against religious minorities. Some of them are noticed and recognized by state and its institutions whereas others are made intangible by non-recognition. For instance, an act of stigmatization involving Sikh community in common jokes is generally goes unrecognized as measure of discrimination.

II

Registering Social Discrimination against Minorities: Tracing Evidence of Institutional Communalism

Vidhu Verma argued that in India, justice, equality and non-discrimination are perceived as interdependent and complimentary to each other. Justice is aimed at achieving equality in society. Discrimination as a separate issue of study is ignored and understood mostly through the lances of justice constructed in terms of (re)distribution of goods as exclusion from resources and public institutions. However, non-discrimination also indicates that justice is not only about misdistribution of goods, certain discriminations and deprivations are part of interconnected socio-political acts like illtreatment by police and vulnerability to violence, bounded labor, and unemployment (2015: 69-70). Justice constructed in terms of non-discrimination is embedded in emotions, power, domination-subordination, and intimacy-hatred. Therefore, resistance and corrections on discriminatory practices might not result into better distribution of resources but they might reduce the humiliations and injuries perpetrated on minority groups (ibid). Many countries in the West had recognized uneven outcomes of formal-legal framework of equality and non-discrimination for excluded and marginalized sections of society. States like USA and UK have recognized the forms direct or indirect discriminations and evolved elaborate regimes of ant-discrimination legislations and introduced anti-discrimination laws in 1970s. In the twenty first century these legislations are supported by positive duties to promote equality in society (Verma 2015: 67). Direct discrimination refers to the forms of activities of public or private agencies that tend to discriminate a person on prohibited grounds. On the other hand, indirect discrimination is not directly

or explicitly discriminate on the basis of a prohibited ground, but produces unfavorable and disparate impact for the person possessing characteristic of any proscribed ground (Doyle 2007: 537). Anti-Discrimination laws tend to impose duties on public and private bodies as an obligation not to discriminate against any group having characteristics of protected grounds like age, sex, race, physical disability, etc. (Doyle 2007: 537, Khaitan 2015).

Pritam Singh referred discrimination in its implicit form as 'institutional communalism'. Singh derived this term from usage of the term 'institutional racism' in Britain. Institutional racism has been used to describe the presence of racism is the institutions of state and society in their day to day business going much beyond general identification of racism in cases of open and extreme violence. Institutional communalism, therefore, extends beyond the political activities of 'extremist' political, social and cultural organizations (for instance Hindu communal organizations in India) and attempts to unravel communalism embedded in the agencies of the state and society transcendenting so called right wing/extremist organizations (2015). Institutional communalism remains pervasive even if extremist political parties are not in power. Thus, it enables to see beyond surface level communal activities of political and social organizations to the deeper roots of communalism embedded in the working of a diverse range of public, semi-public, and private institutions in the Indian society. Institutional communalism is persistent in varying degree in the Indian Constitution, judiciary, civil services, electoral and parliamentary institutions, security forces, prisons, academia, media, corporate business, and even NGOs (ibid.: 55). Thus, it is very crucial to identify those sites where institutional communalism is operating covertly.

The concern of this section is limited only to the cases of discrimination as experienced by religious minorities in secular or religion neutral affairs or social affairs. By secular or religion neutral affairs I mean those activities where ideally religion has no role to play, for instance, getting a job and working as an employ, receiving medical treatment, using public spaces etc. However, more often than not, in these religion neutral matters religious identity of a person intervenes. In case of minorities this intervention on many occasions negatively affects their equal-ness with fellow citizens. In fact, framers of the Constitution recognized possibility of this problem for independent India. Therefore, they not only documented 'freedom of religion' but also ensured that discrimination on

the basis of religion and religious identities should not occur. However, they could not go into minute details of religion based discrimination as they did in case of Scheduled Castes and Scheduled Tribes. The provisions of Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 indicate very clear understanding of discrimination and atrocities faced by these groups with a consequent remedial mechanism. As a result it become very difficult to determine whether a case of discrimination against minorities is indeed a case of discrimination based upon religious identity of a person.

The NCM documents on religion based discrimination provide a suitable site for studying discrimination experienced by minorities on daily basis and their attempts to get justice. Implicitly, this struggle signifies their attempt to reassert themselves as equal citizens. What are the different forms of discrimination experienced by them might become evident from the complaints reaching to the Minorities Commissions at central and state levels. For the purpose of this chapter, I have analyzed two kinds of cases; (a) where complaint of discrimination is against the state agencies and (b) where prime suspect of discrimination is a private company or firm. Therefore, the cases I have observed deal mostly with service related grievances. This study is also limited in a way as it only deals with the NCM leaving state level Minorities Commissions who resolve numerous minority matters at state levels. I am dealing here with the complaints from all religious minorities but most of them come from Muslim community as it is worst victim of social, economic and political discrimination and the NCM receives maximum numbers of complaints from this community.

Religion based Discrimination in Religion Neutral Matters

Discrimination experienced by minorities has far reaching consequences in any democratic state. Christine Delphy has deeply analyzed stigmatized Muslim community in France and effects of discriminatory state practices in heightening the sense of discrimination and non-belongingness to the French society among the members of Muslim community pushing them to margins (2005). In India attempts are made to bring religious minorities into mainstream. Minority identity is duly recognized and protected through the scheme of common fundamental rights available to all citizens along with a regime of minority rights. Still religious minorities are facing discrimination from both state and society. State agencies discrimination against minorities in the matter of

appointment, promotion, transfer, harassment during work, biased disciplinary actions in government offices, discrimination in distributing compensation to riot victims, biased attitude of public officials and police towards members of minority community etc. whereas society owned discrimination is more intangible and difficult to ascertain and mostly manifested in stereotypes. Usually members of minority communities, particularly of Muslim community, experience difficulty in getting rented houses and private jobs, they are made victim of a 'sophisticated form of untouchability and social boycott'.[12] In case of religious minorities, absence of clear understanding of religion based discrimination works against tangible identification of discrimination which consequently blocks formation of remedial mechanisms.

In spite of its structural inadequacies, the Commission receives a plethora of complaints from both individuals and organizations. These broadly pertained to three key areas concerning minorities; security issues, discrimination and deprivation faced by minorities, and socio-economic and educational backwardness of minorities. The First Statuary Commission of 1993-1994 received total 360 complaints. Since then, the numbers of complaints tremendously increased reflecting mounting discrimination and violence against minorities and also increasing awareness about the Commission among minorities. This number mounted to 2,639 in the year 2013-2014. However, the Commission does not entertain the complaints which are *sub judice* i.e. pending before any court or any quasi-judicial body and complaints for which ordinary judicial, quasi-judicial or administrative remedies are available elsewhere but have not been availed by complainant without any reasonable justification.[13]

Exploring Cases of Discrimination

The section deals with only those cases in which the government/private agencies sent their replies and the Commission reached to a decision. The NCM has received a number of complaints from Muslim Army Personnel/ Government servants that their right to

[12] Shehzad Poonawalla used this expression to describe social discrimination against minorities (Poonawalla: 2015). He was a petitioner to the NCM on housing discrimination and Misbah Qadri case in the year 2013.

[13] A respondent to the researcher revealed that the Commission functions quite flexibly. These written rules are not necessarily invoked to turn down a petition. He said that he send his complaint to NCBC along with the NCM, But NCM responded promptly and resolved his complaint in a very short time.

profess and practice their religion freely was denied as they were barred from sporting *beard*, carrying *kirpan* or wearing *hijab* etc. as per their religious custom.

Keeping Beard

The NCM received a representation from Shri Nasirullah Khan, a sub-inspector working in Karnataka police department. Nasirullah Khan alleged that he was terminated from his job from Karnataka police on the ground of keeping bread (Annual Report 2003-2004: 36). Commission took cognition of this condition of deprivation of Constitutional 'right to practice religion' for a member of minority community as the Commission had already received numerous such complaints from Muslim army personnel/Government servants. In Nasirullah's case, chairman Sardar Tarlochan Singh sent a letter dated 1/4/2003 inviting attention of Shri S. M. Krishna, Chief Minister of Karnataka towards a circular of Ministry of Home Affairs permitting Muslim police officials to keep beard on religious ground. Acting upon Commission's proposition Chief Minister issued instructions to the police authorities to look into the matter and take action. Additionally, the Commission recommended to the state governments, Union Ministries of Home Affairs and Defense as well as Headquarters of Army/ Navy/ Air force/ CRPF that 'any infringement to the right of Muslim employees to keep beard is unconstitutional' (ibid.,: 30). On the other hand, the Judiciary consistently turned down the plea of Muslim personnel in armed forces to sport beard on religious ground. In a recent decision on two separate petitions filed by Ansari Aftab Ahmad and Mohammad Zubair who were dismissed by the Indian Air Force. The Supreme upheld dismissal of Aftab Ahmad and Zubair on the ground that they broke Indian Air Force Regulation 2003 (Para 425) that bared all personnel except Sikh to grow beard.[14] The Court reasoned that sporting beard was not a part of essential religious practices as that of Sikhs. Thus, in order to maintain essential uniformity to maintain of discipline in the armed forces, Muslim servicemen in armed forces cannot keep beards by citing religious grounds (Mohammad Zubair v.

[14] The Defense Ministry follows the notification 2003 on 'hair, beard and wearing turbans'. As per the notification only Sikh are allowed to keep beard (as it is essential part of their religious practice) but all others have to seek permission to grow a beard. The Muslim personnel who had kept beard, that too, along with moustache of certain length would be allowed defense forces (Regulation 425 as cited in Mohammad Zubair v. Union of India AIR SC 8644 2016).

Union of India AIR SC 8644 2016). Article 33 of the Constitution imposes restriction on personnel in armed forces from enjoying all fundamental right during their service.

Carrying Kirpan

Indian Constitution recognized the importance of carrying *kirpan* (a worrier knife) as part of profession of Sikhism under the clauses of religious freedom in article 25 (2) Explanation I. But on many occasions Sikhs are barred from exercising this right by transportation agencies. On 27th July 1981, an article appeared in the Spokesman Weekly' stating, one Sikh *gentleman*[15] was required to part with his Kirpan while travelling by Indian Airlines from Hyderabad to New Delhi (Fourth Annual Report 1981-82: 43). Taking *sue moto* cognition of deprivation of the matter, Commission wrote to the Ministry of Civil Aviation to consider the matter and take suitable action in this regard as it involves violation of Sikh minority right protected in the Constitution (ibid.). Early 1980s was the peak of Sikh nationalism in Khalistan movement causing many to suspect Sikh community as a whole. In this scenario, many travel and aviation companies banned Kirpan in their flights. The hijacking of a flight of Indian Airlines on 29th September 1981 involved five misguided Sikh youth (ibid.: 369) in the background of such bans. Although all major Sikh organizations including Shiromani Akali Dal, Chief Khalsa Diwan, Shiromani Gurodwara Prabandhak Committee, Singh Sabhas and Sikh intelligentsia condemned this act, aviation agencies continue to suspect Sikh community at large, invoking a ban on wearing *kirpan* by Sikhs on national and international flights by the government. The Commission expressed the opinion that 'the misuse of Kirpans by some misguided persons should not lead to a total ban on wearing of Kirpan during flights of Indian Airlines, as such a ban would be contrary to the provisions of Article 25 of the Constitution (ibid 368). The problem of banning *kirpan* surfaced recurrently. The Commission took up problem of carrying *kirpan* during the period 2002-2003. On the issue of carrying of *kirpans* by Sikh passengers travelling by Air, the Commission managed a firm view that a Sikh passenger traveling within India has every right to carry a *kirpan* of the prescribed specification in domestic or international flights.

[15] Early 1980s witnessed Sikh nationalist movement for Khalistan. In those days Sikhs were seen with suspicion. Adding *gentleman* with Sikh as suffix indicates that the person barred from carrying Kirpan in Indian Airlines was indeed a person not involved in Sikh nationalist activities. (Emphasis added).

Wearing Turban on International Flights

During the year 2013-14, the NCM took cognition of the problem faced by the members of Sikh community in regular security check on airports during their travels to European countries. Manjeet Singh wrote to the NCM that he described an incident of disgrace of turban at Rome international Airport occurred in August 2013 (Annual Report 2013-14). The Commission wrote Italian Embassy with reference to Shri Manjeet Singh SK, President of Delhi Sikh Grudwara Committee who was subjected to humiliating body search by Italian authorities during security check on airport on the pretext of wearing turban. Italian Embassy replied that security officials followed the standard EU non-discriminatory procedure foreseen for security checks at airport with due attention to the sensibility of foreigner Sikh religion. Said procedures had been approved in 2011 in a meeting between Italian authorities and Sikh community in order to avoid incidence which could arise during security search of turbans. Italian authorities in coordination with Indian Embassy facilitated timely departure of delegation headed by Manjeet Singh.[16] A European Union delegation to India also informed the Commission that EU countries recently passed amendment intended to use less intrusive means for security checks.[17] It is evident from this case that the NCM takes the issues and concerns of religious minorities to all levels without hesitation and without fear of failure in probability of no reply from authorities concerned.

Nothing Religious

This is a case of 'denial of promotion' to Mr. Firozuddin, an inspector in Central Excise[18]. He claimed that his promotion was denied for last 17 years without any concrete reason. Commission did not find the replies sent by the Central Exercise authorities satisfactory and called a hearing. When summoned, department officials gave excuses of pending departmental proceedings and an unresolved court case against him. But Firozuddin provided evidences showing that some his colleagues were promoted

[16] For details see http://ncm.nic.in/pdf/success stories/Italian Ambassador reply.pdf Accessed on 13/02/2015.
[17] For details see http://ncm.nic.in/pdf/success%20stories/EU%20Ambassador%20reply.pdf Accessedon13/02/2015.
[18] This case was appeared the annual report of the NCM in the year 2009-10 and reappeared in the Annual Report of 2010-11.

despite similar court cases. After evaluating evidences and arguments of both the sides, the Commission recommended the department to promote him immediately in view of the Supreme Court Judgment and government guidelines. Due to the Commission's intervention as informed by the Department of Excise authorities Firozuddin had been given *ad hoc* promotion.

The second case is of 'harassment, victimization and discrimination' in according pay protection to Saifuddin Ahmad who was working as Assistant Professor in the Department of History, Ramjas College, New Delhi (M/DL/20/0109/11).[19] Saifuddin approached the Commission and claimed that the Principal of Ramjas College was harassing him in giving his pay protection for two and a half years. College authorities were summoned by the Commission who could not provide any satisfactory reason for unduly delaying his pay protection. Finding the allegations correct, the Commission recommended that without delay Saifuddin's dues should be settled which was accordingly done by the College administration with fixation of pay and a cheque of Rs. 65,999 was given to him. He was also advised that he could approach the Commission if similar issues resurfaced again, giving him a sense of confidence in case of future violation of his rights.[20]

Private sectors/companies do discriminate against the members of minority community which is symptomatic of wider issue of community based discrimination especially against Muslims.

In November 2013, Shehzad Poonawalla filed a petition against real estate firm 99acres.com for its 'No Muslim' advertisement and discrimination in housing against Muslim minorities in Mumbai. The NCM took up the matter under its active consideration. 99acres clarified to the Commission that it stood against such discrimination and was deeply embarrassed that its site had been misused in such a manner by a third party. Mr. Sanjeev Bikhchandani, representative of 99acres and Mr. Shehzad Poonawalla jointly met Mr. Wajahat Habibullah, chairman NCM and showed commitment to develop policies against discrimination in real estate sector.[21]

[19] File No. M/DL/20/0109/11. Saifuddin approached to the Commission in 2011 and the case was resolved within a year and appeared in the Annual Report of 2011-12.

[20] For details of hearing see http://ncm.nic.in/pdf/Order%20NCM%20Saifuddin%20Ahmad%2027.1.2012.pdf.accessed on 20/10/2015.

[21] For details see http://ncm.nic.in/pdf/press%20release/press%20release_option2.pdfaccessedon10/11/2015.

In a case concerning bias against minorities prevailing in private sectors, Zeeshan Ali Khan, an MBA graduate was denied a job in Mumbai based company Hare Krishna Exports Pvt. Ltd, only because he is a 'Muslim'.[22] Zeeshan Ali Khan sent an application for job in Hare Krishna Exports Pvt. Ltd but the company sent an email stating that it does not recruit Muslim in reply for his application for job. The Commission took cognition of the matter but could not really do anything except receiving an apology letter from the company Incidents of discrimination against religious minorities by private companies and firms keep appearing in media reports.

In the first case, even though Firozuddin's grievance was fixed temporarily, many issues remain unresolved. For instance, what is the compensation to the delay he suffered? Most importantly, the department did not get any penalty for violating a Constitutionally guaranteed right. Second case illustrates how Muslim identity becomes a source of harassment and discrimination even in knowledge producing and imparting institutions that bear the natural responsibility to spread egalitarian ideas in society. The petition against 99acres is not just about a real estate firm's practicing 'policy of spatial exclusion' against the Muslim community rather it reveals common perception about Muslims and unwillingness of Hindus to share a common neighborhood with them signifying deep rooted prejudice attached to Muslim identity. Generally Muslims live in cheap ghettos in cities where Hindus do not prefer to live. Ansua Chatterjee, through her ethnographic fieldwork in Kolkata, studied bhadralok[23] cultural prejudices against Muslims and their unwillingness to share a common neighborhood with them. The most common idiom they use to specify cultural distance between Hindu and Muslim are of 'opposite' to them; 'unclean, 'aggressive self-assertive' and non-'cultured' Muslims. A Bhadralok's imagination of a Muslim community includes a generalized notion of ritual pollution due to their habit of beef consumption, general indifference towards cleanliness, aggressive, criminal mindedness and immorality. Hence they believe in better avoiding those spaces (ghetto) where they live and better to leave such neighborhood mostly inhabited by them. Because of these stereotyping against Muslims, they generally meet with difficulties when they look for accommodation in convention neighborhood of the city (2015: 95-96). Shahid, a software engineer, one of Anusa's

[22] Hindustan Times, Delhi (22 May 2015).
[23] Bhadralok meaning gentleman is term used to denote upper caste people in Bengal.

respondent who opted to live in Park Circus, a Muslim ghetto, described his experiences that may illustrate complexities of spatial segregation-

> I had initially wanted to find a place to stay near my work place, but it is generally expensive, and twice the landlords refused to rent out the place to me because I was a Muslim…but the worst is, after I found a suitable flat in Park Circus, a colleague at workplace said, 'so you too opted to stay in an ghetto?.....Muslims are always so rigid in religious matters (quoted in Chatterjee. 2015: 97).

What is more perplexing is the fact that continuous experiences of marginalization, on many instances, give birth to reverse assertion of identity from within the excluded groups underlining their own symbols which consequently results in the hardening community boundaries (Chatterjee 2015: 99). They instigate identity politics to preserve their symbols not just to save their socio-cultural uniqueness but it express their covert insecurities, fears, memories of violence, injustices and discriminations lived by them. Christine Delphy argues that denial of justice leads the discriminated populations to express its protests in many forms including identity politics (2005: 248-249). They feel safe only in their own cages that are in ghettos.

Incidents of discrimination against religious minorities by private companies and firms keep appearing in media reports. These incidents came in limelight only because they occur in one or the other kind of organization from where evidences of discrimination may be traced. Discrimination in localities by individuals and communities are more difficult to trace despite the fact that they are more widespread. Ascertaining the cause of discrimination becomes even more difficult when it happens in public sphere where society is prime suspect for discriminatory practices. Ironically, the root causes of discrimination at local levels are widespread stereotypes which are many times generated by media it. Print media especially vernacular, is often found to indulge in displaying crude prejudices against minorities in their reporting or the stories they publish (Engineer, 1999: 2132). Since its inception Commission is trying to curb these practices by recommending policies like community sensitization and curbing stereotypes by improving school text books etc.

The mounting number of complaints indicates the significance of the Commission for minorities and inadequacy of available instruments of justice to religious minorities. In spite of this, the Commission is not always able to help them either because of the absence of clear laws pertaining to discrimination against religious minorities or due to

its restricted mandate. Mohapatra found that the Commission has helped vitalize a discourse which blends security, dignity and identity concerns of minorities with their economic well-being (2010: 233). But the most crucial condition for the protection of minorities is a responsive democratic state (ibid.). A state, which not just proclaims equality of all citizens including religious minorities but enact such policies that make discriminatory practices of state and society identifiable and punishable. This would enable the Minorities Commission to effectively uphold rights of religious minorities and protect them against all sort of discrimination.

These cases show the Commission's effectiveness to comprehend and fix grievances related to discrimination practiced by state bodies even in the absence of obligatory jurisdiction. Identifying and comprehending such discriminatory practices are very crucial because even if the real root of discrimination is minority identity of a victim as authorities and agencies can easily misplace the root cause to some procedural complexities or to any other petty behavioral/character issue of the victim as evident from 99acre and Firozuddin's cases respectively. These incidents came in limelight only because they occurred in one or the other kind of organization from where evidences of discrimination were traceable. Discrimination in localities and in unorganized private sectors by individuals and communities are more difficult to trace despite the fact that they are more widespread. Ascertaining the cause of discrimination becomes even more difficult when numerous grounds of discrimination are present and operating simultaneously in public spheres where society is prime suspect for discriminatory practices, for instance a lower caste, non-vegetarian, single Muslim women is refused accommodation by a housing society.

The Sachar Committee found the NHRC and the NCM's role is restricted only looking into complaints made by the minorities with respect to the state action/inaction. These mechanisms are not able to address many complaints arising on a day-to-day basis against non-state agencies and unorganized private sectors (SCR 2006: 239). Zoya Hasan, former member of the NCM, has pointed out that in the absence of a clear definition and law on religion based discrimination it is difficult to establish that particular grievance arises from discrimination and is not a result of general administrative apathy (Hasan 2009: 68). Moreover, the function to look into specific complaints regarding deprivation of rights and safeguards of minorities and taking up

such matters with the appropriate authorities is basically investigative, but the NCM is not equipped with any investigating agency to enquire into the complaints of discrimination and deprivation of rights. As a result, it has to rely on government agencies that on many occasions are predators of discriminatory activities against minorities (Mohapatra 2010: 230-37).

Though, the Minorities Commission has been taking cognition of the cases of discrimination since its inception, but has failed to evolve a nuanced understanding of discrimination. Most of the Commission's recommendations in this context deal with biases and discrimination happening at the entry points like admissions, recruitment in jobs and at the policy levels. It has repeatedly recommended proper implementation of PM's 15 point programme, minority sub-plan in five years planning, presence of one member of minority community in selection committees etc. to secure fair number of minorities in educational institutions and employment, but nothing significant on prevention of discrimination on workplaces. Paradoxically it has to deal with the cases of discrimination happening at workplaces and within the organizations; readings of its recommendations do not reflect these concerns to the extent that could be regarded as a plea for anti-discrimination legislation.

III

Towards Anti-discrimination Law

The first major progress happened in the direction of anti-discrimination legislation that may counter discrimination happening on the ground of religion with the submission of SRC in 2006. The Committee found that the role of the NHRC and the NCM is restricted only to looking into complaints made by the minorities with respect to the state action/inaction. These mechanisms are not able to address many complaints arising on a day-to-day basis against non-state agencies and unorganized private sectors. The Committee recognized widespread discrimination against minorities and recommended all together a new institutional mechanism, 'Equal Opportunity Commission (EOC)' on the lines of the UK Race Relations Act, 1976 and 'Diversity Index (DI)' along with anti-discrimination legislation to address discrimination by state and non-state actors. The Committee said that

> The minorities, many a time, may feel that there is discrimination against them in the matter of employment, housing, for obtaining loans from the public or private sector banks, or opportunities for good schooling….It is imperative that if the minorities have certain perceptions of being aggrieved, all efforts should be made by the State to find a mechanism by which these complaints could be attended to expeditiously….. Deprivation, poverty and discrimination may exist among all SRCs although in different proportions. But the fact of belonging to a minority community has, it cannot be denied, an in-built sensitivity to discrimination. This sensitivity is natural and may exist among religious minorities in any country. Recognizing this reality is not pandering to the minorities nor sniping at the majority. This recognition is only an acceptance of reality. It is a well-accepted maxim in law that not only must justice be done but it must appear to be done. It is in that context that the Committee recommends that an Equal Opportunity Commission (EOC) should be constituted by the government to look into the grievances of the deprived groups….While providing a redressal mechanism for different types of discrimination, this will give a further re-assurance to the minorities that any unfair action against them will invite the vigilance of the law (ibid.: 240).

A group of experts was constituted under the chairpersonship of Prof. N R Madhava Menon on 31st August 2007 to examine and determine the structure, scope and functions of an EOC. After studying similar legislations of other countries and weighing Constitutional provision and Indian social reality, the Menon Committee submitted its report in February 2008 with an elaborate framework for proposed EOC which would be pro-active and autonomous of the government. EOC was to be a body that would develop, gather and publish evidence of discrimination of any deprived group that experience discrimination; adivasis, dalits, minorities, LGBT community, handicapped persons, HIV-AIDS patients, North Easterners or any other deprived group that feels itself discriminated. It was to undertake evidence-based advocacy role involving many functions, including research and data gathering. Besides, the EOC was to undertake monitoring and auditing function in order to assess the impact of laws and policies; it was to have advisory and consultative function for various organs and levels of government, policy intervention and grievance redressal function. EOC was also to be an equal opportunity watchdog and undertake shaping of public opinion (Menon 2008). The EOC Bill defines discrimination as:

> any distinction, exclusion or restriction made on the basis of sex, caste, language, religion, disability, descent, place of birth, residence, race or any other which results in less favourable treatment which is unjustified or has the effect of impairing or nullifying the recognition, enjoyment or exercise of equality of opportunity, but does not include favourable treatment

> given in fulfillment of Constitutional obligations towards deprived groups. Discrimination includes direct and indirect discrimination…in order to count as discrimination for the purposes of the EOC's interventions: it must be *systematic*, i.e., non-random discrimination cannot be an accidental or chance event; it must be the *result of human actions* discrimination cannot be an act of God or nature; and finally discrimination must produce real differences i.e., it must *set apart or distinguish in an unjustifiable manner* a particular group (or groups) from other groups (ibid.: 20-22).[24]

One of the striking features of the draft Bill of EOC was that it had given huge importance to deprivation making it more critical a concept in EOC scheme and proposed 'Deprivation index'. For this reason, Hasan argues that the EOC's main task appeared to inquire, investigate and collect data on deprivation and different kinds of inequalities of opportunity (and to identify future directions of policy so as to eliminate such gross inequalities in future) than to act as an executive body to study the charges of discrimination or denial of equal opportunity, but to monitor the situation, survey the arena and make broad recommendations for policy. These tasks were similar to what the other commissions are mandated to do in their targeted groups. Although, it prohibited discrimination on various grounds, but the relationship between deprivation and discrimination was not clearly explained (Hasan 2009b: 308). Moreover, it could not offer a solution to the problem of under-representation of Muslims in public and private sectors which may be due to discrimination or institutional bias (ibid.: 312). That is why, Hasan was not very optimistic with the EOC in the promotion of genuine equality of opportunity for all deprived sections as eradicating structural injustice and institutional bias without an anti-discrimination law. She maintained that for the EOC to be effective there should be a substantive anti-discrimination law prohibiting discrimination on various grounds with clear provisions for remedial action. In fact, international experiences of the working of EOCs in the UK and South Africa have shown that an anti-discrimination law can go a long way towards strengthening the effectiveness of the EOC (ibid.: 310-11) and eradicating discrimination. The most striking contribution to the EOC proposal was that it introduced new theoretical perspectives on equality and social justice in India by expanding the concept of inequality to take into account contemporary discrimination in contrast to the earlier stress on historical injustices (ibid.: 305) which

[24] Emphasis in the original.

culminated into positive discrimination policies for Scheduled Castes and scheduled tribes.

To counter the tendencies of discrimination and deprivation in production, distribution and social sectors, the SCR emphasized the need to enhance diversity in living, educational and workspaces. To operationalize this broader notion of diversity it has recommended a Diversity Index which is to be likened to a wide variety of incentives to ensure equal opportunity to all socio-religious categories in the areas of education, government & private employment and housing (SCR: 25, 242). Expert Committee under the chairmanship of Amitabh Kundu (2008) was constituted to recommend on DI. The Committee turned up with an incentive based index to engender pluralism in both public and private sector. This Index was designed to cover three essential dimensions of society, which are; (a) religion, (b) caste and (c) gender, inclusive of their internal diversity. Under this index an educational institution, housing society, private company or hotel etc. are evaluated according to stated indicators of religion, caste and gender. If organizations have a significant presence of these groups then they would be incentivized with certain tax relaxation etc. and if they practice discrimination or their institutional profile is less diverse then additional tax etc. would be imposed to de-incentivize them. To look after implementation of DI, Committee proposed chain of watchdog bodies from national level Diversity Commission with corresponding DI Implementation Committees at the state levels to DI committees in government, semi-government bodies at local levels (Kundu 2008) to look after the application of incentive and disincentive mechanisms of DI. The DI was to steer pluralism in society but it could not be adopted for its very complex and expansive formulations.

After these two Committees, the Post-Sachar Evaluation Committee was appointed to evaluate the progress of Muslims on the lines of the Sachar Committee reiterated the need of DI and also recommended enactment of a comprehensive anti-discrimination legislation to prohibit discrimination based on disability, sex, caste, religion and other criteria which could cover both State and non-state spheres in terms of discriminatory practices (Kundu 2014: 177-78). However, the report on DI was rejected and the report of the Post-Sachar Evaluation is yet to be accepted by the government, these have triggered a public debate on anti-discrimination law. The reports of EOC and DI have provided the content for this debate which aimed at attaining equity, non-discrimination

and development for vulnerable sections of the society. As a result a vibrant debate has started and anti-discrimination law has been emerged as a key demand for organizations representing women, LGBT, persons with disability which has been recently joined by minorities. This debate has taken shape of the Anti-Discrimination and Equality Bill 2016 (ADE Bill) that is introduced in the Parliament by Shashi Tharoor on 10 March 24, 2017 as a private member Bill.[25] While introducing the Bill, Tharoor said that-

> The Constitution of India promises justice, liberty, equality and fraternity to all our citizens. However, discrimination denies these cherished Constitutional promises. Cases of discrimination continue to be witnessed in all spheres of social, economic and political life. They are frequently directed against dalits, Muslims, women, persons of different sexual orientations 'hijras' persons with disabilities, persons from North-Eastern States unmarried couples and non-vegetarians, among others. There is a need to protect everyone who are (sic) subject to any forms of unfair discrimination under a single comprehensive legislation which should be neutral and free from bias (ADE Bill 2016: http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/2991.pdf accessed on 4/03/2017).

The Bill is drafted on the premise that existing Constitutional provision of Article 14, 15, 16, 17 and alternative redressal mechanisms like NCM, NCW, NCSC, etc. are proving insufficient in combating discrimination and there is need to support them with additional legislative instruments. The ADE Bill 2016 aims to fill in this lacuna by protecting an open-ended list of grounds, elaborating concepts such as separation and boycott, relying on the principle of proportionality, and imposing negative and positive duties on public and certain private parties. Though, these are usually minorities who face discrimination more often, the proposed legislation is for all citizens whether minority or majority to make it more robust (ibid.). Earlier legislations aimed at curbing discrimination have been dispersed in several pieces targeting one or two groups and excluded discrimination on the ground of religion and were limited to the public sector. This sets legislations have provided remedies against discrimination on several different grounds (sex, caste, and physical disability etc.) but also resulted in hotchpotch and confusion when these grounds operate intersectionally. The proposed ADE Bill aims to bring clarity in protecting generally discriminated grounds and improving

[25] However Dr. Trunabh Khaitan (who has drafted this Bill), in an informal interaction with researcher on 18 December 2016, himself accepted that chances for this Bill to become a law are very slim keeping in mind the ideological leaning and anti-minority attitude of the ruling party.

implementation by bringing private players within the ambit of this law and by imposing positive duties.

Khaitan gives three reasons why the government should enact anti-discrimination law on the line of ADE Bill 2016; (a) it aims at symmetrically protects vulnerable sections across majority and minority, (b) understands and recognizes discrimination as lived reality, and (c) brings private sector under legal regulation for discrimination. Unlike earlier legislations which have criminalized discrimination that required heavy burden of proof, this Bill creates civil liability to protect and compensate victim (The Indian Express 25 March, 2017). That is to say that the person or the agency guilty of practicing discrimination, boycott or segregation is expected to compensate the victim.

Anti-discrimination law identifies and protects certain grounds that are defining features of a group, on which discrimination takes place; such as race, sex, religion, age, sexual orientation and so on. Two issues are always at the heart of any anti-discriminatory legislation, one is, who are entitled to protection under discrimination law, and it protects all citizens to varying extents depending on the context. And other is, who the duty bearers are? It mostly imposes duties not on the members of advantaged groups, but on certain categories of persons; primarily state employers, service and goods providers (Khaitan 2015: 120-147). India too seems to be progressing slowly in this direction and the content of EOC and DI might be seen as small steps towards anti-discrimination legislation. The NCM also seems to facilitate minorities in combating discrimination and re-claiming equality.

Conclusion

The Minorities Commission has evolved progressively in terms of comprehending caste and its repercussion for religious minorities. While pre-statutory Commission stuck with the humanitarian consideration for converted Dalits, the statutory Commission emphasized Constitutional anomaly and recommended SC status to Muslim and Christian Dalits. However, knowing the government stand on this issue, Farida Abdullah Khan, a former member of the NCM lamented that it has been unofficially decided in the political circles that Scheduled Caste status and resultant benefits would not be extended to Dalit Muslim and Dalit Christians in any case (Khan 2016). Khan said that ‘Minorities Commission has been advocating this very seriously but it was being told that it would

never going to happen…informally lot of people have said this… If you take complete theoretical basis for reservation and philosophical arguments, it makes complete sense. In practical terms I know it is not going to happen' (2016). Khan remark unravels deeply entangled 'political' aspect in the questions of equality, non-discrimination and social justice in India. Religion based identification of Scheduled Caste is only one form of state led discrimination with far reaching implications for socio-economic discrimination against lower castes Muslims and Dalits.

On the other hand, discrimination as a distinct subject of theoretical investigation and policy making has been a neglected area in India despite its pervasiveness in government and private, organized and unorganized sectors. The mounting numbers of complaints coming to the NCM indicate the inadequacy of available instruments of justice to minorities and the limits of formal guarantee of equality to all citizens. Moreover, procedural haziness combined with the absence of investigating agency paralyses the NCM to dispose the cases of discrimination happening on the ground of religion effectively. The NCM's achievements are limited to treating symptoms of discrimination than hitting the root cause that is prejudice. In 1979, the Commission recommended its own remodeling on the lines of UK Racial Equality Commission 1976 (Third Annual Report 1980).[26] Until enactment of anti-discrimination law, the existing alternative mechanisms like the NCM are required to handle discrimination happening on the ground of religion more efficiently that too appear a fantasy at least in the present political context.[27] Shashi Tharoor pointed out that 'India is at present an exception among liberal democracies for not enacting a comprehensive law against discrimination' (ADB 2016: XXXVII). To ensure equality and non-discrimination to operate at every level of society, enactment of such legislations are inevitable that could make discriminatory practices of state and society identifiable and punishable on the one hand, and that could impose positive duties on all citizens and ensure compensation to victims on the other. If passed ADE Bill 2016 would make a big difference in enabling a number

[26] The Commission for Racial Equality in U.K. 1976 was merged with Equality and Human Rights Commission in 2004. Apart from promoting better relationship between members of different ethnic group, the UK Commission works to eradicate racial discrimination and encourage equality of opportunity.

[27] From March to May 2017, the NCM was defunct as all of its members completed their tenure on March 9, 2017 and the central government did not make fresh appointments till May 25. The fresh appointments are made in end of May from close BJP workers by the Modi government. Hence, there would be little assurance for minority citizens from the NCM that it would come out of its redundant stage and work as facilitating agency for them in reclaiming their rights and equal citizen-hood.

of vulnerable sections including religious minorities to claim their Constitutional rights of equality and non-discrimination and would provide necessary legal backing to the NCM to deal with the cases of discrimination.

Chapter V

Minority Citizens, Violence, and National Unity: Looking Through the Lenses of the Minorities Commission

Communal violence assumes different forms of collective violence such as genocide, pogrom, riot (Brass 2006) and mob lynching etc.[1] that represent the most dangerous, brutal and inhuman assault on religious minorities in India. In the last 70 years of India's independence, three minority communities, Muslims, Christians and Sikhs have faced violence, on the basis of their religious identity alone, resulting in a serious assault on their basic human, right of life. The Sachar Committee confirmed that threat to security has been a wildest fear that minorities live with (2006). Threat to life and concerns for security have been the most dominating theme in minority discourse along with the need to build trust among minorities by eliminating sense of insecurity. History of communally targeted violence gives strong evidences to believe that this fear is not baseless.[2]

At the founding moment, India witnessed the catastrophe of communal violence accompanying partition. Thus, the leaders of new India set aside 'politics of religion' in favour of secular politics. Right to life was given paramount importance in the Indian Constitution.[3] Right to food and education were added in a comprehensive interpretation of right to life. But right to life, elaborated in broader sense, get suspended under several situations such as operation of preventive detention laws, situations of violence, riots and other forms of public unrest.

At the time when the Minorities Commission was founded, the country was struggling with mounting number of communal instances causing huge losses of life and property engendering a sense of insecurity among minorities. The Minorities Commission was entrusted to protect minorities in such situations, thus, it became actively engaged in the

[1] Mob lynching has not been a common feature of Indian society; there were few and far incidents of lynching rooted in variety of social problems such as caste, superstition, petty crimes like theft etc. The history of mob lynching India may be traced from West Bengal. For details see Samit Kar (2006) *Measure for Measure: Lynching Deaths in West Bengal: A Sociological Study*, Kolkata, K.P. Bagchi & Company.

[2] For details of data on communal violence since independence, see Wilkinson and Varshney 1996.

[3] Article 21 of the Indian constitution clearly stipulates: 'No person shall be deprived of his right of personal liberty except according to procedure established by law' (Bakshi 2016: 63).

activities like fact finding, relief and rehabilitation which were deeply associated transitional justice in the aftermath of a violent event, but soon realized that the state governments and local administration were not keen to cooperate with the Commission which could facilitate it to carry out its mandate related to communal violence (Najiullah 2011: 102-103). Incidentally, Commission's existence coincided with peak points of communal violence as it was the same period when India was witnessing the upsurge of identity politics; mobilization around Babri Masjid-Ramjanambhoomi, Shah Bano, and Mandal Commission etc. Through the data on communal violence since independence, Wilkinson and Varshney have captured trends in fluctuating numbers of communal violence. As per their analysis, incidents of communal violence rose during 1960s touching its peak in the year 1969, and then witnessed a slowdown throughout 1971-77 followed by disturbing surge during 1978-93 (1996: 12). Thus, there were more instances of communal violence since 1978, a year marked with the Minorities Commission's birth (Najiullah 2011: 103).

The chapter examines intervention of the Minorities Commission in the instances of violence against minorities and the normative justification it evolved for the kind of intervention it made in such instances. Although, Commission intervened in numerous incidents of communal violence since it came into being, a few selected prominent incidents are analysed here which were the cases of severe violation of human rights of minorities and the state was found to be implicated in most of these instances. Analysis of the Commission's intervention assumes more significant in the light of the fact that it was the only body to address such concerns of minorities. The NHRC came into existence as prime body to monitor human rights violation across religion, caste, gender and racial communities only in 1993. Analysis of these incidents reveals shifting trends in the Commission perspective of violence against minorities as shown in the chapter.

Production of Violence, State and Minorities

Paul R Brass argues that violence has multiple usages in the political process of the state. The large scale riots and other forms of collective violence are intentionally produced for political purposes in electoral democracies like India (2006). The violence against minorities operates through specialists within the known political parties or at their behest by so called cultural organizations like RSS and Shiv Sena etc. (ibid.: 142). It is

brought into play when political bargain and compromises fail.[4] Further, it is used as electoral devise before elections to influence their result by contributing to the formation of communal identities and consequent consolidation of Hindu-Muslim votes.

According to Paul R Brass, the decline of the Congress party in the United Provinces and the development of more competitive party politics in mid 1960s (in which different forms of the Jana Sangh were considerable force) precipitated post-independence communal violence. Further, riots prevention and control measures (state apparatus like police, prevention measures like arresting riot provokers etc.) were increasingly used as 'devices aimed against the Muslims' in wake of the Hindu militant movement and mass mobilization around the Babri masjid (Brass 2006: 111). The normative issue entangled with the communal riots is the peculiar interpretation of secularism in the political fields where it does not denote state policy of separation of state and religion. Secularism in the Indian discourse has been reduced to the question whether Muslims should be allowed to retain their personal laws and other popular animosities and their consequences like separatism. The focus of secularism is on definition of the Indian nation, meaning of citizenship and the relation between two largest religious communities (ibid.: 158-59). Both the Hindu nationalist and the secularists believed that secularism meant 'national unity', opposite of separatism, required to transform India into a great modern state. Thus, no compromise could be acceptable to unity with regard to separatist or secessionist demands.

There are at least three major issues at the heart of safeguarding lives of minority citizens who are routinely subjected to violence across the country. (a) Enactment of comprehensive communal violence law absence of which embodies a huge gap in the protection of minority lives in communally charged situations, riots and their subsequent rehabilitation.[5] (b) Enactment and operation of such legislations that tends to reinforce majority identity and superiority of its religio-cultural practices such as cow protection

[4] Brass described the centrality of violence as 'principle mechanism' in creating conditions that ascertained partition. That was how Congress and Akali Dal began to demand partition in the aftermath of mass killing of Sikh and Hindus that occurred in Rawalpindi and Multan. After the failure of the Cabinet Mission Plan, the great Calcutta killings of August 1946 was the principle factor in determining in winning finally the acceptance of Congress and the British for the Partition (2006: 19-20).

[5] Since 1998-99, the Commission's reports pointed out that, existing laws with present enforcement mechanism at local level have been grossly insufficient to protect minorities in wake of communal violence. The discourse was further energized in context of Gujarat riot 2002.

legislations and anti-conversion laws.[6] (c) Ruthless exercise of preventive-detention laws on minorities, particularly on Muslims and Sikhs (Kumar 2007), and lack of accountability of investigating agencies and police when they wrongly or falsely implicate minorities. Through the interventions of the Minorities Commission, this chapter highlights these points as these are the most crucial fields of the Commission's activity. For the purpose of the chapter, four types of cases are being analysed that are organized in different sections likewise- (a) where riots/pogroms ruptured lives and living conditions and state complicity was found such as Sikh riots-1984, Gujarat riots-2002, Kandhamal riots 2008, Muzaffarnagar riots-2013, (b) where individuals were subjected to violence that was perpetrated by mobs and Minorities Commission took cognizance of the matter, (c) where state's punitive organs of the state such as Police or PAC are the prime culprits of violence against minorities as happened in Hashimpura incident, and (d) where individuals were framed under preventive detention laws, as in Mecca masjid blast case, and after wastage of many precious years of life finally found innocent. Each of the issues taken up in this chapter has wide range of literature available, but the concern of this chapter is limited to analysis of these key events from the perspective of the Minorities Commission.

I

Exploration of Commission's Ideas on Protection of Minorities and National Unity: From Sikh Riots 1984 to Muzaffarnagar Riots 2013

In its fifth annual report, the Commission observed that effective enforcement of existing provisions under Section 153A, 153B and 153C of the Indian Penal Code by local administrations could successfully restore normalcy in communally disturbed areas and could prevent repeated occurrence of communal violence (1982-83: 11). Thus, local administration along with state governments have most crucial role in prevention and suppression of communally charged situation turning into full-fledged riot. Despite this, National Commissions like the NCM and the NHRC came into picture once a riot broke out. Their intervention, particularly that of Minorities Commission's is stemmed from its

[6] Although, the Commission recognized anti-conversion laws as instrumental in instigating violence against minorities (Annual Report 1998-99, 2007-08, 2008-09), it refrained from commenting on cow protection laws. Scholars like Jeffralot (2017) highlighted the importance of such laws in producing violence against Muslims.

duty of safeguarding constitutional and legal rights of minorities that includes *inter alia* protection of their lives in situations of violence.

Although, it seems very difficult for central statuary and advisory body to prevent a communally charged situation in busting into riot[7], Commission on few occasions successfully did it. For instance, the Commission successfully persuaded local administration and the police to take action to prevent a charged situation to bust into open violence in 2014 Trilokpuri (Habibullah 2017, Khan 2016, Ahmad 2017).[8] Since situation soon brought back to normalcy, Commission's intervention could not come under popular knowledge. Still, activities of the Commission are mostly restricted to transitional justice in post-violence situations; enquiring and truth finding, rehabilitation and compensation etc. Praveen Davar, former member of the NCM, apprised that Commission approaches to any incident of communal violence when situation comes under control, then the Commission questions the authorities 'what steps you have taken and what steps you are going to take further, then we keep persuading the administration for adequate compensation and rehabilitation…we keep monitoring' (interview with Davar 18, August 2016).

In its first year of existence, Commission had to look into the matters of two serious riots and the Commission prepared detailed reports on them. In 1978 communal disturbances took place in Pernambhut town of Tamil Nadu and Aligarh city of Uttar Pradesh. In both the places Commission had conducted on the spot enquiries and submitted reports to respective state governments and to the central government. In Pernambhut incident, the Commission found that sufficient measures were not taken by the authorities to protect life and property of Muslims and recommended prompt rehabilitation and compensation to the victims. However, the Commission's recommendations were rejected by the state government. On the other hand, Aligarh riot was found to be caused by mischievous elements and influential public figures. Moreover, PAC also showed bias attitude

[7] Praveen Davar explained the limited jurisdiction of the Commission in prevention of communal violence as it becomes only when something (incident of violence) has already happened. 'It can't do much'. Davar added that 'this is a work of political class, state government machinery, local administration and police to ensure that such incidents should not occur. If they (district administration and police) are alert there would be no riot, and if a riot happens they can control situation very quickly' (interview with Davar 18, August 2016).

[8] Farida A Khan told that the Commission received several phone calls of the local people from Trilokpuri area. Acknowledging the gravity of the situation, the Commission communicated to local authorities and with their help situation was brought under control (2016).

towards Muslims as all the deaths caused due to PAC firing was of Muslims. Thus, Commission recommended withdrawal of the PAC from Aligarh and payment of compensation to victims. The UP government had taken action on some of the recommendations (First Annual Report 1978: 4-6). In the first year itself, the Commission acknowledged paramount importance of protection of life and property of minorities, particularly of Muslims and Christians as they were frequent victims of communal violence in India. As the origins of communal disturbances were found to be rooted in petty quarrels between the members of two communities, the Commission proposed intensive adoption of effective preventive measures. Moreover it recognized the problems in the training of paramilitary forces and biases in text book and recommended dissuasion of communal training to paramilitary forces and inclusion of such content to the text books which might facilitate equality and brotherhood between communities (ibid.: 8-9). During the next year, communal clashes took place between Hindus and Muslims on Ramnavmi killing 61 Muslims, 24 Hindus, 1 Christian and 30 unidentified (Second Annual Report 1979: 29). Here again Commission found role of the local police dubious. Victims unanimously complained that police did nothing to save their life and property rather participated with Hindus and attacked on Muslims (ibid.: 29-34). After visiting deplorable condition of relief camps and noticing absence of the state in relief and rehabilitation process, the Commission emphasized the necessity to translate moral obligation of the state to rehabilitate riot victims into obligatory legislation (Annual Report 1980).

Sikh Riots 1984: Who would ensure security to live when the state is a predator?

Sikh riots of 1984 took place in the background of '*Khalistan* movement[9]' and 'Operation Blue Star'[10] and subsequent assassination of Prime Minister Indira Gandhi. Indira Gandhi crushed Sikh militant separatist movement which she herself earlier

[9] *Khalistan* is the name of imagined state that Sikh nationalists were aimed to achieve by political and armed struggle. *Khalistan* movement reached its peak in early 1980s.

[10] To crush secessionist *Khalistan* movement in Punjab led by Jarnail Singh Bhindranwale, on 5 June, 1983 a military operation was carried out in the Golden Temple of Amritsar, the most sacred place for Sikh community. This operation is known as operation Bluestar. In this operation, the army killed Bhindranwale and huge amount of arms and ammunitions were discovered. The Sikhs all over the country were agitated on this military exercise in their holiest place. They felt humiliated, their honour crushed and identity attacked. They believed that damage to the temple was deliberately done to humiliate their community, it was not necessary to stop violence (Austin 1999: 548).

encouraged as an instrument to fragment political unity in Punjab, the traditional Sikh homeland (Crossette 2004: 70, Austin 1999: 548). After her assassination on 31 of October 1984, mobs encouraged by the Congress Party slaughtered men and boys, set everything ablaze. Sikhs were killed wherever they could be found; on roads, houses, buses and trains. Accounts of the incidents following the assassination have stated that 'policemen, politicians and the world just watched' (Dayal 2011). About 3,000 Sikhs (the number is still controversial) were murdered in Delhi which was categorized by scholars nothing less than a pogrom. Only after the intervention of army, it was controlled. A few have been prosecuted for their crimes till now. Dayal says that two and a half decades have already passed justice is yet to be done. Only a small group of activists and lawyers are still pursuing justice for the widows of 1984 (ibid.).

The Minorities Commission was then operating under the chairmanship of Justice Hameedullah Beg who was closely associated with Congress and Nehru family. The seventh annual report 1984-85 mentioned the incident of assassination of the PM more prominently than riots that shook the lives of Sikh living in Delhi. While placing press release of the Commission's resolution on assassination of the Prime Minister Indira Gandhi among the main contents, Hameedullah Beg choose to relegate visit reports on riots affected people in the annexures of the annual report. The resolution lamented that the assassination of PM Indira Gandhi was actually an attack directed against the unity, integrity, stability and strength of the entire nation (Seventh Annual Report 1984-85: 89). The Commission also viewed that the feeling of superiority which was predominant in the Sikh community, that had divisive implications. In the same report, Khuswant Singh was cited to suggest that the Sikhs believed in their superiority and smartness over others. The prevalent concept among Sikh that 'one Sikh is equivalent to *sava lakh* (1.25 lakh) other individuals' reflected superiority complex of the Sikh community. 'So it was no wonder that they thought of a separate homeland of *Khalistan* for their superior race and culture which was actually apposite to the concept of universalism propagated by Sikhism' (ibid.: 90). However, former Sikh member of the Commission, Sardar Arjun Singh insisted that overwhelming majority of Sikhs were against *Khalistan* and got a resolution passed rejecting the conception of superiority complex of entire Sikh community which culminated into and *Khalistan* movement. Security guards who killed Indira Gandhi represent only views of microscopic minority within Sikh community,

were reached the peak of religious and cultural superiority of Sikhs (Seventh Annual Report 1984-85.: 90-91). Still the Commission seems to confirm the idea of Sikh religio-cultural superiority as problematic for diverse societies and juxtaposed the example of Hitler and German superiority to describe Sikh superiority. The security guards, marked the Commission, 'could not bear the thought of Operation 'Blue Star' directed against people occupying their Golden Temple in Amritsar (ibid.: 91). Arjun Singh insisted that the crime committed by individuals should be considered as individual's act. But case of the PM's assassination the entire Sikh community was wrongly considered to be responsible for the wrongs committed by a few individuals (ibid.). Strangely, the Commission nowhere held the Congress party responsible for the violence following the PM's assassination. Prior to this, usually Commission had tried to ascertain the causes of violence and identification of predators during its visits to the places where the violent incident had occurred. In this particular case, though the Commission visited the sites of the violence even after the attempts of local administration to prevent it to do so (ibid.), but had not showed its concerns for identification of the predators that everybody knew was the Congress and its cadre. This reflects an alignment of the Commission with the ruling party disregarding the fact that it was the only autonomous body to safeguard the rights of minorities including their basic human rights at that point of time; the NHRC came into existence in 1993.

Without bringing Congress and its cadres' complicity, the Commission proceeded to highlight the losses suffered by the Sikh community and problems of relief, rehabilitation. Nevertheless, Commission had recognized how state agencies were jamming relief and rehabilitation processes and victims also didn't trust the state machinery. The Commission visited the refugee camp and Mota Singh Senior Secondary School, Narang Colony, West Delhi on 14 November, 1984. The victims in the camp complained that mob violence occurred in the presence of the police, no measures like lathi charge, tear gas, firing etc. had been resorted to save their lives and disperse mob neither any arrest was made. Residents told that milk, water supply, food, and telephonic facilities were often interrupted by the authorities so that people living in the camp would be compelled to disperse from the camp. Food and other supplies in the camp were received by voluntary organizations like Red Cross, Sikh organizations and Relief Centres of the Janata Party as victims held government machinery responsible for their

fate (Seventh Annual Report 1984-85: 250-252). Although, Commission sought report from the administration and police authorities, it did not specified responsibility of the riot; it had paid attention only to post-pogrom rehabilitation and compensation to victims in later annual reports.

The Minorities Commission also appeared to shield the Congress government from international criticisms against the alleged failure of the state to protect minorities and their religious places.[11] PM Rajiv Gandhi was to attend the Commonwealth Conference organized at Vancouver, Canada on 17-18, October 1987. Keeping in view Indian Prime Mminister's Participation in Commonwealth Conference, the Indian People's Association in North America (IPANA) decided to hold parallel conference on the theme 'Centralized State Power and Threat to Minorities in India' to attract the attention of international dignitaries towards the minority situation in India. Organizers of the conference claimed that the growing numbers of attacks on minorities were caused by Hindu chauvinistic ideology which was indeed 'used, promoted and directly assisted by the Indian state (reprinted in Tenth Annual Report 1987-88: 163-64). In view of possible protest during PM Rajiv Gandhi's visit to Canada, What the Commission did, was indeed interesting. The chairman wrote a letter to PM to save him from the possible embarrassment on minority related questions during his participation in Commonwealth conference. In the letter, Justice Beg elaborated how the Indian state was making stringent efforts to protect and promote the interests of minorities. Beg explained constitutional guarantees granted to minorities along with the schemes like PM's 15 Point Programme and mechanisms to combat communal violence (ibid.: 166-67). This letter unravels how the Commission worked as a government department than as an

[11] On October 1987, a letter from Shri Hari Sharma, Secretory, Indian People's Association in North America (IPANA), Vancouver, Canada was published in *Economic & Political Weekly* under the caption 'Centralized State Power and Threat to Minorities in India'. This letter was in fact an invitation to the conference that was generated in view of violence and attacks on minorities with state assistance, particularly 1984 Sikh riots and 1987 Hashimpura incident, reconversion spat and Hindu claims on mosques. It read-

> India today is facing the most severe crisis of its always weak, fragile and formal democracy. All minorities-religious, ethnic and linguistic are under attack. And of these minorities, those that are facing the most intense, systematic and escalating attacks all over India are the religious minorities; the Muslim, the Sikh and the Christians… the violence perpetrated on the Sikh in November 1984…genocidal massacre of the Muslims by the armed constabulary of the State in Meerut…Christian Churches and missions are burnt down…mosque claimed in favour of Hindu temples. Reconversion to Hinduism is being aggressively imposed (reprinted in Tenth Annual Report 1987-88: 163-64).

autonomous body protecting minorities. Instead of raising voice against infringement of rights of minorities, it had chosen to defend the government. Indeed, the existence of the Commission has a symbolic value to government to save its face on minority issues at international level. This might be one kind of pressure on the Congress government that perhaps led the Congress party to award of statutory status to the Minorities Commission in 1992 and the establishment of the NHRC. The services rendered to the government by the chairman Justice Hameedullah Beg and member Ven Kushok G. Bakula during and after Sikh pogrom and Hashimpura-Mailana incidents (discussed later in the chapter) were rewarded with Padma Vibhushan and Padma Bhushan in 1988 respectively.

Conflicting Claims of Communities: Babri Masjid-Ramjanambhoomi Dispute and the Minorities Commission

Babri Masjid-Ramjanambhoomi dispute captured the political scene of 1980s and 1990s intensifying violent Hindu-Muslim clashes.[12] Knowing the potential of the this dispute, the Commission in its annual conference of State Minority Commissions and Boards unanimously agreed to declare the site as national monument barring claims of both Hindu and Muslim parties in March 1985. The Commission found that the best course for the authorities concerned to adopt was to declare disputed sites such as Babri Masjid as the property of the central government which should be handed over to Archeological department to use the sites as per national interest. Concerned parties should be compensated with alternative land and funds to erect new places of worship. The central government might come up with legislation to give effect this kind of proposal (Eighth Annual Report 1985-86: 211). The view was also endorsed by Beg's successor S. M. H. Burney in Annual Report 1989-90.

In wake of country wide *rath yatras* (processions), carried out by the Hindu nationalist organizations to generate consciousness and consensus among Hindu community for building Ram Mandir at the very site where the Babri Masjid had been standing since 1524. These processions were routinely followed by communal tensions and riots. Apprehending that the Babri Masjid-Ramjanambhoomi dispute might emerge with

[12] Babri Masjid was built in 1524 by Mir Baqi, a commander of Mughal Emperor Babur. The claim over site was contested by both Muslims and Hindus alike as many Hindus believed that it was the site of Lord Rama's birth and Muslims revered it as a sacred worship place. To quell the dispute, the doors of Masjid were closed by the Court's in 1949. Since then it was a dormant legal battle until revived by RSS, BJP and allied parties during the decade 1980s which finally culminated into its demolition in 1992.

renewed tension leading to the total break-down of law and order situation and rioting, the Commission recommended to the Ministry of Home Affairs a blanket ban on all religious processions for the time being. The Ministry replied that holding public meetings and processions peacefully and without arms is constitutionally guaranteed right emanating from Article 19 (1) (b). Thus, the state action abridging this right, prohibiting peaceful assembly of citizens by law, was not reasonable[13]. Moreover, the Ministry said declaration of the disputed site as national monument was not acceptable to the parties involved. The Commission, however, reasoned that fundamental rights could be subjected to reasonable restrictions. Contrary to the Ministry of Home Affairs, the Commission explained that how a close nexus between religious processions, provocative slogans, mischief by anti-social elements had subsequently busted into communal violence on several occasions. It believed that religious procession had become more a demonstration of brute strength (Twelfth Annual Report 1989-90: 19-23). In the next year, the Commission endorsed constitution of a committee to hold discussions with various groups to find a negotiated settlement in the meeting of the National Integration Council (Thirteenth Annual Report 1990-91: 7-8). And reiterated the advice of blanket ban on religious processions more strongly, along with the formation of 'Peace Keeping Forces' in wake of violence in Gujarat around the *Kar Seva* at Ayodhya (ibid.). In the years 1991-92 and 1992-1993, the Commission worked without chairman and only with three members, did not make any mention of this issue but recommended the general guidelines for combating communalism including a recommendation to ban all king of militant senas (Fourteenth Annual Report 1991-92). This was the time when Babri Masjid-Ramjanambhoomi controversy reached its height and finally unfolded into Babri Masjid demolition. Few months before the demolition, the Minorities Commission was accorded statutory status and the first statutory Commission was formed in the year 1993. Commented on this lapse, Tahir Mahmood commented:

[13] Manipulation of religious processions for political purposes has a long history in India. For the first time, processions were organized around Ganesh Chaturthi festival to unite and organize Hindus against Muslims in early 1890s. In 1894, a procession precipitated riot by deviating from officially fixed route and by playing music in front of the mosque. By 1920s processions and riots were also utilized to mobilize and polarize supporters for electoral gains. The trend continued in post-independence India (Jaffrelot 2005: 280-288). Thus, one may find difficult to understand the rationale of the Ministry's decision of not banning procession knowing the sensitivity of the dispute except political.

> It was during this year, 1992-93, that the status of the Minorities suffered the biggest and most violent jolt in Independent India…The Commission had nothing to say or report about this most heinous crime against the Nation's honour. Was it, then, just a lapse or deliberate escapism? There is no justification at all why 1992-93 was treated as Zero year and no report was ever submitted for it not even by the next Commission (2001, 2016).

By the time Commission was constituted, Bombay was burning in post-Babri Masjid demolition riots. The NCM condemned winding up of the Sri Krishna Commission, appointed to enquire into Bombay riots by the Shiv Sena led Maharashtra government in 1996. The NCM advised the state to allow the SriKrishna Commission to continue to complete inquiries (Annual Report 1995-96:84-85) which was complied with though its recommendations were never implemented.[14] In another instance of post-Babri Masjid demolition riots in Gujarat, the NCM recommended to the central government to act under Articles 255 and 355 as state government failed to protect minorities against violence (Annual Report 1999-2000).[15]

The response articulated in the Babri Masjid-Ramjanambhoomi dispute by non-statutory Commission was not of an institution which was to uphold and facilitate justice and equality for minorities but of a forum created to promote national unity and integrity even at the cost of justice that reaffirmed minorities' second class citizen-hood. Many leading Muslim personalities such as Syed Shahabuddin, Tahir Mahmood, have severely criticised virtual nationalization of Babri Masjid to protect communal harmony. Shahabuddin alleged that this opinion was given to only in order to please the government.[16] However, the recommendation of blanket ban of religious processions and use of loudspeakers at religious places seemed practical as negligence of this crucial issue by the state and the central government made Babri Masjid-Ramjanambhoomi dispute more violent and threatening. The 'politics of procession and rioting' routinely served dual purposes in wake of Babri Masjid-Ramjanambhoomi dispute; they mobilized

[14] The State Minorities Commission was also not reconstituted by the Maharashtra government after the lapse of its tenure in 1995. The Commission could be revived by the next government under Vilasrao Deshmukh (Times of India, 23 October, 1999). The NCM repeatedly recommended reinstallation of SMC in Maharashtra (Annual Report 1995-96: 182, 1996-97 and 1997-98).

[15] In response to this recommendation, state BJP in its executive meeting accused the Commission for partisan attitude and extending Congress political leverage (Indian Express 19 November, 1999).

[16] Justice Beg responded to Shahabuddin's criticisms and cautioned him against spreading bigotry in place of harmony and also tried to convince him about the benefits (material) of getting a new place and fund for construction of new mosque (Letter to Syed Shahabuddin reprinted in Tenth Annual Report 1987-88: 286-87). It would be interesting to note that Justice M. H. Beg and Ven. Kushok G. Bakula were awarded Padma Vibhushan and Padma Bushan by the government of India in 1988 while they were holding their positions in the Commission.

anti-Muslim sentiments and were utilized as shows of strengthen and violence for electoral purposes (Jaffrelot 2005: 280-94). But the Commission could not approach the dispute as a matter of contesting claims of communities pertinent to secularism and entangled with claims of superior/inferior citizens. Even statutory Commission was refrained from commenting on the Allahabad verdict (2010) that divided the disputed site into three parts between Hindus, Muslim and Nirmohi Akhara. The judgment was criticised as ill reasoned and detrimental legal precedent which in implication accorded legal superiority to indigenous Hindu faith. At the same time Muslims claims were down played for practicing a religion whose sacred places could not be treated as primary as that of Hindus. The series of riots following demolition were inextricably connected to Babri Masjid dispute that could not be treated in isolation from the political context in which it emerged. The way Commission chose to stay away from controversial sources of violence like Babri Masjid dispute reflects its superficial response to key issues concerning minorities. Gujarat riots 2002 were also embedded in unresolved Babri Masjid-Ramjanambhoomi dispute as *karsevaks* who were burned alive in Sabarmati Express were coming back from Ayodhya after performing *karseva* which was aimed at construction of Ram Mandir.

Gujarat Riots 2002: State Complicity in Violence against Minorities

In the year 2002, Gujarat went through the most horrific anti-Muslim violence since partition. The riots erupted subsequent to Godhra carnage of 27 February, 2002 in which Sabarmati Express was allegedly set ablaze by Muslims, burning 59 Hindu *karsevaks* alive who were returning from Ayodhya after performing *karseva*. Large-scale communal violence subsequently erupted in Ahmadabad and in other adjacent towns of Gujarat, which lasted for many days. Severe rioting took place between 28 February to 2 March 2002 in which state's complicity was alleged. According to official estimates about 790 Muslims died whereas Human right organizations claimed the death of 2000 Muslim (Dayal 2011). The Gujarat government described riots as 'spontaneous reaction' to Godhra carnage, but civil society organizations and NGOs alleged riots as planned conspiracy (Human Right Watch 2002: 4). Communal clashes in Gujarat presented a very challenging situation where violation of basic rights of minorities was coupled with negligence of authorities to deal the matter appropriately and impartially. Recognizing

the gravity of situation, three commissions, the NCM, the NRHC, and the NCW made interventions as per their mandate and role. It is not commonly known that the NCM was first to come immediately into action referring Gujarat violence as 'a threat to great tradition of communal amity and communal harmony of the Indian polity' (Catalogue 2002).[17] When the Commission's request to visit the state was turned down by the Gujarat government on 2 March, 2002, it had detailed discussion with PM on this matter and made several recommendations to bring peace and harmony to the state. In addition to conducting an investigation in Ahmedabad, on 13-14 March, the NCM summoned top state officials to appear in New Delhi on 6 April, 2002, after the state failed to respond to its request for a report specifying the action taken to curb the violence in early March.

The NHRC took *suo moto* action arguing that 'the recent events have resulted in the violation of fundamental rights to life, liberty, equality and dignity of citizens of India as guaranteed in the constitution' and conducted a fact-finding mission from 19-22 March (Human Rights Watch 2002: 60). Both the NHRC and the NCM have made serious allegations of state misconduct and put forth detailed recommendations which were not dealt by the Gujarat government satisfactorily. Investigations carried out by the NHRC found the evidences of premeditation in the killings. RSS, VHP, Bajrang Dal and Vanvasi Kalyan Ashram, were found to be involved along with the political and administrative machinery of the state under CM Narendra Modi (NHRC 2002, NCM 2002, Dayal 2011).

There was a difference in the way in which Gujarat riots were approached by these Commissions. While the NHRC focused on addressing transgression of citizen's basic rights, the NCM was engaged in reconciliatory activities to bring back communal harmony in the state. In the context of recurrent violent incidents, the NCM assumed the role of arbitrator facilitating negotiations between the Gujarat government and leaders of minority-majority communities. Its recommendations prominently included issues of peace committees, relief, rehabilitation, compensation and fresh day to day problems that surfaced in wake of riots.[18] Godhra incident was repeatedly mentioned whenever there was a reference to Gujarat riot in comparison with other instances of severe violence like

[17] Activities and actions of the NCM with respect to Gujarat riots were compiled in *Gujarat Turmoil 2002 and the National Commission for Minorities: A catalogue* published by the Commission's secretariat.

[18] Commission dealt with comparatively trivial issues with great care and efforts such as organization of board examinations (Catalogue 2004).

Naroda Patia[19], Gulbarg society[20], Best Bakery[21] etc. Indeed, the Commission's focus on mere reconciliation and its satisfaction[22] with state's role in relief rehabilitation were severely criticized. The Times of India advised the Commission to realize that 'justice comes before reconciliation'. Moreover, it rejected the Commission's claim of engagement with legal cases as it could not protect the key witnesses including Zahira Shaikh who had lied in the court because of threat to her life as Vadodara Fast Track Court acquitted all 21 accused in 2003 (Times of India 22 July, 2003). The most significant outcome of the NCM's engagement with the Gujarat government, as claimed by the NCM was the appointment of the Nanavati Commission for an impartial investigation into the cases of riot as the it had repeatedly suggested the appointment of sitting judge of the Supreme Court on the enquiry panel in place of retired judge of High Court as done by the Gujarat government earlier (The Tribute 23 May, 2002, Catalogue 2004: 94). While the NCW appeared busy in protecting the state government deeply implicated in the violence against Muslim women (Arya 2013), the NCM, reported *The Pioneer* took pride for successfully enabling the constitution of Women Cell with three senior women police officers to record complaints of sexual assault and rape, something the NCW failed to achieve (24 May, 2002). As a part its reconciliatory mission, the NCM organized several rounds of meetings between leaders of RSS, VHP and Bajrang Dal with the prominent Muslim figures of the Gujarat to clarify pervasive misgivings about each other, after sometime CM Narendra Modi was also brought to reconciliation table. Like the NCW (ibid.), NCM was also appreciated Modi for this concerted efforts

[19] Not less than 65 Muslims were killed by the mob of 5,000 in Naroda Patia (Human Right Watch 2002: 15). Some other sources estimated death tools as 97 (Hindustan Times 1 September, 2012). In 2008 this case transferred to SIT appointed by the Supreme Court that alleged 70 people involved in carrying out violence including activists and politicians of Bajrang Dal, BJP and VHP. The Special trial Court on 29 August, 2012 convicted 32 including former minister and sitting MLA of Naroda Maya Kodnani and Bajrang Dal politician Babu Bajrangi (ibid.).

[20] Around 69 Muslims were killed at Gulbarg housing society by Hindu mob including a former Congress MP Ehsan Jafri in post Godhra riots of 28 February, 2002 (Indian Express 1 March, 2003). It was because of the efforts of the NHRC and Citizens for Justice and Peace that Gulbarg society case was transferred outside Gujarat in which 11 people were finally sentenced to life. 12 others sentenced to 7 years jail and one man was given 10 years terms (Business Standard 18 June, 2016).

[21] On 1 March, 2002, a mob attacked Best Bakery situated at Vadodara owned by Muslim Sheikh family, killing 14 including 11 family members and two Hindu employees. The case is known for key witnesses turning hostile. Although, both the NHRC and the NCM asked the state government to file appeal against this judgment (Catalogue 2004: 119,121), it was only after the Supreme Court's order in 2004 after which trial began in the Bombay High Court. In July 2012, the Bombay High Court upheld life term for 4 convicts and acquitted 5 (10 June, 2012).

[22] The Pioneer was critical of NCM's letter to Home Ministry which complimented the Gujarat CM Narendra Modi and claimed 'Modi is a changed man' (The Pioneer 24 May, 2002).

to bring back normalcy (Catalogue 2004), but NHRC remained critical to the role of the state and the Modi government.

The problem of deficient link became prominent in Gujarat violence. The NHRC, NCW and NCM though intervened in to ensure redressal of citizen's rights; their intervention was marked by isolation. Moreover, they carried their own set of normative values while approaching violence against citizens. While NHRC gave importance to citizen's rights, NCM granted foremost significance to reconciliation through dialogue and negotiations. The NHRC exerted comparatively more pressure on the state government of Gujarat due to its power to investigate and enquire into the cases of human rights violation coupled with enforceability of its decisions. Except NHRC, two other Commissions could not alter the course of state activities significantly; their activities were confined to identification and condemned state complicity in violence against minorities. The NHRC's intervention was well informed of normative questions of rights and justice as embedded in the instances of communal. On the other hand, NCM could not go beyond the thesis of communal violence as a threat to national values and traditions of communal harmony. Moreover, in absence of binding force of recommendations, the other two commissions were limited only to monitoring and advising.

Violence against Christians: Kandhamal Riot 2008

Orissa and Gujarat have been the states where Christians experience communally targeted violence more than any other state in India.[23] Riots erupted in Kandhamal after the murder of VHP leader, Swami Laxmanananda Saraswati along with his four disciples on 23 August, 2008.[24] Subsequent violence ruthlessly damaged and destroyed Christian churches, institutions, hamlets other properties and attacked pastors, raped nuns and common Christians forcing them to flee (Kanungo 2008: 16). What happened in Kandhamal in 2008 was in making for long, hatred was inculcated in the minds of common Hindu masses against minorities by demonizing them threats (Malec 2011: 93).

[23] Orissa has one of the most conspicuous histories of violence against Christian community. Since late 1960s Christians and Muslims were increasingly targeted by Hindu fundamentalist organizations with the passage of Orissa Prevention of Cow Slaughter Act 1960 and Orissa Freedom of Religion Act 1967 (Malec 2011: 93-94).

[24] The murders were explained through several theories. One claimed that Maoist killed him and his fellows as he was 'mixing religion with politics'. RSS alleged 'Christian conspiracy' and raised cry for revenge. As per explanation pertaining to electoral competition these murders were engineered by a section of the RSS to secure electoral advances for BJP in upcoming elections (Kanungo 2008).

Missionary activities were projected 'dangerous for the indigenous culture' and Christians were accused of forced conversions in general (ibid.: 94). Pralay Kanungo has argued that anti-Christian mobilization in Kandhamal had more to do with ethnic divide of Kandhas (Hindu) and Panas (Christian) and their competing claims over economic resources in the region which was converted into 'Hindu-Christian communal confrontation'[25] by the intervention of Hindutva outfits including Swami Laxmanananda Saraswati. Panas demand of SC status turned Kandhas furious that stimulated violence against them in 2007 at the eve of Christmas (2008: 17-18). The state, argues Kanungo, if not supported post-Swami Laxmanananda murder anti-Christian violence, it acted as mere spectator when 40 people (this estimate varies from 40 to 100)[26] were killed and Christians were made homeless (ibid.). Many RSS, BJP, and VHP leaders including Praveen Togadia were allowed to participate in Laxmanananda's funeral procession on August 25 which aggravated communal sentiments (Malec 2011: 98).

While Maoist took the responsibility of murder, RSS and allied organizations accused Christians for murder. Civil society groups and Christian organizations demanded CBI inquiry into murders and afterward riots, government preferred to appoint a one man judicial commission by retired HC Justice Sarat Chandra Mohapatra. The riot affected people generally distrusted this inquiry commissions, local authorities and judiciary (Malec 2011: 92).

The NCM sent vice chairman M. P. Pinto for Kandhamal visit from 11-13 September, 2008. Pinto rightly designated Swami Laxmanananda's murder and his politicized funeral procession that was deliberately diverted from its officially determined route as the immediate cause of unleashing violence against Christians. Pinto mentioned Hindu groups' allegation of increasing Christian population due to conversion large scale conversion which was the prime cause of disturbances in the area. Pinto rejected such claims. He wrote-

[25] Originally Kandhas were inhabitants of Kandhamal and Panas came as migrants from pain areas. The landless Panas used to live as subjects under Kandhas. Deprivation from forest land due to new land laws under colonial rule and their reluctance to interact with outer world placed Kandhas on disadvantageous position comparatively. On the other hand Panas utilized the opportunity to explore the colonial world and some of them secured petty jobs, small land pieces and business that made them 'exploiter' and 'land snatcher' in the eyes of Kandhas. This perception was further crystallized as Kandhas believed that Panas cornered the benefits of reservations by producing forged SC/ST certificates (Kanungo 2008:17).

[26] The NCM report pointed out that actual estimate of dead might differ as official records listed only those dead whose bodies were found and post-mortem performed (Annual Report 2008-09).

> Some groups did complain that large scale conversion was at the root of the disturbances and that the Swamiji's murder was only the trigger…unrest that was already brewing in Kandhamal. While exact figures of the number converted are hard to come by, there is no doubt that the Christian population has registered a larger increase than that of the Hindu population. But although the Freedom of Religion Act has been in existence for about 40 years, not a single case has been registered under this Act for forced conversion in Kandhamal. If indeed conversions by force or fraud were responsible for the feelings against Christians, it is absolutely amazing that the provisions of an Act designed precisely to address such conversions have never been invoked. It gives rise to the suspicion that conversion had really very little to do with the problem (http://kuidina.blogspot.in/2008/10/ Assessed on 12/12/2016).[27]

Instead of recommending on how to control anti-Christian propaganda, Pinto advised state authorities to invoke Orissa Freedom of Religion Act (Annual Report 2008-09: 18-19) against those employing force to convert Christians to Hinduism. It is a well-known fact, that how Freedom of Religion Acts are employed against minorities, particularly Christians are victims of such Acts. This NCM report disappointed many as it contained just general recommendations to combat communal violence than supplied authentic objective data on the causes and culprits of the riots (Malec 2011: 92). Moreover, it could not deal with the issue of indoctrination of religiosity among masses by Hindu out fits and competing claims over economic resources as basic cause of the violence in this case as rightly underlined by kanungo (2008).

On the contrary, when anti-Christian riots broke in Kandhamal earlier at Christmas Eve 2007, taking *suo moto* cognition, the NCM called for a report from Orissa government which it found grossly dissatisfactory. Thus, it sent a delegation to Orissa from 6-8 January, 2008 to make on the spot assessment. In its findings, the delegation recognized Kondh-Pana conflict over SC status as source of the violence partially. According to the delegation, anti-conversion campaign launched by VHP under Swami Laxmanananda was the most important factor for communal disturbances in the area. At the same time, delegation did not find any justification for anti-conversion campaign by the VHP and the RSS. In this context, delegation recommended assessment of Swami Laxmanananda's speeches to determine whether it would amount to incitement of violence in the area (Annual Report 2007-08: 41-42). Pin pointing the roots of the conflict, delegation also recommended examination of inclusion or exclusion of

[27] It would be interesting to note that this report was not available on NCM portal anymore and is available on http://kuidina.blogspot.in/2008/10/Assesed on 12/12/2016).

disadvantaged groups from official SC/ST list (ibid.: 42-23). The state government did not pay attention to the Commission's recommendations seriously and the issues raised by the delegations remain unaddressed triggering the riots of August 2008. Indeed disturbances on December 2007 and riots of August 2008 appear in continuation. The Commission's intervention became obscure as the Commission recognized the real cause of violence at one time and did not follow that precedent later. In his follow up visit during June 2009, Pinto advised the state government to ascertain whether people (Christians) returning from camps to villages were forced to convert to Hinduism or they were voluntarily opted for the Hinduism. In the wake of repeated assault on Christians, he recommended that cases must be filed against those threatening riot victims with forced conversion to Hinduism as a pre-condition to return to villages (Annual Report 2009-10: 15-16). This was a U-turn in his earlier position on conversion. Moreover, he suggested extended stay of CRPF to the central government till normalcy was fully achieved (ibid.).

The NCM visited Kandhamal to assess the relief and rehabilitation of Christians in 2013; it kept referring to its 2007 report instead of 2008 and 2009 reports, which comprehensively dealt with the sources of conflict between Kandhas and Panas and complicity of anti-conversion campaign. Meanwhile, Swami Laxmanananda's murder case was solved and six Christians were found guilty by the speedy trial Court though the responsibility of the murder was taken by Maoist groups. In a follow up visit done in the year 2013, the Commission though appeared satisfied by the rehabilitation done by the state government, it recorded that some Christians were still living in camps and haven't moved to their respective villages (Annual Report 2013-14: 49-52). What is interesting in this case is that though the Commission safely stated the fact of Christians' conviction in Swami Laxmanananda's murder case, it raised figure towards the Court's decision by bringing in Anto Akkara's book[28] on Kandhamal riots (ibid.)

Muzaffarnagar Riots 2013: Shrinking Role of State in Post-Riot Scenario

Riots broke out in Muzaffarnagar in the background of the killing of one Muslim boy Shah Nawaz by two Jat boys, Sachin Malik and Gaurav Malik at Kawaal village who

[28] For details see, Anto Akkara (2009) Kandhamal : A blot on Indian Secularism, Media House.

were also killed by enraged mob in turn by the villagers between August-September 2013. There were two versions of the story behind this incident. According to one version, Jats alleged eve teasing of their girls by Shah Nawaz which prompted his murder. However, authenticity of both the stories was suspected (Rao, Mishra, Singh and Bajpai 2013). As per Muslims version of the story, Shah Nawaz and two Jat boys scuffled over a minor incident of motorcycle and bicycle accident. On August 28, Jats returning from cremation of their boys damaged 27 Muslim houses in village Kawaal. The next day Muslims damaged Shiv Mandir in the same village. On August 30, a Muslims jan sabha was called allegedly inciting them, however the NCM was supplied with a CD claiming that jan sabha an appeal for peace. Following condolence assembly for Jat boys on the next day at Nangla Mandaur, six Muslims were pulled out of car and beaten up and a Muslim youth was assaulted. On September 5, a Malik Khap panchat was held at Lisad village, Shamli followed by Mahapanchayat of Jat Khaps at Nangla Mandaur on September 7. Events proceeding Mahapanchayat took 9 lives including one of IBN journalist leading to imposition of curfew in the area and subsequent installation of army. The army was withdrawn on 17 September, 2013 (NCM Annual Report 2013-14: 25-28). Around 60 people died in sporadic instances of violence and 50,000 were displaced by the end of October (Indian Express 30 October, 2013).

The NCM paid two consecutive visits to Muzaffarnagar and Shamli on September 19 and October 3 inquiring the causes of the riots and assessing relief and rehabilitation process. The Commission had thorough visits; it visited each of the affected villages, camps and families of deceased. The issues security, compensation and rehabilitation of both the communities were considered by the Commission as majority community alleged that compensations were given only to Muslims and FIR against them were withdrawn. The chairman, Wajahat Habibullah assured them that 'all guilty of perpetrating violence, irrespective of community, would be held to account' (ibid.: 29). The Commission arrived at conclusion that spread of rumours through social media[29] combined with the administration's unexplainable failure to prevent Mahapanchayats of both Jats and Muslims and thoughtless transfer of DM and SP in the wake of Kawaal incident deteriorated law and order situation further. It also found that lower castes

[29] It was alleged that some fake videos of Taliban atrocities in Afghanistan were shown during Mahapanchayats and circulated through WhatsApp and other social networking sites that incited communal sentiments.

among Muslims were the worst sufferers and Hindu scheduled castes were likewise scared and flew to camps. Many of them were too scared to return to their homes. During the visits, Commission came across several instances of administrative inefficiency, under reporting of dead who were buried without post mortem or whose bodies could not be found. The Commission recommended utilization of Communal and Targeted Violence Bill 2011 as guideline to process speedy rehabilitation for riot victims.

The Commission noticed several disturbing trends in rehabilitation and compensation measures opted by the state during its next visit on 16th November 2013. At least two points need especial mention in post-riot scenario of Muzaffarnagar. First, there were attempts to block return of riot victims to their ancestral villages. The NCM took cognizance of the news reports that the state government was sanctioning one time of financial aid of 5 lakh Rupees to victims with certain unjust conditions such as beneficiaries of one time financial aid would not be allowed to return to their original homes.[30] However, the district administration clarified to the Commission and issued a press release stating that no notification to such effect was issued and the government order was misinterpreted. Rs.5 lakh aid was only for those who were not willing to return to their homes despite all efforts made by the administration. And such people would continue to own their properties even after receiving aid (Annual Report 2013-2014: 46-47). Second, the state seemed to be moving away from responsibility of relief and rehabilitation and shifting it to community organizations. There was a near total absence of state agencies in the relief efforts for the riot victims. On the face of it the relief camps were being organized by religious/communal organizations of the Muslims like Jamiat Ulema-e-Hind, Charity Alliance, Khudai Khidmatgar, and hundred others among which the Jamiat Ulema-e-Hind was the most prominent one. Whatever, little relief was provided by the state agencies were also routed through the communal organizations of the minority community (Farida Khan 2016, Rao et al 2013). Moreover, Farida A. Khan pointed out that, although communal violence was a huge problem in itself, something larger was happening that could have implications for the nature of state and politics in India. There was some sort of withdrawal of the state from the lives of minorities which was not real but made to appear as real by the state itself. Khan said that-

[30] The government order of 13th October 2013 required the victims to state in affidavit that they would not go back to their original homes after receiving aid (The Political and Business Daily 29 October, 2013).

> State intervention again is of very particular kind right now. There was critical reporting of this fact that state was not taking responsibility as the Muslim organizations were. In fact what was disturbing again that the state was taking responsibility, but the state was actually, partly working with the local Muslim community and asking that community to take on, looking after riot affected people...*State was actually providing food, money, whatever assistance needed*.[31] But it preferred to have Muslims doing all of this, the community which has been affected. There is Kind of way in which Muslims have already been perceived, like in education the push for making madrasa and giving assistance to madrasa. So the *community has to be the muhafiz*[32] *for itself*. State promises *I will assist you, but it is your responsibility*. (Khan 2016.).[33]

This kind of state response forced the victims of riot to believe that the community was the one most important thing in their lives. The marginal role of the state restoring normal life, facilitating relief and rehabilitation process sent a negative massage to minorities. Minorities might believe that state was actually absent in the entire process as what they were finding around them were their co-religionists not the state agencies. This deliberate absence of the state could result in alienation of minorities from the mainstream politics and reduction of their faith in the state as a whole. In Muzaffarnagar, NCM registered disturbing trends prevailing in society reflecting political polarization of communities along religious lines. NCM was consistently told by the residents of riot affected area about precipitating hostility between Hindus-Muslims and Muslims were generally threatened before after the incident. Hindu residents did not want to live with them. Many Muslims were reported that even before the incident some members of the Hindu community kept telling them that 'We will make you leave this place, you will not live here, and we will make sure that you will not come back' (ibid.). Persistent hostility and threat to life made the Muslims more insecure in the place where they had been living for generations. One incident of open communal violence made them believe that they were secure only at the places surrounded by Muslim populations. Even after incident of violence, as Khan told, many members of Hindu community did not repent what their community had done to Muslims and kept on insisting that they did not want to live with them.

> In Muzaffarnagar, we met a group of women, who said we would not allow Muslims here. We were trying talk to them about the fact that they have lived together and being together for long

[31] Emphasis original.
[32] *Muhafiz* is an Arabic work meaning preserver, custodian or guardian.
[33] Emphasis original.

> time how they feel about them. That group of women said *Hum unhen wapas ni aane denge unki tange tod denge. Is gaon me hmen koi muslaman nahi chahiye*[34] (ibid).

Unlike earlier interventions, the Commission's association with Muzaffarnagar riot was quite refined, well informed by the issues of citizens' rights. It sought accountability of local administration and state government on various aspects of violence and breach of citizens' right in post-riot scenario like cases of rape and death little children in relief camps. Moreover it pin pointed deep seated anti minority sentiments prevailing in society at large.

II

Cow Protection, Conversions and Minorities: Mob Lynching of Akhlaq and Killing of Graham Staines

On the night of 28-29 of September 2015, Mohammad Akhlaq, 52 years old, was lynched and his son Danish, 22 years, was beaten almost to death by an angry mob on the allegation that his family had involved in the act of cow slaughter and was storing and consuming beef. Other members of the family, including Mohammad Akhlaq's aged mother were also beaten up. This incident took place in Bisahda Village of Dadri Tehsil, Gautam Buddha Nagar District of Uttar Pradesh, and just a few km away from the national capital. This incident as reported by media was not spontaneous at all. Public announcement system of village temple was used to spread the rumour that Mohammad Akhlaq had slaughtered a calf and stored beef in his refrigerator. The police arrived an hour later. By then, Akhlaq was dead and Danish was critically injured (Indian Express 30 September, 2015). On 29th September, relatives were barred from attending Akhlaq's funeral. The Uttar Pradesh government on September 30 ordered a magisterial inquiry into the incident and also announced a compensation of Rs.10 lakh for the family of the victim (Hindustan Times 1 October, 2015). The incident took a political face as prominent politicians belonging to different political parties visited the village favouring one or the other side. The visitors included Sangeet Som, Mahesh Sharma, Arvind, Kejrival, Asaduddin Owaisi, Rahul Gandhi etc. along with several NGOs and civil society organizations (Hindustan Times 5 October, 2015). The initial forensic test done

[34] Emphasis original.

by Government Veterinary Hospital in Dadri[35] proved that the meat kept in refrigerator was mutton not beef. But another forensic report from Mathura Central Forensic and Scientific Lab stated the meat found in Akhlaq's home was indeed beef that led the village into fresh communally charged scenario and demanding FIR against Akhlaq's family.

NCM criticized the incident strongly. Acknowledging the gravity of the situation, a NCM team headed by Chairperson Mr. Naseem Ahmad and members Mr. T. N. Shanoo and Prof. Farida Abdullah Khan visited Bisahda Village to assess the situation and evaluate progress in investigation. On the visit, team talked to district authorities, family members and neighbours of Akhlaq. The sequence of incidents as appeared in media were found to be corroborated with the description given by family members, relatives and other witnesses in the village to the Commission. District authorities indicated that something was precipitating in the area as the rumours of cow killing had been reported at least two nearby villages in attempt to gather people and to incite them, in which concerned authorities took instant action to 'establish that there was no truth in them' and prevented the situation to escalate.[36] The Commission felt that this incident was premeditated as 'a crowd of large numbers appearing within minutes of announcement from temple's loudspeaker and at a time when most villagers claimed that they were asleep' could not natural (Annual Report 2015-06: 21-22). The NCM team reported that in spite of large police presence in the village and assurance from the administration, Akhlaq's family was visibly shaken and feeling insecure and trying to shift to some other 'safer' place. Further NCM found 'In fact they are already shifted their belongingness to some other place. At the time of team's visit of Akhlaq's house, the team could see only bare cots with no household good in the house (ibid.).' Janhastakshep team, also found definite signs which indicated that preparations had been underway by communal forces to break the communal amity among the villagers by a precipitous action such as

[35] Brijesh Sisodiya (leader of Rastravadi Pratap Sena) one of the interviewee of Janhastakshep team believed that the Samajwadi party state government could not be trusted on the issue of determining whether the meat was beef or mutton as they were known for favoring the Muslim community. Besides the state government had a vested interest in falsifying the reality to ensure that Hindus in the area do not get agitated (Janhastakshep 2015: 84). However new forensic report stated that meat found in Akhlaq's home was indeed beef led the village into fresh communally charged scenario.

[36] Akhlaq's case was not the first or an isolated incident in which a mob has killed members of minority community on the allegation of cow slaughter in the area, a month before Akhlaq killing; three young men were killed by villagers on the allegations of animal smuggling (cows) in Kaimrala village of Dadri district.

flourishing of dubious 'senas' in the area like 'Rastravadi Pratap Sena', 'Samadhan Sena' and 'Ram Sena', newly arrived priest with unknown background, circulation of photos of alleged cow slaughter on mobiles in village a little while before the people were called upon to gather over the issue of cow. These photographs were later recovered by the police (2015). However, the charge sheet filed in a Dadri court did not mention the conspiracy angle, despite the NCM and Akhlaq's family members repeatedly insisting that the lynching was premeditated.

The facts, as reported to the NCM team, indicate strongly that the whole episode was a planned operation, in which a sacred place like a temple was used to push people to attack a hapless family,' said the NCM's report to the Home Ministry (Annual Report 2015-06: 21-22).' NCM left no doubt that these kinds of attacks of minorities cannot be tolerated and underestimated as something normal in the life of diverse societies. It commented on Najma Heptuall's ill framed remark that what happened in Dadri was 'just an accident' and emphasized that it would be 'quite an understatement' to call such a killing merely an accident 'as has been claimed even by some persons in authority' (The Indian Express, 22 October, 2015). Nevertheless, NCM recognized deep roots of the issue of 'moral policing with impunity' which was spreading fast 'what is more disturbing is that responsible person's coverage at the place of such incident and make irresponsible statements which further vitiates the relationship between communities (http://ncm.nic.in/pdf/tour%20reports/Farida/GBN%20tour%20report%2015.10.2015.pdf.Accessed on 1/01/2016)'. The NHRC refrained from intervening in Dadri case on the excuse that one commission was already looking after the matter and it could not formed any stand of this 'complex matter' (http://indianexpress.com/article/india/india-news-india/dadri-lynching-serious-violation-of-human-rights-may-take-action-nhrc/#sthash.za00h1rO.dpufAccessed on 20/01/2016).[37]

[37] After 2 years, a man named Pahlu Khan, a dairy farmer of village Jaysinghpur, Mewat, Haryana, was lynched to near death by a mob at Alwar, Rajasthan on 1st April 2017. While, Hindu diver was spared, Pahlu khan's along with his two sons were beaten badly. They were attacked by vigilante group activists when they were in their way from Jaipur cattle bazar after purchasing cows to Mewat. After two days on April 3, Pehlu died of injuries. While this incident happened the NCM was defunct in the absence of fresh appointments to the posts of chairman and the members of the Commission. The NHRC took *suo moto* cognition of the incident and sent a notice to the central government seeking report of the entire incident. There are some similarities between Dadri and Alwar cases as in both the incidents Minister of Minority Affairs gave very controversial remarks and FIR was lodged against the victims. While at the time of the Dadri incident, the NCM was functional and criticized the remark made by Najma Heptullah and blocked further progress on FIR against Akhlaq (Ahmad 2017), in Pahlu's case nothing was done.

What was lying embedded in the incident was not just the protest against the eating habits of smaller sections of population but more annoying issue of impact of constructed movements like 'cow protection movement' and their legitimization by enactment of anti-cow slaughter laws. These questions remained dormant in the public domain and issue was reduced to just identification of meat as beef or mutton to legitimize or de-legitimize the brutal act done by the mob.[38] At the first place, a person was killed by a mob on allegation of his dietary habits which was different from majority's perception of food; his right to life was violated due to the act which is not punishable to death even under controversial cow protection legislations, and a mob cannot be authorized to decide and deliver punishment to anyone. But the existence of cow protection laws extends certain legitimacy to such incidents in the eyes of common people; as many as 24 states out of 29 states have one or the other kind of anti-cow slaughter / protection laws. Advocates of cow protection cite Article 48 of the constitution which inspires to protecting cows and ban cow slaughter.[39]

Identification of as mutton in the Agra forensic laboratory created the basis for de-legitimizing mob's action initially. The rationale was like this; mob action could not be justified as murdered man was not even consumed and stored beef. Centrality of 'identification' was made it possible for various cow protecting organizations to claim that Akhlaq was judiciously punished for a crime he did, once Meerut forensic lab testified that meat was 'beef' instead of mutton.[40] An FIR was demanded and was actually lodged on the directions of the Court deceased Akhlaq and his kin (Indian Express, 15 July, 2016). The Minorities Commission monitored the situation closely, and Mr. Naseem Ahmad said in an interview with the researcher that 'we have ensured that the FIR should not be proceeded further and to harass Akhlaq's family. And we manage to arrange a home for the family out of the village as we found it would not be feasible

[38] Moreover, setting dangerous precedence, UP government paid 25 lakhs as compensation to Sisodia, an accused of Akhlaq's lynching who died in jail because of illness. His dead body was draped in Indian flag (Indian Express, 12 October, 2016) meant only for martyrs.

[39] Article 48 reads It reads 'State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines, in particular, take steps for preserving and improving breeds, and prohibiting the slaughter of cows and calves and other milch and drought cattle' (Bakshi 2016: 119).

[40] Many went to the extent that they demanded search for other Muslim houses where beef might be consumed as entire cow meat could not be consumed by a family alone and demanded that FIR should be filed against the family members of Akhlaq on the charges of cow-slaughter.

for the family to live in communally poisoned environment of the village (interview with Ahmad 30 January, 2017).

The Minorities Commission, in this case and earlier, never seems to raise the question on the legal (moral) validity of these laws. Even the clerics from the community appeal to Muslims on the occasion of Bakraeid[41] not to scarify cow to give respect to Hindu faith and belief and to maintain communal harmony of the country. On the other hand the NCSC demanded a ban on cow protection committees after the killing of Dalits on the name of cow protection in Una, Gujarat. P. L. Punia, chairman of the NCSC, appreciated Dalit mobilization and protest that followed Una incident. Punia said that 'It is a good sign. When Babasaheb Ambedkar said 'educate, organize and agitate', this is what he meant. So, in that sense, it is good that this is happening. Had such unity been there earlier, such atrocities would not have happened' (Frontline 2 September, 2016). The entire Dalit community was mobilized on Una incident unlike the Muslim community which remained silent spectator on Dadri incident and other similar incidents of lynching. The reason for lack of mobilization of Muslim community on Dadri and like incidents seems to be their threat for life and security that becomes even more real on the face of such incidents.[42] In the recent move, the central government issued a regulation on 26 May, 2017 putting stringent rules for selling and purchasing cows, bullocks, steers, heifers and calves, as well as buffaloes and camels. It is noteworthy that earlier in the year, RSS chief Mohan Bhagwat demanded an all India law banning cow slaughter (Hindustan Times 17, April, 2017).

Alleged Conversions and Minority Lives: Graham Staines's Case

On 23 January 1999, Graham Stuart Staines and his two sons Philip (aged 10) and Timothy (aged 7) were burned alive by a mob of around 1500 led by Dara Singh, a Bajrang Dal activist, while they were sleeping in their station wagon at village

[41] Barkaeid also known as eid-ul-adha, eid- ul-zuha meaning feast of sacrifice, is one of the most important Muslim festival all over the world. This festival was originated from the event related to the life of Prophet Abrahem. He was ordered by God to scarify his son Ismail in a dream. He took his son for the sacrifice but God sent angel Gabriel with a huge hum who was eventually scarified in place of Ismail. This story is mentioned in Quran in sura 37.

[42] But the lynching of 16 years old Junaid on 23 June, 2017 on a suburban train in Delhi, triggered the appeal of peaceful protest against mob lynching on social networking sites. On June 28, 2017, a non-political citizens' protest was organized at Janatar Mantar under the slogan 'Not in My Name' (Indian Express 29,June, 2017).

Manoharpur of Keonjhar district of Orissa. When they tried to escape, they were held back by the mob.[43] Initially, the case was handed over from the local police to the crime branch of the state police. After that it t was transferred to the Central Bureau of Investigation, which began its investigation after a first information report (FIR) which was registered with the police only on March 29. Hindu fundamentalist organizations have alleged that Graham Staines had been converting adivasis in the backward Orissa districts where he had lived and worked for the last three decades (EPW 2003: Vol. 38: 3949). Seven days after the killings, a judicial commission of inquiry, headed by Supreme Court Justice D. P. Wadhwa, was also set up to probe the circumstances surrounding the incident. The Commission, however, was upset with the central government for not extending sufficient resources for conducting inquiries and alleged that the government was not 'serious' to find the culprits. The Commission also condemned the Intelligence Bureau and the intelligence wing of the Orissa police for their failure to sense precipitating tensions in the area prior to the incident (Human Right Watch 1999). Whereas the NCM summoned an emergency meeting just after the incident came to public knowledge and sent a fact finding team consisting members Mr. James Massey and Mr. Kaminath K. The team observed that Staines was not involved in proselytizing activities but the incident was premeditated by outsiders (read activists Bajrang Dal, VHP and RSS etc.) and demanded a CBI enquiry into it (Messy 2003: 107-08).

Initially 49 Bajrang Dal members in connection with Staines murder (Indian Express January 25, 1999). The case was first transferred from state to state crime branch and later to CBI. While RSS denied any connection with the case, VHP alleged that Stain was involved in 'mass conversions than in social work' (Human Right Watch 1999). Investigations conducted by the investigating agencies and that of D. P. Wadhwa Commission's concluded that preventing mass conversion of tribals was the key issue behind the Staines murders in which Dara Singh played a crucial role by motivating his fellows to assault Christian missionaries (ibid.). The report stressed that no non-minority organization (read Bajrang Dal, VHP and RSS etc.) was involved in the incident also

[43] This was not a lone case of mob violence against individual Christians, between 1997 to 1998 several such cases occurred. On 2 September, 1997, a priest serving as Vice Principal of St. Joseph School, Dumka, Bihar (now Jharkhand) was assaulted; he was stripped and made to walk naked for 8 km. on September 1998, 4 nuns were gang-raped in Jhabua district of Madhya Pradesh (Messy 2003: 97,100). These cases along with Graham Staines invited international sanctions against India.

criticised the NCM for its fact finding report (Mahmood 2016:108). The CBI filed the charge-sheet against 14 people in 1999 (The Times of India 21 January, 2011). Dara Singh was convicted of the crime and sentenced to death by the Trial Court while other accused were awarded different jail terms. Later, Dara Singh's death sentence was commuted to life imprisonment by the Orissa High Court in 2005 that was upheld by the Supreme Court in 2011 (The Times of India, 21 January, 2011).

The Orissa government has passed the Orissa Prevention of Cow Slaughter Act, 1960 and the Orissa Freedom of Religion Act, 1967; both these Acts have helped the Sangh Parivar to carry out its anti-Christian agenda in Orissa. The chapter three has shown how freedom to propagate religion is already being constrained by the presence of so called 'freedom of religion'. These laws have circumscribed the religious freedom of lower castes, minors and women as far as religious freedom defined in terms of freedom of conscience, profession and practice. After Dadri lynching, Maharashtra government passed its long pending cow protection law. Haryana even went ahead with the creation of a post for 'Honorary Animal Welfare Officer' in each of its districts where Cow Protection Commission was already in place since 2010. The eligibility criteria for such post include possession of a history of being *Gau Rakshak* (https://scroll.in/article/813871/will-haryanas-cow-protection-ids-simply-be-a-licence-for-vigilantism Accessed on 29/12/2016). These kinds of state actions are actually vindicate majoritarian violence against minorities. Writing on cow vigilantism in *Indian Express*, Christopher Jeffrelot offers three reasons to explain why Hindu nationalists opt for vigilantism and how state appears in this frame? Firstly, since beginning RSS desired to transform society by instilling its own sense of discipline. Secondly, Hindu nationalist claims to represent society so they are not willing to prioritize state over society taking social affairs in their own hands. Thus, society should be regulated to achieve 'social order and harmony', but it should be done from within society not from state as 'people's will is beyond the law' and RSS claims to embody that. Thirdly, vigilantism is found to be convenient by the rulers as it would not be held guilty of minority witch-hunt. Instead of the state harassing minorities itself, allowing to vigilantes to do so would satisfy majoritarian feelings (13 May, 2017) and the state would be free from allegations of minority witch hunt. This argument may be extended to make sense of vigilante practices against the Christian community. Activities of vigilante groups go well beyond

maintaining Hindutva styled social discipline by imposing majoritarian ideals on minorities, infringing constitutionally guaranteed rights of religious freedom and above all right to life.

III

Hashimpura and Maliana: Complicity of PAC

One of the most hilarious cases of minority witch hunt by the state organizations came in light in the year 1987 from Hashimpura-Maliana in which Provincial Armed Constabulary (PAC) was found to be indulged in illegal abduction and murder of 42 Muslims on 22-23 May, 1987. This incident took place in the background of PM Rajiv Gandhi's decision to open door of Babri Masjid for Rama worship followed by riots in Meerut. Around 50 men were rounded up by the PAC and taken to Upper Ganga canal in Ghaziabad where they were murdered, four of them survived to tell the horror story by pretending dead. State CID submitted its report in 1994 which was never made public (Mander 2015: 46). Charge-sheet could be filed in 1996 convicting 19 policemen. Astonishingly, 23 bailable and 17 un-bailable warrants were issued but these policemen were untraceable though they were on their official jobs. Under public pressure and critical media reporting they surrendered 2000 but soon came out on bail. The procedural justice was undermined by delaying appointment of the public prosecutor (which happened only in 2006) and not informing the appellants about bail of convicts (ibid. 47).

Members of Amnesty International drew Commission's attention towards alleged excesses of the PAC during Meerut riots. In their letters Amnesty activists expressed anxieties about the disappearance of more than 36 men on 22 May, 1987, who were reported to be taken away by the PAC from Hashimpura, Meerut. Amnesty International also wrote about the deliberate killing of more than 30 unarmed civilians in Maliana on May 23. Under the leadership of Justice Beg, Commission appeared reluctant to get involved in the situation as it sent its reply to Amnesty International only in November. Justice Beg stated that since an enquiry committee under Gian Prakash was already appointed to investigate the issue, the Commission won't be able to provide correct facts unless enquiry was incomplete (Tenth Annual Report 1987-88: 57-58). However, the Commission already visited Meerut between 11-14 June, 1987. In its visit report,

Commission mentioned that 'communal holocaust which struck Meerut from 1 May, 1987 onwards was to a large extent, the consequence of a fall out of the agitational approach to the Babri Masjid issue' but found it improper to fix culpability on individuals and communities as Gian Prakash Committee was working in that direction (ibid.: 59-60). The other visit that Commission for July 19-20 was cancelled as District Magistrate advised the Commission to postpone the visit due to security reasons (ibid.). Though nothing came out of visit, it is worth wondering why the Commission chose to write letters to UP government to obtain the Gian Prakash Committee report only after it received letters from the Amnesty International not earlier, that request too was refused by the state government.

Habibullah informed about the initiatives taken by the Commission in Hashimpura case by the Commission under Hamid Ansari. He told that

> the legal case was going on and on. The case was decided only after Hamid Ansari revived that case when he was Minorities Commission's chairman. And finally decision came. You may object to the decision…nothing was generally done to culprits…some compensation thing was paid…but case finally reached a conclusion that was because of the fact that Minorities Commission *actually pushed the case*[44] and had that case transferred from the local court which was subjected to pressure and kept postponing that. Then the case was transferred to Delhi.

By the time law took its course three accused were died, several promoted and later retired. In absence of sufficient evidences all convicts were acquitted on 15 March, 2015 (The Hindu 21 March, 2015) causing much disappointment to victims and their kin. Initial inconclusiveness after Hashimpura visits of Commission's could be described as deliberate skipping in the presence of critical media reports at that time. Despite of Habibullah's claim that because of the NCM's effort the case was transferred from local court to Delhi seems to have little weight as several other individuals and organizations like Amnesty international and individuals such as Asghar Ali engineer, Harsh Mandal and Iqbal A. Ansari closely followed and pushed the case significantly along with the victim's kin. Still, the Commission examined the case document sent by the UP government and observed that it was a serious case of negligence on the part of the state government, it failed to take appropriate action against the persons who killed innocent Muslims in Hashimpura (NCM Annual Report 1999-2000: 81)

[44] Emphasis original.

IV

Extraordinary laws and Production of Suspect Communities: A view from Mecca Masjid Blasts 2008

According to Ujjwal K. Singh, enactment of extraordinary laws reflects the 'dilemma of democracy'. They are adopted as extraordinary measures to address extraordinary situations that have potential to generate existential crisis for the state. Constituted with exceptional provisions of 'arrest, detention, investigations, evidence, trial and punishment', these laws are intended to be short lived. The extraordinary-ness of these laws contends democratic ideals of 'individual rights, legitimacy and rule of law', that works on basic premise of limited and restricted government even in the time of emergency (Singh 2007: 16-30). The ways in which extraordinary-ness of POTA as essential 'corrective directed' against the clear enemy, namely, 'terrorist' was carried out in the state discourse and practices delineated lines of conflict around communities. The discourse surrounding POTA and its practical working suggest that it has substantially contributed in labelling entire community as suspect (ibid.: 166). Minorities and other marginal groups are the worst victims of specific exercise of these laws. Abdul Shaban argues that police has shown overenthusiasm to jail or shoot Muslims down in fake encounters. The shield of 'national security' has been used to legitimize violation of human and citizenship rights of Muslims in such cases (2016: 163). The share of Muslims has been higher than their share in state population particularly in Maharahtra, Gujarart, Uttar Pradesh, Madhya Pradesh, West Bengal and Delhi (ibid). Acknowledging arbitrary use of TADA against minorities and other vulnerable sections, both the NCM and NHRC opposed its renewal pending in 1995. NHRC's criticism of TADA lingered in the dilemma of balancing 'national security' and 'individual dignity'; being core national values one should not be sacrificed for the other (Singh 2007: 30-31). The NHRC assigned centrality to 'protection of civil liberties' and argued that it was difficult to protect civil liberties in the presence of draconian laws (ibid.: 31). The NCM was critical to TADA and passed a resolution demanding its repeal in 1994-95 and again in 1995-96. The Commission resolved that TADA was an 'odious piece of legislation' and was contrary to civilized norms of jurisprudence and fundamental rights as given in the constitution. The Commission argued that repeal or lapse of TADA would save the

minorities from 'the cauldron of continuous hardship and harassment' and would 'reinforce their faith in objective rule of law…a symbol of our democracy' (Annual Report 1995-96).

The first decade of the twenty first century unfolded with an unprecedented global phenomenon called 'war on terror', a phrase used to describe post 9/11 global position on terrorism (Ali 2008) that caused enactment of extraordinary laws in most the countries (Singh 2007). In India, the Parliament attack of 13 December, 2001 supplied urgency to officially declare this war. In this background Prevention of Terrorism Act, 2002 (POTA) was proposed and enacted. The NHRC viewed that POTA was not required given that existing laws were sufficient to take care of objective stated in the POTA Bill. Further, unusual procedures of the Bill were not addressing the problems of common justice systems such as delays in trial and difficulty in establishing conviction (Singh 2007: 30-31). After the abrogation of POTA in 2004, amendments were made to significantly strengthen Unlawful Activities (Prevention) Act **(**UAPA) (Ali 2008: 37, Singh 2007: 14) that synchronized its appearance with that of POTA (Singh 2007: 14).[45]

In the context of heightened threat to national security, Mecca Masjid bomb blasts shook Hyderabad. On 18, May, 2007, around 10,000 people were present to perform Friday prayers in Mecca masjid when a high intensity bomb exploded. Nine people immediately lost their lives and 40 were reported injured. In the atmosphere of chaos and panic, police opened fire on the people already running for life which took six more lives and left 21 injured. Sharib Ali closely examined how the blast, post blast investigations, trials and official stands framed Muslim youth under 'war on terror'. All of this made this case a unique referral point for the narratives governing 'communal and political relations in Hyderabad' and relationships 'between people themselves and between citizens and their state' (2013). 200 young Muslims, most of them in their 20s, were picked up from Muslim pockets of the city; interrogated and tortured following blasts. Police and investigating agencies built up a story accusing Shahid Bilal and Harkat ul-Jihad-al-Islami (HUJI) along with ISI for the blast who died after a week of blast (Ali 2013: 37).

[45] Indian has been living with the regime of extraordinary laws since colonial rule. Just after independence (Preventive Detention Act 1950(PDA) was came into followed by Maintenance of Internal Security Act 1969 (MISA), Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 (COFEPOSA), National Security Act 1980 (NSA), TADA 1985 and POTA 2002.

Before NCM had taken into cognition the custodian atrocities on detainees, on man commission appointed by State Minorities Commission (SMC) confirmed the allegations of custodian violence (Ali 3013: 38). Initially, the NCM called for a report from the state government of Andhra Pradesh as people killed due to police firing sustained above waist level injuries amounting to breach of prescribed procedure for resorting police firing (Annual Report 2007-08: 47). Only nine months later, acting on the complaints and letters of Nirmala Deshpande (MP) and advocate Nandita Rao, a four member team of the NCM went to visit Hyderabad on 4-5 February, 2008. Deshpande and Rao drew the NCM's attention towards fact finding reports of SMC and civil liberty monitoring committee that alleged police's failure to follow due process of law. During the visit, the NCM team met relatives of the deceased, wounded and visited detainees in Chalapalli jail (Annual Report 2007-08: 38-39). The first instance of police's disregard to due process of law as complained by these groups was indiscriminate firing of police on people who were running in panic after blast caused six deaths (ibid.). Subsequent to blasts at Lumbani Park and Gokul Chat eatery on August 25, police randomly picked up Muslim boys on mere suspicion of their involvement in blast. The detainees were not permitted to inform their relatives about their arrest and were not produced before magistrate within 24 hours of detention, and were subjected to severe mental and physical violence (ibid.).[46] When the NCM enquired these allegations, the police officials flatly denied charges and contrarily claimed 'so called Civil Liberty Groups which have been orchestrating the campaigns against the police are known to have links with certain Jehadi elements'. The Commission raised serious questions about such irresponsible statement against Civil Liberty Groups which were duly registered, and pressed for evidences to substantiate their links to Jehadi organizations. The officials could not produce any such evidence. For the NCM denial of the charges of torture was of a grave concern as comments of forensic expert, who accompanied Andhra Pradesh SMC, confirmed the charges of third degree procedures executed on suspects (ibid. 39).

[46] It was alleged by civil liberty groups and SMC report, that suspects were illegally detained and kept in private places like farm houses and lodges. The violence they suffered was both mental and physical; 'they were stripped naked, severely beaten, administered electric shocks on various parts of their body, including genitals, and deprived of food and water. The police used abusing language about their women folk and their faith and forced them to hail Hindu deities'. They were arrested much before the official time of arrest shown by the police. They were produced before magistrate at his residence once court hours were over. Suspects went through nacro test whose evidentiary value was quite contested (Annual Report 2007-08: 38-39).

The NCN team also noticed injury marks on the body of detainees but could not ascertain if these were recorded by hospital where detainees were examined. More importantly, the NCM team questioned the prison authorities, concerned minister and the police officials about the 'ISI' reference after the names of detainees. At the Charlapalli prison, the Commission noticed that 'in the list of detainees provided by the prison authorities, the letter 'ISI' figured alongside each name' when questioned none of them could explain this reference (ibid.). Commission discerned from official's failure to explain that the police could not identify the real perpetrators of the three bomb blasts occurred in Hyderabad. Moreover, the NCM referred to the letter written by the police commissioner to the APSMC that did not cite ISI reference for detainees though the Commissioner insisted their involvement in criminal acts and participation in Jihadi network in Hyderabad. He also confirmed that enough evidences were not found against suspects who were detained (ibid. 40). On further questioning and persuasion, authorities agreed to delete the reference of ISI, and for that purpose undertakings were given to the NCM by Charlapalli Jail authorities, and minister Mohd. Ali Sabbir (ibid.). Then the Commission recommended CBI enquiry for all three blasts that happened in 2007. Though, the NCM team did not reject serious security issue raised by the police authorities due to Jehadi activities in the state, it viewed that 'the police must not jettison due process of law' as it would further marginalize Muslim youth and derive them towards extremist forces (ibid. 41).

In strange turn of the events, Swami Aseemanand in December 2010 confessed his indulgence along with Sadhvi Pargya and other high names of Hindutva brigade in several cases of bomb blasts including Mecca Masjid blast (Khetan 2011). His confession revealed that 'it was not Muslim boys but Abhinav Bharat, a Hindu terror organization who was responsible for bomb explosions in several places including Malegaon, Samjhauta Express, Ajmer Sharif and in Mecca Masjid (ibid,, Ali 2013: 37). Apart from indicating active presence of home grown Hindu right wing terror organizations, arrest of Muslims in these cases specified that how easy it was for the police and investigating agencies to accuse Muslims of 'terror' by repeatedly invoking the label of 'terrorists' against them. However, by the time involvement of far-right Hindu terror organizations was revealed about 39 Muslims had been convicted already spent 6-18 months in jail (Ali 2013: 37). On the other hand Aseemanand was acquitted in

Ajmer Sharif case and granted bail in Mecca Masjid case (Hindustan Times 23 March, 2017).

Subsequent to Aseemanand's acquittal and CBI investigation, Muslims youth who were falsely implicated were acquitted. Nonetheless, the NCM received a representation from Maj. S.G. M. Quadri former President of 'Help Hyderabad', an NGO working for Muslims welfare in Hyderabad. Mr. Quadri said that despite Aseemanand's confession and acquittal of the accused, no relief was provided to Muslims arrested initially. Considering Quadri's representation seriously, Wajahat Habibullah the chairman of the NCM, wrote a letter to Andhra Pradesh government in 28 April, 2011 and sent a reminder as CM Andhra Pradesh was not replied. In the letter, Habibullah urged speedy rehabilitation and compensation to the victims. Meanwhile Andhra Pradesh government informed the Commission that it had appointed a committee to analyze the gaps in rehabilitation of victims and fix compensation to victims. The Committee submitted its report on 15 October, 2011 and proposed 3 lakh rupees compensation to 9 victims. In December 15-17, Habibullah visited Hyderabad and met victims, representatives of NGOs, lawyers and members of SMC who informed the Commission that even 3 lakh rupees compensation was given to only 9 victims and all others were deprived of it. The Commission prepared a list of victims who were not given compensation and recommended the state government to ensure compensation to them (Annual Report 2011-12: 6, 27-27). Moreover Habibullah recommended the payment of 15 lakh rupees as exemplary compensation as recommended in the draft Communal Violence Prevention Bill for victims of communal violence, character certificate and assured employments to the victims along with stringent action against guilty policemen who falsely implicated innocent. The Commission reasoned that if youths belonging to a particular community are targeted purely on communal ground; compensation should be given under the proposed provisions of the Communal Violence Bill 2011 (http://ncm.nic.in/pdf/Mecca%20Masjid8.5.2012.pdf Accessed on15/04/2017). Andhra Pradesh government released 70 lakh rupees for this purpose which was stayed by the High Court initially but later allowed this compensation. Though the compensation paid to victims was meager and all victims were not provided compensation in Mecca Masjid case, this case has set precedence for the cases of false framing of minority citizens. The compensation given to the victims was applauded as a 'first' and 'unprecedented as a

confidence building measure' (Ali 2008: 43). The Commission registered this case as 'success story', but Majlis-e-Ittehad-ul Muslimeen (MIM) seemed to assert plenty of pressure on CM Kiran Kumar Reddy as Reddy required support from MIM to defeat no-confidence motion (ibid.).[47] Recognizing the vulnerability of Muslim youth, the Commission takes up the case of Muslim arrest promptly. Farida Abdullah Khan expounded that

> Wherever there is a mention of police and authorities, I tend to ask for an explanation. Even if people don't refer to it as communal bias, and just say, my child is picked up for something he did not do... If there is some disturbance in the area, police comes and pick up boys. We have enough reports and media coverage on the fact that Muslim boys are really vulnerable right now. This is one I take seriously. I write to police to look into the matter and send me an explanation. There may well be a criminal activity involved….At least we ask the police to investigate for them to know that the Minorities Commission is aware of it. So that it should not be just biased picking up because boy is a Muslim… In police case we intervene more often (Khan 2016).

On responding on the question of Malegaon judgment acquittal, Farida Abdullah appeared disillusioned with the investigating agencies as she believed that 'these kind cases are making the state agencies untrustworthy'. Further she said that 'the government itself is now raising questions on the SIT that would mean that every state agency and institution is under doubt. But on the other hand it would strengthen the case of people who are questioning state agencies. Now everybody knows that SIT could cook a case…then every case is suspected in this country.' By the time, the Court declares accused of terror cases innocent, they would have gone through severe torture, lost most of their money, jobs and reputation. The Commission seemed to be engaged with post-acquittal problems these people face. The NCM is working with NGOs like Innocent network, Peoples' Campaign against Politics of Terror (PCPT, Jamia Teachers' Solidarity Association (JTSA), Aman Biradari, Karvaan etc. to formulate certain guidelines for compensation and rehabilitation for the victims of false implication (interview with Ahmad 2017).

[47] Sharib Ali pointed out several anomalies in payment of compensation. Only 70 people were short listed for payment of compensation leaving many who were rightful claimant of compensation. The list ironically included a daed person who was never a part of investigation. Strangely enough, compensation was to be paid from the funds of Mecca masjid itself (2013: 43). However the NCM prepared a new list including those who were previously excluded (Annual Report 2008-09).

Commission's Initiatives and the Discourse on Minorities and Communal Violence

Paradoxically, the set of rights that were successfully bargained by the religious minorities have been under majoritarian scanner for a long time (Mahmood 2016). Christian priest, nun and other activists are routinely killed and rapped on the suspicion that they were carrying out proselytizing activities. State too seems to support Hindu fundamentalist forces; by legislating anti-conversion laws and cow protection laws assigning some sort of legitimacy to the anti-Christian and anti-Muslim activities of these forces. Moreover, Muslims and Christians are lynched in the name of cow protection and allegations of conversions by Hindu fanatics.

In the initial years of its existence, the Minorities Commission strongly recommended a separate legislation to handle communally targeted violence. It had recognized the problem of transitional justice and raised the issue of equal compensation, relief and rehabilitation for the victims of communal violence. In the year 1980, the Commission emphasized the necessity to translate moral obligation of the state to rehabilitate riot victims into obligatory legislation (Third Annual Report 1980). However, its own intervention in riots during the tenure of Justice Hameedullah Beg was moderate as Beg looked upon communal violence as a problem of national integration and national unity rather as a threat to constitutionally guaranteed rights to minorities that accepted and protected uniqueness of minorities' way of life. There were general guidelines to prevent communalism and ensure rehabilitation and compensation in a superficial manner. The Commission appeared busy in organizing seminars and conferences on how to combat communalism and ensure communal harmony for the sake of national integration and national unity. On the contrary, its performance on the field was not very enthusiastic. Indeed, the Commission stood with the state in worst ever anti-Sikh violence of 1984. Similarly, it remained inconclusive in Hashimpura incident of 1987 when civil liberty groups alleged complicity of PAC in fake encounters/murders of innocent Muslims in Hashimpura-Maliana. The Commission was also not able to pin point the issues of justice and equality entangled in Babri Masjid-Ramjanambhoomi dispute and suggested nationalization of Babri Masjid. This trend underwent change to some extent with the extension of statutory status to the Commission in 1992 and somewhat better appointments in panel of the Commission. Although, inadequate minority representation in the armed forces as one of the cause of failure in communal violence prevention, was

recognized by non-statutory Commissions, the first statutory conducted an extensive study on this matter, and on the basis of tabular data that the study produced, urged the government to take suitable action.

The statutory Commission's intervention has been informed by concerns of protection for lives of minorities and their claims of rights within the framework of citizenship. In 1996-96, the Commission recommended 'National Minorities (Protection and Development) Act' which would be designed the line of the protection of Human Rights Act 1993 and would include provisions to implement UN declaration on Rights of Minorities 1992 (NCM Annual Report 1996-97). On several occasions, the Commission summoned high state officials to explain their action during communal violence. The Commission, under Tahir Mahmood, summoned Gujarat's Chief Secretory and Director General of Police to file written statements (Hindustan Times 1 January, 1999). In the same year, the Commission organized a study on 'Communal Riots: Prevention & Control' undertaken by Iqbal A. Ansari, an activist and academician from the Aligarh Muslim University. The study proposed a separate body, 'Community Relations Commission', to monitor communal situation in the country and was to be entrusted to preserve, resolve and manage all kinds of intergroup religious, linguistic and ethnic disputes or conflicts (NCM Annual Report 1998-99). The important functions of the proposed Commission were to initial legal proceedings against erring parties, taking preventing measures like efficient enforcement of laws on hate speech, regulating processions, communal activities of political parties etc. Moreover, it was to review contents of teaching materials and media coverages related to religious, cultural and historical aspects of Indian society to reduce possibility of communal discord because of distorted/biased presentation of facts and take required rectifying measures and actions under law. The report indicated that the existing legal mechanisms under the IPC and the Cr PC were grossly insufficient to deal with the cases of mass violence, riots and pogroms (ibid.). After adoption of this report the Commission repeatedly recommended separate legislation to combat communally targeted violence. The report was widely cited in post-Gujarat riot demands for legislation to prevent and control communally targeted violence along and satisfactory rehabilitation and compensation to the victims. The Annual Report for the year 1999-2000, proposed amendment in the Representation

of the People Act, 1951 to curb the misuse of religion and caste for electoral and political benefits.

It was in the year 2005 that the UPA government finally came up with the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill 2005. The Bill was stemmed from the imperative of state obligation to protect basic rights of citizens on the face of targeted violence from fringe groups motivated by hate and revenge particularly in post Gujarat riot 2002 scenario. Iqbal A. Ansari has strongly advocated legislation of this Bill and emphasized the need to evolve national consensus for comprehensive legal reforms irrespective of political affiliations. Ansari argued that the reports on large scale mass violence of Delhi 1984, Hashimpura 1987 and Gujarat 2002 etc. has revealed state's failure to prevent communal violence precipitated by partisan law enforcement grounded in political calculations. Thus, it would be unreasonable to leave exclusive jurisdiction of such incidents to the same governments; registering cases, organizing inquiries to fix accountability or to undertake investigation and prosecution of accused etc. To determine state culpability in communal violence, a central law under the Article 355 should be legislated on the account of communal violence as cases of 'internal disturbance'. So that, if the state government fails to prevent rioting for more than five days or causing loss of around 100 lives, the state government then be dismissed under the Article 356 (Ansari 2005). The Bill enhanced the punishment for organizing violence against any community or group.[48]

The Bill was criticized as the drafting of the Bill was done without consulting main concern group, such as human right groups, civil bodies, Muslim and Christian intelligentsia, and was grossly inadequate a tool to handle most of the aspects of communal violence. According to John Dayal, two major flaws of the Bill were; (a) instead of empowering victims sufficiently, the Bill gave extensive powers to state, (b) it did not address the issue of impunity; to hold local administration, politicians and officials responsible for their action and inaction in communally charged situation,

[48] The Bill enhanced punishment for organized violence such as three year imprisonment for supplying money to stimulate communal violence (clause 14) and to threaten witness (clause 15), one year imprisonment and fine to driver or owner of the vehicle for carrying people (more in number than permitted under Indian Motor Vehicle Act 1988) to communally disturbed areas (clause 16), punishment with fine for public servant for exercising authority in mala fide manner (clause 17) and three year punishment for transgressing section 144 of Cr. PC (clause 18). The Bill was intended to establish Statutory National Crimes Tribunal (SNCT) entrusted to fix culpability in case the failure of governance resulting in riot. The SNCT would be authorized to carry out investigations and prosecutions, as well as to determine losses, reparation and rehabilitation of victims (Ansari 2005: 812).

during and after incidents of communal violence. Moreover, Bill was also inadequate to ensure transition justice to the victims in form of compensations, reparation and rehabilitation. Dayal continued that for the Christian community Bill was at best useless as Christians suffer from small scale violence which was not recognized in the Bill as communally targeted (2011).

In face of these criticisms, 2005 Bill was rejected and a fresh working committee was formed under two NAC members, Farah Naqvi and Harsh Mander to work out a new draft. This time draft of the Bill was prepared with the help of prominent academicians, activists and members of religious communities. Prominent particiapants were Shabnam Hashmi, John Dayal, Teesta Setalvad, Vrinda Grover,Usha Ramanathan, Sister Mary Scaria, P.I. Jose, senior advocate Muchhala, and leaders of the Jamiat-e-Ulema-i-Hind and the Jamiat-e-Islami-e-Hind etc.(ibid.). Again the Bill was subjected to severe criticism from BJP and other right leaning parities along with jurists and intellectuals for holding majority culpable,[49] for being based on past experiences of riots, and useless in the context of 'politics of aspiration'[50]. Countering these criticisms, Javed Anand argued holding majority culpable was not a new development; it was being part of protection of vuneralbe sections like SC/ST and women etc. Likewise, minority groups (linguistic, ethnic, religious and racial) need protection against majority under special law. Further, communal violence has yet to become a part of history as in view of frequent occurrence of large and small scale riots (Muzaffarnagar 2013, Bharatpur 2011, Atali 2015, Balabhgarh 2015 and countless other) throughout the country. In fact , the Bill holds police force, administration and civil servants responsible for 'dereliction of duty' if they fail to protect minorities and subject them serious punishment (ibid.: 21), a recommendation long made by the Commission.

The NCM contributed in improvement of 2005 draft Bill and strongly endorsed 2011 version of the Bill. Wajahat Habibullah asserted that advices made by the Commission were actually incorporated in the improved draft of the Bill that came out in 2011 (interview with Habibullah 7 January, 2017). After visiting Muzaffarnagar riots affected

[49] BJP leader Arun Jaitley registered his criticism as he found that the Bill was intended to make members of 'majority community culpable' (Indian Express 24 June, 2011).

[50] Ashutosh Varshney held that Bill was based on past riots as India was witnessing 'politics of aspiration' in the context of high economic growth that left little room for communal politics. Therefore this legislation was not required at all as to deal with a phenomenon of past (Hindustan Times 30 May, 2011).

areas, Habibullah again stressed urgency of enactment of the Communal Violence Bill in the ground that existing provisions to prevent communal violence are grossly insufficiency. Habibullah continued that schemes for riot control at district level are dormant and un-updated. And the proposed Bill would effectively prevent communal violence along with rehabilitating the victims of violence.

Conclusion

The chapter has examined the intervention of the Minorities Commission in the instances of violence against minorities and the normative justification it evolved for the kind of intervention it made in such instances. The readings of Commission's reports, the chapter concludes that that non-statutory Commission under Masani and M. H. S. Ansari recognized the state, police and PAC's complicity in violence against minorities, but under Hameedullah Beg the Commission disassociated from this position and stood with the central government during the worst ever pogrom against Sikh minorities that happened in 1984. In his tenure, minority question was reduced to national integration and national unity. Beg's emphasis was on communal harmony as requirement of national unity and national integration (as insecure minorities might become a threat to national unity). Except some occasions the Commission could not develop normative arguments in its recommendations to combat violence (more so in first decade of its existence).

The chapter has argued that there are deficits in legal mechanisms to ensure security of minorities. Presence of laws such as anti-conversion laws and cow protection laws supplied some kind of legitimacy to self-appointed protectors of majority community to launch minority witch hunt. On the other hand, absence of concrete law on communally targeted violence allows perpetrators to go free seriously hampering minorities claim over justice. The Commission in each case of violence figured differently depending upon who were constituted the Commission then. Pre-statutory commission worked in close association with the Congress party, could not raise pertinent issues of protecting lives of Sikh minorities. Similarly its response to Babri Masjid-Ramjanamboomi movement and consequent riots was not appreciable as the Commission appeared obsessed with the idea of national unity and integration disregarding minorities claim over justice as equal citizens. Post-statutory Commission differed significantly in its

approach towards cases of violence; it appeared to justice centric and conscious of state complicity in violence. Nonetheless, Commission cannot prevent communal violence; it has contributed in the evolving discourse on Communal violence Bill.

Chapter VI

Cultural and Educational Rights of Minorities: Dilution of Safeguards

Educational rights of minorities are believed to be the most vocal expression of the India's commitment to pluralism and diversity. These rights were framed to protect minorities from the cultural hegemony of majority on one hand and to preserve and promote linguistic, cultural and religious diversity on the other. In the Constituent Assembly, the demands of special provisions for political representation of religious and cultural minorities were withdrawn in the last phase of the deliberations, group rights for preservation, protection and promotion of religious, cultural and linguistic minorities were included in the chapter of fundamental rights of constitution (Jha 2008: 344-345). Lijphart celebrated these rights as an important measure of consociational democracy to provide cultural autonomy with the support of public fund (2001: 333). Unlike political safeguards minority cultural and educational rights did find some support within the nationalist normative vocabulary, nevertheless an analysis of this vocabulary done by Bajpai, reveals crucial gaps which suggests that justificatory basis of minority cultural and educational rights was weak (Bajpai 2010: 284-295). Bajpai argues that nationalist vocabulary showed commitment to religious, cultural and educational rights of minorities, but so far these rights involve special treatment over and above the rights enjoyed by all individuals and groups, their normative basis remained ambiguous. A kind of tension was persisted in nationalist normative vocabulary on the issues such as cultural rights of minorities and justice constructed in individualist, difference blind terms, and concerns for national unity (Bajpai 2010: 284-295).

Articles 29(1) gives the right to any group of the citizens residing in India or any part thereof, having a distinct language, script or culture of its own, to preserve the same. Article 29(1) gives the right to all sections of citizens, whether they belong to a minority recognized by the government or not, to preserve their language, script or culture. In the exercise of this right to preserve the language, script or culture that section of the society can set up educational institutions. This right is necessarily concomitant to the right conferred by Article 30 which provides minorities right to establish and administer educational institutions. Article 30 (1) states that all minorities, whether based on

religion or language, shall have the right to establish and administer educational institutions of their choice. Further clause (1) (A) of Article 30 stipulates that in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the state shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause (2) of Article 30 that the state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. The right under Article 30 is not absolute as Article 29(2) stipulates that, where any educational institution is maintained by the state or receives aid out of state funds, no citizen shall be denied admission on the grounds only of religion, race, caste, or language.

The chapter also considers three languages; Urdu, Bhoti and Punjabi that are intrinsically associated with community identity of Muslims, Buddhists and Sikhs respectively. This chapter is divided into three sections. Each section considers a few cases that involve pertinent issues of cultural and educational rights of minorities such as minority status and management of minority institutions, religious instructions and issue of biased text book, languages inextricably linked to minority religious communities like Urdu, Bhoti and Punjabi etc. and examines the Minorities Commission's intervention in them. The first section critically analyses the cases of Aligarh Muslim University and St Stephen's College to demonstrate complexities and controversies around 'minority status' and 'right to establish and administer educational institution of their choice'. The second section examines the interplay of language and religious community as happen in the linguistic claims of Muslims, Sikhs, and Buddhists in Urdu, Panjabi and Bhoti languages respectively. The last section looks at homogenizing tendencies that operate through controversy around text books.

I

Minority Educational Institutions, Issues of Minority Status, and Autonomy in Management

Fali S. Nariman pointed out that before 1990s 'the Supreme Court functioned as a super minorities commission' (2014: 42) something that M. Ruthnaswamy expected the federal

court to do while rejecting the need for special institutional mechanism for minorities. He argued that the safeguards for minorities were incorporated in the constitution itself, like rest of the constitution they should be placed under the protection of the Federal Court and its local units in the provinces (Ansari 1996: 224). In the initial years of republic, the Court lived up to that expectation and upheld educational rights of minorities, almost at every occasion of infringement, against the actions and legislations of centre and state governments (Nariman 2014: 42). For instance, In *Kerala Education Bill* (1958) case, the Supreme Court clarified absoluteness of minority's right to establish educational institution by saying that 'the right guaranteed under Article 30 (1) is a right that is absolute right and any law or executive direction which infringes the substance of that right is void to the extent of infringement'. Again in *St Xavier* (1974) case, the Supreme Court insisted that any tempering with minority's right to manage their educational institutions would not be permissible under the Constitution. The judiciary upheld minorities' right to establish educational institution of 'their choice' in case they choose to establish technical and professional educational institutions. The judicial reasoning on this matter as evolved in several judicial pronouncements[1] rejected narrow interpretation of 'their choice' limited only to establishment of educational institutions to protect, preserve and promote 'distinct language, script and culture' (Mahmood 2007: 26).

However, in late 1980s and in the entire of 1990s, the BJP's successful projection of Congress's minority policy as 'appeasement'; made the very term 'minority' unpopular. Since then, argues Nariman, the Court's attitude towards minority rights was shifted from, as applauded by Upendra Baxi 'preferred freedom' to less protected rights (Baxi cited in Nariman 2014: 42-46). Nonetheless, the Courts have treated state aided minority institutions and private unaided minority institutions differentially. While private unaided institutions received patronage, state aided minority educational institutions could not be extended preferred treatment (ibid.). Their autonomy and right to administer the institution were often brought under judicial scanner. *St Stephen's* (1992) case might be seen as a watermark in the gradual erosion of educational rights of minorities in which the Court decided that minority educational institutions have to enroll equal number of

[1] '*Father Proost* (1969), *Bishop SK Patro* (1970), *Mother Provincial* (1970), *Mark Netto* (1979) and *All Saints* (1980)' to name a few (Mahmood 2007: 26).

students from majority community as of minority community for the sake of national integration (Mahmood 2007: 26). Afterward, judgments in *TMA Pai* (2002), *Islamic Academy* (2004) and *PA Inamdar* (2005) etc. customized undue restrictions on Article 30 of the Constitution (ibid.: 27). Recognizing the difficulties faced by minority educational institution, the Minorities Commission prepared a Guideline for Recognition of Minority Educational Institutions (1986) and categorically said that:

> There were about 95,000 minority educational institutions in the country, with 17% of students on their rolls belonging to the minority communities. With a view to obviating the difficulties faced by these institutions, a need was felt for effective implementation of the Guidelines framed by the Minorities Commission for determination of minority status, recognition, state aid and related matters in respect of them (Tenth Annual Report 1987-88: 47).

Dismissal of minority character of the Aligarh Muslim University (AMU) might be seen as 'aberration' in the generous attitude of the Supreme Court towards educational rights of minorities. The aberration made the AMU one of the most important symbol of Muslim identity and focal point of minority politics. Zakir Hussein described the symbolic importance of the AMU in Muslim politics as, 'the way Aligarh participates in the various walks of national life will determine the place of Muslims in India's national life. The way India conducts itself towards Aligarh will determine largely, yes, that will determine largely, the form which our national life will acquire in the future' (Zakir Hussain as quoted in Graff 1990: 1779).

Aligarh Muslim University and St Stephen's College: the Crisis of Differentiated Rights

The AMU controversy stemmed from the Supreme Court's decision in *Azeez Basha* case in which the Court annulled minority status of the university that the university was established by the Act of Parliament and not by Muslims. Deciding on validity of the AMU Act 1951 and subsequent amendment in the Act 1965, the Court reasoned that 'the Aligarh University was neither established nor administered by the Muslim minority and therefore there is no question of any amendment to the 1920 Act violating Art, 30(1) for that Article does not at all apply to the University' (Azeez Basha v. Union of India AIR 1968 SC 884). Following a decade of Muslim unrest and mobilizations, the central government decided to amend the AMU Act 1951.

In the meantime, the Minorities Commission came into existence to protect legal and constitutional rights of minorities in 1978. At that time, the AMU controversy was in full swing and Aligarh Muslim University Bill 1981(AMU Bill 1981) to recover minority status to the university was under way which was lost in *Azeez Basha* ruling. Nearly ten years after the *Azeez Basha* judgment, the Minorities Commission came into existence and analyzed each part of the controversy. Exploration of AMU controversy reveals conflicting interpretations of educational rights of minorities by the Judiciary and the Minorities Commission.

On March 9, 1978, Mr. Shafiq-ur-Rehman, convener of the All India Aligarh Muslim University Action Committee sent a memorandum to the Minorities Commission regarding restoration of AMU's minority character. Responding promptly the Commission sent a letter to the Education Minister requesting to send a note regarding the developments concerning AMU to facilitate discussion and decision on the issue (First Annual Report 1978: 20). The Commission expected that 'the further action by the government, such as drafting and introduction of the Bill (to be introduced) in the Parliament, will not be undertaken till the Commission have an opportunity to express its considered views to Government' (ibid: 20). The Ministry of Education though sent a reply, did not inform the Commission about the upcoming Bill on AMU to be introduced in Rajya Sabha (ibid.). Nevertheless, the Commission prepared an elaborate report on the roots of the AMU controversy using various authentic sources from AMU and elsewhere and retrieved University's history to address the major issues involved in the controversy.

The Aligarh Muslim University Controversy: Grasping through History

The Aligarh Muslim University (1920) - the most controversial of the central universities, grew out of the M.A.O. College, Aligarh (1875) founded by Syed Ahmed Khan (1817-1898), the greatest Muslim social reformers of the nineteenth country India. AMU was an outcome of a movement popularly known as Aligarh movement initiated by Sir Syed Ahmad Khan to spread scientific knowledge among the members of Muslim community to overcome their backwardness. It was the 1857 revolt that exposed the deterioration of the Muslim Society and Syed Ahmed· Khan realized the seriousness of the situation and found a solution in modern education coupled with progressive

religious education of Islam. To achieve this end, Syed Ahmad with the help of other like mined Muslim established 'the Mohammedan Anglo-Oriental College' (M.A.O) in 1875. This college grew into a full-fledged Muslim university with the efforts of his successors (First Annual Report 1978: 22-24). After Syed Ahmad's death in 1998, the Board of Management of the College created 'Sir Syed Memorial Fund Committee' to build a university in fulfillment of Syed Ahmad's long standing desire and to raise funds for that purpose.

In January 1911, a committee named Aligarh Muslim University Foundation Committee was established followed by creation the Constitution Committee in February to draft the university Act. In 1911, the colonial showed willingness to sanction establishment of AMU at Aligarh on the condition that the Foundation Committee would show sufficient funds and the draft Act was acceptable to the government (First Annual Report 1978: 25-26). In July 1912, the government added that the jurisdiction of universities of Banaras[2] and Aligarh would be limited to the cities of their location and would not enjoy the power of affiliation (ibid.). Because of the contentions over affiliating powers, name of the university (Muslim University or Aligarh University) and questions over Chancellor between the Founding Committee and the government, establishment of the university was delayed for 7-8 years. Meanwhile, Banaras Hindu University Act was passed in 1915 supplying impetus to moderates in the Foundation Committee to convince others to follow this Act as precedent in 1917. The Muslim University Association[3] was also conceded to the Foundation Committee and passed a resolution to that effect in 1920 (ibid.28).

In the same year, negotiations between the Association and the government were resumed and a consensus was reached. Thus, on August 7, 1920, the Aligarh Muslim University Bill was introduced which dissolved the Muslim University Association and the Mohammedan Anglo-Oriental College and transferred their properties to new body called 'Aligarh Muslim University' (First Annual Report 1978: 28-29). Section 23 of the Act restricted the membership of the Court, the supreme governing body of the

[2] When Muslim community was engaged in negotiation with the colonial government to establish a Muslim university, at the same period, Madan Mohan Malviya was striving for establishing a Hindu university at Banaras.

[3] The Muslim University Association was created in 1913 consisting 200 representatives to keep university funds intact and to utilize the derived income for pending elevation of the university. Association was also authorized by the Foundation Committee to negotiate with the government on India (First Annual Report 1978: 28).

University to Muslims. Likewise Electoral College of the Court was to be predominantly Muslim under the Section 8 of the Act 1920. On the basis of this history and reading of the AMU Act 1920, the Commission believed that the Act 1920 recognized the minority character of the University (ibid.: 31).

In order to correspond with of the provisions of the Constitution of free India, certain amendments were made in the AMU Act 1920 and renamed as AMU Act 1951. The amended Act opened the doors of the Court for non-Muslims, the President of India was made the visitor and Governor of Uttar Pradesh was made Chief Rector of the University, religious instructions could be imparted as provided under Article 28 and it was to admit students irrespective of religion, caste, race and sex etc.

The Commission endorsed the findings of the Aligarh Muslim University Inquiry Committee Report (1961) commonly known Chatterjee after the name its chairmen G. C. Chatterjee. The Committee observed that the amendment Act of 1951 brought the provisions of the Act 1920 in conformity with the requirements of the constitution without altering the fundamental character of the University as Muslim University for the educational advancement of Muslims. Moreover, the Committee argued that the state financial aid also not altered University's 'minority' character on the basis of the Supreme Court's opinion in *Kerala Education Bill* (1958) case. The Court opined in this case that practically no educational institution could be carried out without aid from the state and if minorities would get financial assistance after surrendering their rights, it would violate their rights under Article 30 (1) (Chatterjee Committee cited in Annual Report 1978: 33-34). Moreover, the Committee observed that the University had adhered to the norms of Article 29 (2) and never discriminated in giving admission to students on the grounds of religion, race, language caste or place of birth etc. as required by state aided educational institutions (ibid.).

It was in the background of a violence incident, in which Vice-Chancellor Nawab Yavar Jung was assaulted, the Aligarh Muslim University Ordinance 1965 was promulgated. Muslims viewed the Ordinance as violate of their rights under Article 30 (1). As a result a petition was filed by Azeez Basha and some others in the Supreme Court. In response, government filed an affidavit categorically stating that AMU was not established by the Muslim community but by the central government, thus, it could not claim protection under Article 26 or 30 (1) of the Indian constitution (First Annual Report 1978: 37). The

Minorities Commission, on the other hand, believed that the government erred by over-arguing the case for intervention in the University and appeared ignorant to its history that according to which Muslim community persuaded the government to convert M.A.O. into the Muslim University (First Annual Report 1978: 37).

The Supreme Court agreed that M.A.O. College was established by the Muslim community but after becoming University under the Aligarh Muslim University 1920 Act, it ceased to be an educational institution established and administered by the Muslims. The Court argued that the Muslim community requested the government of India to establish the University (S. Azeez Basha vs Union of India 1968 AIR 662, SCR (1) 833). However, the colonial government conceded to convert M.A.O. into Muslim University only after the fulfilment of two conditions; that were collection of minimum 30 lakh rupees fund by the Foundation Committee and acceptance of the draft Act by the government. The Commission observed that the judgment ignored 'the legal and moral commitment' that the state accepted while it took over existing Muslim College with all its assets to incorporate into University through an Act (The First Annual Report: 41). The Commission further emphasized error in the Court's reasoning:

> 'if the view taken by the Supreme Court in Azeez Basha's case is correct, it would mean that a religious or linguistic minority is debarred from establishing a University in as much as a University can only be established by an Act of the Central Government or State Legislature. This would mean the deprivation of a right conferred on the minority by the Article of the Constitution (ibid.:40).

Expressing disappointment over the judgment, M. H. Seervai observed that the judgment was a departure from the Supreme Court's own broad spirited precedents of dealing with cultural and educational rights of minorities (Seervai cited in Ansari 2007: 141). Muslim unrest and mobilizations around the judgment asserted pressure on the government to reinstall minority character of the University. Thus, the government appointed a Committee under Fakhruddin Ali Ahmed (later became President of India) which categorically recommended reinstallation of minority character of AMU notwithstanding any judgment, decree or order of the Court' and regretted 1965 amendment (cited in First Annual Report 1978: 44). However, the amendment 1972 in AMU Act again disappointed the Muslim community as it ambiguously refused minority character to the

University and vested too much power with the nominated Vice-Chancellor[4] which generated the need of one more amendment in 1981 (Graff 1990: 1772). Afterward, noted Graff, the AMU question became 'an obsession, a highly symbolic struggle, which no political party could afford to ignore' (1990: 1772).

Meanwhile, Indira Gandhi lost 1977 elections and the Janata government came to power which promised restoration of AMU's minority character turned up with a Bill in January 1978 (Graff 1990: 1772). Around the same time, the Minorities Commission was brought into existence by the same government. Freshly constituted Commission was eager to play active role in minority affairs, considered the AMU (Amendment) Bill, 1978. According to the Commission's analysis draft Bill 1978 carried ambiguity on the minority character of the University (something that later proved to be true when the Allahabad High questioned the minority character of the AMU again in 2006). In order to brought clarity to the definition of 'University', the Commission suggested to define University in this way, 'University means the educational institution of their choice established by the Muslims of India, and which was incorporated and designated as Aligarh Muslim University in 1920 by this act' (First Annual Report 1978: 48). The Commission believed that this formulation seemed to 'accept the legitimate claim of Muslims that Aligarh Muslim University should be entitled to the constitutional guarantee of the fundamental right embodied in Article 30, it would in no way affect the powers of parliament to discharge its proper functions in regard to 'an institution of national importance' (ibid.). The Commission was also critical to *Azeez Basha* judgment and recommended to the government to recognize the University as having been established and administered by the Muslim minority as entitled to the protection of Article 30 (1) of the Constitution. The Commission viewed:

> The Aligarh Muslim University was established by the Muslims of India with their own funds and properties, and that the judgment of the Supreme Court in *Azeez Basha* case must be deemed to have been overruled by subsequent judgments of larger benches of the Supreme Court in certain other cases and that in any event the Parliament was competent to pass legislation recognizing the Minority Character of the University (First Annual Report 1978: 4-5).

[4] Graff argued that the AMU Act 1972 was reflection of new educational policy of the Congress government shaped on the line of the Gajendragadkar Committee 1971 which recommended designation of students and teachers in place of election in key administrative bodies of the Universities (1990: 1773).

While the Supreme Court asserted impossibility of an institution to be a minority educational institution and a university at the same time as any educational institution required Act of the legislature to a become university, the Commission, on the other hand, expressed its view unequivocally recognizing minority character of the AMU.

Graff found the report produced by the Commission on minority character of AMU 'remarkable and very comprehensive document whose conclusions sounded convincing' (1990: 1773). But the Janata government was not conceded to similar views and went ahead with a different draft (ibid. 1774), Meenu Masani, the first chairman of the Minorities Commission appointed by the Janata government itself, resigned in disgust on this issue (Wright 1986: 3).[5] The Bill 1978 could never pass and the Janata government fell (Graff 1990: 1774). While the Commission expressed surprise about the Janata's draft Bill on AMU, Prime Minister, Morarji Desai said in the Lok Sabha that it was not necessary to refer AMU Bill to the Minorities Commission as government was considering the issue even before the foundation of the Commission (The Tribute 20 June, 1978). Thus, the Commission experienced negligence and recognized its own symbolic presence at the very moment of its commencement when was relegated and marginalized in the AMU controversy.

The Congress came back in power in 1980 and introduced AMU (Amendment) Act 1981 omitting the contentious term 'establish' from the AMU Act. 'University' as defined in the Act meant 'educational institution of their choice established by the Muslims of India, which originated as the Muhammedan Anglo-Oriental College, Aligarh, and which was subsequently incorporated as the Aligarh Muslim University' (AMU Act 1920 as amended in 1981). Violette Graff argued though the amendment was no clear enough as expected, it was at least acceptable as it declared that 'University' was not 'established' by Acts of either 1920 or 1951, but only 'incorporated' (1990: 1774-75). The ambiguity of the Act led to belief that reasoning of the Court in *Azeez Basha* was rejected for forever and AMU was absolutely a minority institution. The belief was shattered when *Azeez Basha* was revived in 2005 by the Allahabad High Court; once again putting question marks on minority character of AMU (Akhtar 2014: 66). This issue is taken up later in chapter.

[5] Masani's resign also appeared to be instigated by non-fulfilment of his demands of cabinet minister status, lack of funds and other facilities to the Minorities Commission (Hindustan Times 22 June, 1978).

The Act restored the supreme governing position of the Court and recognized the University's mission as promotion of 'educational and cultural advancement' of Indian Muslims under clauses 5(2) of the Act (Act 1920 as amended in 1981).[6] However, clause 5 (2) of the Act carried the seeds of contradictions with the provision of Article 29 (2) that conferred non-discrimination to all citizens in the matter of admission in the educational institutions, maintained or received aid out of state funds on the ground of religion, sex, case, race, language etc. Thus, special provisions like reservations in favour of Muslims to promote their educational and cultural advancement were analysed through the lenses of Article 29 (2) that interpret such measures as discrimination against non-Muslims. The interplay of Article 30 and Article 29(2) generated contradictions that initiated intense debate on differentiated cultural and educational rights of minorities and universalistic obligation of non-discrimination. The Supreme Court delivered conflicting interpretations of these clauses in St. *Stephen's v. University of Delhi (1992*) case that affected minority educational institutions at large. The contradiction also embraced AMU within its ambit causing reappearance of the controversy on its minority character in forthcoming decade. It is imperative to analyse St Stephen's case at this juncture as it added one more contentious aspect that curtailed educational rights of minorities. The AMU question is examined later so that the outcome of analysis of Stephen's case may be utilized.

St Stephen Collage 1992: Majority Needs Reservations in Minority Educational Institutions

While the first constitutional amendment removed the difficulty of preferential admission of SCs/STs and OBCs in educational institutions[7], it was not extended eliminate similar difficulties faced by religious and linguistic minorities. On the other hand, minorities were not allowed to reserve seats for the students of their own communities in minority educational institutions. *Stephen's v. University of Delhi*

[6] Strangely, the Minorities Commission under chairmanship of M. R. A. Ansari and Justice Hameedullah Beg was not expressed opinion on AMU (Amendment) Act 1981.

[7] The first constitutional amendment introduced clause (4) in Article 15 making room for preferential treatment of SCs/STs and OBCs. The text of the Article immunized the these groups from the effects of Article 29 (2), it reads, "Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes" (Bakshi 2016: 35).

(1992)[8] presents a case of universalistic interpretation of the Article 29 (2) that lowered down the provisions of Article 30.

St Stephen Collage has been one of the most prestigious minority educational institutions established by the Christian community. On May 1980, the College brought admission prospectus devising new rules of admission in the College for the academic year 1980-81. According to these rules applications for admission in B.A., B.SC. and B.Com had to reach the College before 20 June and admissions were to be finalized after an interview of the candidates. On 29 May, the Delhi University decided merit based upon the last examination passed as criteria to admissions in B.A., B.SC. and B.Com and other courses and last date for receiving applications would be 30 June 1980. The Delhi University Student Union (DUSU) complained against St Stephen's College to the DU authorities that the College was not following University statute by prescribing its own deadlines of receipt of applications and introducing criteria of interview before admission. The University authorities communicated to the College to comply with the University schedule of admissions. But the College expressed inability to follow University prescribed dates at the last moment. With respect to the interview, the College informed the Vice-Chancellor that holding interviews had been an integral part of Stephen's procedure for admission for a long time. In the meantime, a student filed a petition in the Delhi High Court challenging admission schedule and interview criteria devised by the Stephen's College. The High Court directed the College to receive applications till 30th June and barred it from publishing the list of selected student till the disposal of the writ. Against this Order, the College filed a petition in the Supreme Court stating that Stephen's College was a minority run educational institution, not maintained by the University. The College stated that since beginning, it had exercised managerial powers that included scheduling dates of applications and interview as criteria for admission. Moreover, University's interference with the managerial powers of the College was violation of fundamental right provided in Article 30. The Court granted stay on the matter and College continued to follow its own rules of admissions. Further complexity was added in the case by the intervention writ filed by the DUSU pleading to restrict the College's practice of preferring Christian students and challenging minority

[8] Details of case given here are borrowed from the Supreme Court's judgment in St Stephen's vs. University of Delhi 1992 (AIR 1630, SSC (1) 588 Available on https://www.lawnotes.in/St_Stephens_College_v_University_of_Delhi Accessed on 16/11/2016.

status of the College as it received state funds. The petition also contended that even a minority College could not entitled to discriminate among students on the basis of religion for being recipient of the government grants in aid out of state funds as envisaged in Article 29 (2). In the meantime, dealing with similar issues of preference to Christian students and devising admissions rules and eligibility criteria, the Allahabad High Court turned down the Allahabad Agricultural Institute's practice of reserving seats for Christian students as unconstitutional amounting discrimination under Article 29 (2). The Allahabad Agricultural Institute also approached the Supreme Court.

Both these cases were clubbed together by the Supreme Court as they involved the question of minority educational institutions under Article 29 and 30. The Court had to decide whether the Stephen's College was a minority run institution and as minority institution whether it was bound by the University rules and regulations. More importantly, whether the Stephen's College or the Allahabad Agricultural Institute could preferentially admit students of their own community and status of such preference under Article 29 (2). After rehearsing the history of the origin of the College, the Court conceded that the St Stephen's College was a minority educational institution founded in 1881 by the Cambridge Mission with collaboration with the Society for the Propagation of the Gospel. Its aim was to propagate Christian religious education based on to Christian students and other willing persons. The College was administered the Supreme Council and Governing Body in which was to be constituted by members of the Church of North India and other recognized Churches. The Principal of the Colleges had to be a Christian appointed by the Supreme Council. Even after being affiliated with the University of Delhi, St Stephen's College was not lost its minority character as it was 'constituted as a self-contained and autonomous institution' and preserved key rights of management such as choosing own Governing Body and appointment of the Principal along with apparent signs of Christianity such into its emblem, motto, prayer room, religious instruction etc. (AIR 1630, SSC (1) 588 1992: Para 34).

Another question, whether the College was bounded by the University's directives and regulations regarding admissions, was taken up by the Court. Being minority educational institution under the meaning of Article 30 (1), the College was entitled to administer itself and devise rules of admission as a part of administration, and the University could not interfere with its administration in the 'absence of the proof of maladministration'. It

was also noted by the Court that without concessional treatment, Christian students, who usually lag behind on merit and granted 10% relaxation, could not be admitted in the College. Despite the absolute nature of the Article 30(1) of the Constitution, the Court argued that minority educational institutions had to comply with the state's power 'to regulate education, educational standards' to achieve 'excellence and uniformity in standards of education' and autonomy in administrative affairs could not be interpreted as 'right to maladminister' the institution (St Stephen's vs. University of Delhi 1992 (AIR 1630, SSC (1) 588 1992: Para 61-62). Recognizing the principle of relative equality and positive discrimination, the Court opined that

> In order to treat some person equally, we must treat them differently, we have to recognize a fair degree of discrimination in favour of minorities…The equality means the relative equality, namely the principle to treat equally what are equal and unequally what are unequal. To treat unequals differently according to their inequality is not only permitted but required (ibid: Para 102, 105).

The Court, however, argued that the rights of minorities in as given in Article 30(1) 'must not be arbitrary, invidious or unjustified' and the rights of individual 'will necessarily have to be balanced with competing minority interests' (ibid.: Para 106). Thus the Court categorically imposed restriction on the admission percentage of minority students:

> …in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course in conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed fifty per cent of the annual admission. The minority institutions shall make available at least fifty per cent of the annual admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit (ibid.: Para 107).

Although, the Court upheld differentiated right to minority communities to establish and administer educational institutions of their choice and with certain restrictions, allowed the institutions to prefer the candidates of their communities in admission only to the extent of 50% and was not imposed similar duty on majority run educational institutions like Sarasvati Shishu Mandir. Indeed, this judgment was misread as 50% reservation of minorities that was, in fact, 50% reservation for other communities (Wilson 2007: 75-76). In this contest, the first statutory Commission expressed anxiety over 'growing the

tendency to curtain, a bridge and whittle down the content, quality and spirit of the minority educational rights through a series of legislations and government notifications, unmindful of the purpose and intentions of Article 30 (1)' (NCM Annual Report 1993-94: 8). The Commission regarded the St Stephen's College judgment as one more step to restrict the educational rights of minorities. The Commission pointed out that by the implication of *St. Stephen's* judgment minority educational institutions could admit students of their own community up to 50% and remaining vacant seats were mandated to be filled by the students of other communities (NCM Annual Report 1993-94: 8-9). The Commission several received several representations from the minority educational institutions related to the issues raise in the St Stephen's. The All-India Association for Christian Higher Education pleaded to the Commission that Christian minority educational institutions had been following the policy of admitting students of other communities for long, they should not be constrained by the percentage ratio in admitting students of their own community.[9] However, the Commission's activeness was only limited to criticism of the judgment.

Demanding reduction of 50% reservation of non-minority students in minority educational institutions to 25 %, the Commission, under Tahir Mahmood, advised the central government to enact suitable law for this purpose. The legislation should also impose corresponding duty on all non-minority institutions to reserve 20% seats for minority students (NCM Annual Report 1998-99).

Mandating Scheduled Caste and Scheduled Tribes Reservation in Minority Educational Institutions: Crisis of Social Justice and Minority Character of AMU

After St Stephen's case, minority educational institutions were under the state scanner for one or the other reason. The Commission received several complaints of encroachment of educational rights of minorities as an aftereffect St Stephen's ruling. This led the NCM to establish a special Minority Education Cell in the year 1998 within the Commission to deal with complaints and representations related to educational rights of minorities. The Commission, moreover, widely circulated relevant Constitutional and

[9] The Association informed that during the year 1993-94, the percentage of Christian student in 228 Christian educational institutions was just 39.04 and the rest belonged to other communities (NCM Annual Report 1993-94: 8-9).

National Education Policy (1986) provisions along with the Commission's Guidelines for Recognition of Minority Educational Institutions (1986) [10] and the Government Policy Norms and Principles: For Recognition of Minority-Managed Educational Institutions (1989)[11] to generate awareness about educational rights of minorities. However, the NCM's Guidelines and the Government Norms contained provisions inconsistent provisions. While the Government Policy Norms indicated that the *state might reserve seats* (for SC/ST) in minority education institutions under Section 8 (d), the Commission, in the Guidelines emphasized non-interference of the government in the admission policy of minority educational institutions. Section 7 (1) categorically stated:

> Minority educational institution should have freedom to give special consideration to the students of their own community in matters of admission. Government should not insist on administrations of these institutions one being thrown open to all strictly in order of merit. The Government cannot enforce the rules of reservations in favour of Scheduled Caste, Scheduled Tribes and Other Backward Classes, for admission of Students in these institutions (Guidelines 1986).

The first provision was significantly curtailed in the St Stephen's ruling; the other was conflicted with the Government Norms 1989 and became controversial as University Grant Commission (UGC) decided to implement reservation policy in minority educational institutions in mid 1990s. The UGC stopped the grant in aid to AMU on the pretext that the University was not complied with the universal norm of SC/ST reservations (NCM Annual Report 1997-98). Tahir Mahmood, the then chairman found obligation of SC/ST reservations in minority educational institutions quite puzzling as most of them were run by Christians and Muslim who could not be a Scheduled Caste under the Presidential Order 1950 (ibid. Mahmood 2016: 109, 2007,). On the basis of St Stephen's judgment, the Commission issues a ruling to the UGC showing that admissions within 50% minority seats might not be strictly based on merit and the Court ruled that in 50% open seats admission would be strictly on the basis of merit, thus no SC/ST reservations in minority educational institutions either in admissions or in faculty recruitment (NCM Annual Report 1997-98: 22-23, 1998-99: 11). Thus, the grant in aid to AMU was resumed after some time.

By provisioning SCs/STs reservation in minority institution, Mahmood argued that UGC was forcing protection of the interests of SCs/STs at the expense of minorities' that too

[10] See full text of the Guidelines Appendix V.
[11] See full text of the Government Policy Norms in Appendix VI.

in the institutions established by minorities themselves (2007: 110, NCM Annual Report 1997-98). For the first time, the Commission recommended for a 'binding legislation spelling out detailed implications and connotations of rights guaranteed by Article 30' (Mahmood 2016: 117). To Mahmood, 22 % SCs/STs reservations in these institution would hamper educational aspirations of minorities, particularly that of Muslims who happen to be educationally most backward (Mahmood 2007). St. Stephen's College was also troubled by the UGC's direction of reserving seats for SCs/STs. Taking into account the difficulties faced by minority educational institutions because of contradictory legislations, the Commission recommended legislation of a law elaborating absoluteness of the provisions contained in Article 30 superseding contradictory legislations. The Commission recommended:

> A law for this purpose, titled 'Minority Educational Institutions (Establishment and Administration) Act' should be enacted by Parliament and properly enforced so as to supersede contrary provisions of all State laws, rules and regulations, as also of the special enactments governing the Central and State universities and the bodies like the UGC and AICTE (NCM Annual Report 1997-98:41-42).

Interestingly, the largest numbers of minority educational institutions are run by the Christians and Muslims whose Dalit population is officially outside the constitutional net of Schedule Caste (Mahmood 2007: 22, Ahmad 2017). On the insistence of Naseem Ahmad, former Vice-Chancellor of AMU who later held the NCM chair for 2014-2017, Central Educational Institutions: Reservation in Admission (2006) Act was enacted which immunized the Minority educational institutions from the mandatory SC/ST and OBC reservation. Although, such Acts created exceptions for protection of education rights of minorities, it brought vulnerable sections in face to face confrontations. Naseem Ahmed apprised that earlier it was not the case the AMU was not reserving seats for SCs/STs. The University used to reserve seats out of Vice-Chancellors quota, but making it mandatory was problematic as Muslims could not be Scheduled Caste and AMU was a Muslim University (derived from Naseem Ahmad's interview with researcher 30 January 2017).

The AMU 'minority status' issue reopened again in 2005. AMU Vice-Chancellor, Naseem Ahmad, decided to implement 50% minority ceiling in admissions of Post Graduate, Medical Courses for the session 2005-006 as ruled by the Supreme Court in *St*

Stephen's case and reaffirmed in *TMA Pai* (2002) judgment[12]. Five petitions were filed by 34 MBBS pass outs affected by the University's decision. The petitioners contented on the basis of the Supreme Court ruling in *Azeez Basha* case that the AMU was not a minority institution as it was established by the Parliament, thus, was not fall under the purview of Article 30 (1). Thus, reservation in favour of Muslim candidates was invalid. The single judge bench in *Dr. Naresh Agarwal vs Union of India* (2005) relying heavily on Azeez Basha ruled that AMU was not minority institution and reasoning offered by the Supreme Court in *Azeez Basha* case 'still hold good' (2005: Para 70). Therefore, 'the University cannot provide any reservation in respect of the students belonging to a particular religious community' and 'the admission granted in pursuance of the aforesaid reservation stand cancelled' (ibid.). The University challenged the decision of single judge bench in the Aligarh Muslim University vs. Malay Shukla (2006). The Minorities Commission became a party in conjunction with AMU against the petitioners.[13] University argued that it was a minority institution under Section 2 (1) of the AMU Act as amended in 1981 and emphasized the concomitant right to admit students of Muslim community as provided by Para 107 of St Stephen's judgment. While upholding the decision of the *Dr. Naresh Agarwal vs Union of India* judgment, the Bench struck down the Section 2 (1) of the AMU Act 1920 on the ground that the findings of the Supreme

[12] Eleven judges Bunch in TMA Pai case found the 50 % ceiling ratio valid. The Bench also held that this that

> …aided minority educational institutions were entitled to preferably admit their community candidates so as to maintain the minority character of the institution, and that the state may regulate the intake in this category with due regard to the area that the institution was intended to serve, but that this intake should not be more than 50% in any case…Though we accept the ratio of St. Stephen's…we have compelling reservations in accepting the rigid percentage stipulated therein…It will be more appropriate that depending upon the level of the institution, whether it be a primary or secondary or high school or a college, professional or otherwise, and on the population and educational needs of the area in which the institution is to be located the state properly balances the interests of all by providing for such a percentage of students of the minority community to be admitted, so as to adequately serve the interest of the community for which the institution was established (2002: Para 151).

[13] Research Officer of the NCM (who had been working in the Commission since 1987), told that the Commission was backing the AMU case and became party to the case in conjunction with the University and supplied all possible support to the case to University's Counsel (informal conversation with the Research Officer NCM 10 June, 2016). It was a clear shift in Commission's position. Non-statutory Commissions, though consistently sided with educational rights of minorities, were reluctant to perform pro-active role in the matter. For instance, in 1987, Muslim and Sikh delegations approached the Commission in relation to a writ a petition filed by the Guru Nanak Public School in Delhi High Court. The delegation appealed the Commission to join as a party or become intervener in the writ and similar other such cases of infringement of educational rights of minorities. But the Commission refused to do anything on the account matter being *sub judice* (Tenth Annual Report 1987-88: 13-15). After Meenu Masani, statutory Commissions opted for pro-active role in safeguarding educational rights of minorities.

Court could not be nullified by a simple declaration. Thus, invalidating the findings of *Azeez Basha* case by adding a declaratory section as in Section 2 (1) of AMU Act was flawed. The Court maintained:

> The submission of Aligarh Muslim University and Union of India is that the amendment in preamble, long title, Section 2(1) and Section 5(2) (c) declare that institution was established by minority community. The said declaration being contrary to the Azeez Basha's case (supra) and the basis of the said judgment having not successfully changed, the aforesaid provisions are nothing but overruling of a judicial decision which has been frowned upon by the Apex Court in several judgments, as noted above. Consequently the provisions of Section 2(1) and Section 5(2) (c) as well as amendment in preamble and long title are liable to be struck down (Aligarh Muslim University vs. Malay Shukla 2006: Para 151)

Against this decision AMU knocked the doors of the Supreme Court and the Court issued stay order preventing the University to reserve seats for Muslims. Post-*Azeez Basha* enactments proclaiming AMU a minority institution instigated larger debate on the balance of power between the Parliament and the Judiciary. Again, questions were raised whether Parliament had the competence to provide for minority University. Shamim Akhtar argued that St. Stephen's College was 'indisputably privately established and managed', because of this reason; it was not difficult for the Court to affirm its minority status. 'Since a minority institution, by definition, cannot be a State-administered institution, AMU must, in order to be a minority institution, be transformed from its present status as part of the State to an aided private institution' (2014: 67). Flow of the state financial aid might be unaffected by this transformation under Article 30 (2) No writs would lie against it and it will become subject to ordinary litigation as any other registered body (ibid.). On the other hand, Aftab Alam contended this formulation of minority educational institution. Alam argued that in *Azeez Basha* judgment, the Court expressed that interpretation of minority educational institution would include a university (Indian Express 2 May, 2016). The ambiguity was further escalated with an amendment in the National Commission for Minority Educational Institution Act 2004 to bring the possibility of 'minority educational institution' to also mean 'a university'. The original Act explicitly denied the possibility of a 'minority educational institution' to be university; the Act defined 'minority educational institution' as a 'college or institution, which must be other than university' (NCMEI Act 2004). The Amendment 2010 removed the phrase 'other than university', though made room for a 'minority

educational institution' to be university, not made it clear enough that expressed such possibility explicitly. The case is now pending in the Apex Court with the question, whether university could be termed a minority institution?, looming large.

Contrary to the Judiciary, the Minorities Commission had consistently supported educational rights of minorities since its inception. Meenu Masani, the first chairman of the Commission resigned on the pretext of narrow interpretation of those rights in case of AMU. Although, the Commission became moderate during 1980s, it kept a broad interpretation of educational rights of minority intact as evident from the Commission's Guidelines for Recognition of Minority Educational Institutions (1986). The statutory Commission overtly condemned narrowing down of these rights in St Stephen's and later judgments and adopted a pro-active role in protection of educational rights of minorities.

II
Linguistic Rights of Religious Minorities: Urdu, Bhoti and Punjabi

Minority communities, whose identities are entrenched in both language and religion, require double safeguards to be protected from cultural and linguistic assimilation. Muslim, Bodh and Sikh are such communities which are simultaneous linguistic minorities and closely associated with Urdu, Bhoti and Punjabi. Other, recognized religious minorities, Christians, Parsis, and Jain are considered linguistic minorities. Christians and Parsis usually speak regional languages and are well verse in English that too is considered a minority language. The factor of dominance differentiates minority language like Urdu from other minority language like English. While Bhoti and Punjabi have been spoken by religio-linguistic groups (largely Sikhs and Buddhists) and confined in geographical pocket of Punjab and Arunachal Pradesh, Urdu was the spoken language of North and Central India. Till the matter of official language was finally decided by the Constituent Assembly, Urdu was considered as a part of amorphous Hindustani a fusion of Sanskrit, Persian and Arabic evolved through centuries. Hindustani could be written either Urdu (Persian-Arabic inspired script) or in Hindi (Devnagari-Sanskrit inspired script). The question of official Indian language was initially posed as a contest between English or Hindustani (Austin 1966: 341-342). Because of its composite nature, Hindustani (Urdu or Hindi) was chosen by the Congress as the language of national movement to abridge 'the widening gulf between Hindus and Muslims' (ibid.: 340) and adopted it as official language of the party (ibid.: 338). Post-partitions meetings of the

Constituent Assembly, Hindustani, English and other regional languages were attacked by Hindi-wallas.[14] The meeting of the Congress Assembly Party held in July 1947 voted sixty three to thirty one to adopt Hindi in place of Hindustani as national language of India. In wake of partition, Hindustani was killed and English was threatened, 'the anger against Muslims turned against Urdu' ibid.: 346). Even after partition, Gandhi advocated flexible Hindustani:

> The Hindustani (Gandhi wrote) should be neither Sanskritized Hindi nor Persianised Urdu but a happy combination of both. It should also freely admit words whenever necessary from different regional languages and also assimilate words from foreign languages…To confine oneself exclusively to Hindi or Urdu would be crime against intelligence and the spirit of patriotism (Gandhi quoted in ibid.: 339).

But the Draft Constitution 1948 provided that the language of Parliament would be Hindi or English and these languages could also be used in provincial legislatures as alternative to regional languages, arguably following Congress's resolution that changed the word 'Hindustani (Hindi or Urdu) to Hindi' (Austin 1966: 346-347). The controversy over Urdu or Hindi acquired communal overtone. Finally in 1949 the amorphous Hindustani was deserted in favour of *sanskritized* Hindi leaving Urdu speakers (mainly Muslims) bewildering (ibid., Smith 1963: 399). Urdu (within the frame of Hindustani) was the language spoken by majority of Indians, became a minority language in a single stroke. It was shared by Muslims and non-Muslims before independence, eventually, Urdu came to be associated with Muslim identity which contributed in its decline in post-colonial India.

After losing the race of national language, Urdu was placed under Eighth Schedule of the Constitution. Being minority language, it was eligible for Constitutional provisions under Article 29 and 30. But Urdu was badly managed and 'virtually eliminated as a medium of instructions' from the schools of northern India. Hindi was promoted at the cost of Urdu; some states made it an 'offence' to use any other language other than Hindi by the government officials. Numerous applications were submitted to state and central governments to resume Urdu as medium of

[14] Austin reported that Hindi-wallas (Hindi extremist) in Constituent Assembly were adamant supporter of *sanskritized* Hindi written in devnagari (332-340).

instructions in schools, but were not entertained (Smith 1963: 424-425).[15] With the submission of report be State Reorganization Commission, Urdu question was slightly redirected from communal question to the problem of diverse linguistic minorities (ibid.:427-428).

Situation of Urdu was expected to improve after the arrival of National Education Policy (NPE) 1986 as it gave three Language formula. Russel argued that the UP government gave a strange interpretation of three-language formula[16] devised by NPE 1986, chose Sanskrit in instead of Urdu as modern language and discontinued teaching of Urdu in schools (1999: 44). Thus, Urdu became option language and Sanskrit became compulsory in schools from class VI to XII. Muslim organizations raised the demands to recognized Urdu as a regional language in UP and Bihar, and used as medium of instructions for the children whose mother tongue was Urdu along with demand of publishing government laws and Acts etc. in Urdu (ibid. 426). Adoption of Urdu as second official language in UP in 1989, could not transformed the situation of Urdu and remained optional language in schools and Sanskrit continued to be mandatorily taught.

At the time of its establishment in 1978, the Minorities Commission was entrusted to protect both linguistic and religious minorities as office of Special Officer for Linguistic Minorities was merged in it.[17] It had devised a definition of linguistic minorities a group of people that has a separate spoken language, but not necessarily a separate script and must constituted numerically smaller section of people at state level. However, Commission's jurisdiction over linguistic minorities was taken away in 1988; it continued to entertain grievances of linguistic minorities that were simultaneous linguistic minorities. In the eleventh annual report, the Commission recommended to bring back the linguistic minorities within the purview of the Minorities Commission which was not accepted by the government. Smith rightly raised the formulated the

[15] The performance of the organizations established to promote Urdu (both state funded and privately maintained) like *Anjuman i Taraqqi i Urdu* and *Taraqqi Urdu Bureau* etc., performed dismally. Although, most of these bodies urged the government to promote Urdu, they were not engaged in popularizing the language by adopting measures to improve its accessibility and comprehensibility by simplifying the language (Russel 1999).

[16] Under three language formula, three languages were to be taught in schools, the dominant language of the state (usually regarded as mother tongue), one modern language (Hindi was adopted where it was not the dominant language) and one other language (Russel 1999: 44). The Minorities Commission also showed concerns about non-implementation of three language formula in its annual report of 1988-98.

[17] Already existing Special Officer published its reports independently without passing through the Minorities Commission (Second Annual Report 1979: 13).

complexity of Urdu and Muslims that 'how could Indian Muslim to conserve their culture if their mother tongue was banished from the primary school attended by their children?' (Smith 1963: 426). Since inception, the Commission was flooded with the complaint of systematic downgrading of Urdu by the state governments or its agencies. In 1978, a representation was received complaining discontinuation of UPSC advertisement in only Urdu newspaper *Musalman* of Tamil Nadu. The Commission advised the UPSC to resume advertisement in *Musalaman* that UPSC accepted (Second Annual Report 1979: 12-13).

Representations complaining violation of linguistic rights of Urdu speakers kept coming to the Commission. In 1980, the General Secretary, Muslim Employment Welfare Organization, Chakradharpur, demanded Urdu medium teaching in South Eastern Railway School, Sini, on the account that sufficient numbers of Muslim students were desirous to receive education through Urdu medium. The complainant referred the matter to General Manager, South Eastern Railway who replied that the number of students desirous of learning in Urdu medium was not more than 12 in one class, for that reason, it was not possible to provide separate class and teacher for Urdu. The Commission referred to the 'Resolution of the Education Minister's Conference' which clarified that at junior levels, 'arrangement should be made for instruction in mother-tongue' if number of students speaking that tongue were not less than 40 in the whole school and 10 in a class. Thus, the Commission strongly recommended the Railway authorities to provide instructions in Urdu medium in the school (Third Annual Report 1980: 9-10).

In 1995-96, the Commission recommended broadcasting news in Urdu in the states where substantial population speaks Urdu such as West Bengal and Karnataka etc. (NCM Annual Report 1995-96: 30). To increase administrative efficiency and improve academic standards of Urdu, the Commission suggested enhancement of affiliating jurisdiction of the Maulana Azad Central University of Hyderabad to affiliate Urdu Medium institutions all over India (NCM Annual Report 1998-999). But the government did not pay any of these recommendations. Until Urdu is not linked to employment, it seems difficult that it would come in daily use across all religious communities. Russel (1999) has shown that a lot of children coming out of Urdu knowing (speaking, reading, writing) families have enrolled in English or Hindi medium schools as these schools could made them employable in comparison with Urdu medium schools.

Although, these interventions provided instant relief, could not hit root cause of decline of Urdu that was un-employability of youths educated Urdu in medium schools. Taking a pragmatic position, Smith suggested that it would not be practical for Muslims to confine themselves in Urdu medium education which could not enable them to compete with Hindi educated masses (1963: 429-30). Instruction in Urdu medium became restricted to secondary level or available in Madrasas (impart only religious education). Instructions in Urdu are not available in technical, vocational and higher education in Universities or in technical institutions including Aligarh Muslim University. Urdu became confined to cultural aspect of Muslims and lost its historical character of 'popular mass language' and symbol of 'composite culture'. Making the matter more ambiguous, the policy of SC/ST reservation was followed in recruiting teachers for the teaching of Urdu, Persian and Arabic or in the posts required knowledge of these languages which eventually became Muslim's language. The Commission recognized that this practice resulted in denial of resulted in denial of career opportunity to Muslims as no Muslim could ever be Scheduled Caste (NCM Annual Report 1997-98:36). Moreover, it had lowered of teaching standards of these languages as there was near absence of SC/ST candidates for these post or they virtually face no competition for getting recruited on reserved seats from Muslims. Indeed, the posts are kept vacant for long in wait of SC/ST candidate that also adversely affects the cause of Urdu language.

Punjabi language has been deeply associated with Sikh identity in Punjab, initially written in Urdu or Devnagri script. Because of Sikhs attempt to shape distinct identity, Gurumukhi as Panjabi script gradually evolved. In post-partition scenario when Urdu received hostile treatment from the government, use of Punjabi in Gurumukhi script escalated. Punjab, where majority of Punjabi Speaking Sikhs were residing was predominantly Hindi (Haryanvi) speaking state. In the initial years of independence, the Srimokhi Akali Dal centered its politics on the demand of separate Punjabi Suba. In a memorandum submitted to the State Reorganization Commission (1956), the Akali Dal urged that materialization of separate Punjab out of Punjabi speaking areas in Punjab, PEPSU and Rajasthan would resolve mother tongue controversy for Sikh (Wadhwa 1975: 163-165). The Commission rejected this demand and argued that separate Punjabi Suba would not be able to resolve either language or communal problem rather intensify them. Disappointed with the State Reorganization Commission, Akali Dal pursued the

central government to bifurcate Punjab into two separate states, Punjab and Haryana. The movement for Punjabi Suba was intensified under the leadership of Master Tara Singh who promoted Punjabi to strengthen linguistic ground of his demand. By 1966, Punjabi came out of sacred domain of Sikhism and became language of instructions in schools and of administration all over Punjab (Jeffrey 1997: 443-445. Supplied with linguistic impetus, in 1966, Panjabi Suba movement led successful bifurcation of Punjab into two separate states, one Punjabi dominant Punjab and other Hindi (Haryanvi dialect) dominated Haryana. However, Punjabi speaking minority residing in other parts of India needed and demanded linguistic safeguards.

The Minorities Commission received representations from Delhi Sikh Gurdwara Prabandhak Committee, Sikh Sabhas, other Sikh organizations and individuals, demanding similar treatment of Punjabi as accorded to Urdu keeping in view the size of Punjabi speaking minority in Delhi (Second Annual Report 1979: 8). Representations included demands of recognition of Punjabi as second language, funds, and establishment of Council for the promotion of Punjabi in Delhi (ibid.: 53). The Commission noted that as per 1971 census, Hindi, Punjabi and Urdu speakers constituted 75.27%, 13.50 % and 5. 70 % of Delhi's population respectively (ibid.: 55). After scrutinizing provisions extended to Urdu, the Commission recommended that Punjabi should be accorded the same position as was given to Urdu in the Union Territory of Delhi (ibid.: 8, 53-56). In 1991, Panjabi Language Teachers Association represented to the Commission concerning non-appointment of required teachers, discouraging students from opting Punjabi, non-approval of text books prepared by Punjabi Academy and blocking promotion of existing teachers (Fourteenth Annual Report 1991-92: 53). The Commission apprised the Lt. Government of Delhi about the problems faced by Punjabi speaking minority and advised him to take appropriate steps to remove them. Although, Lt. Governor accepted the recommendations in principle, nothing substantial was done. Afterward, statutory Commissions kept pushing the demands of Punjabi speaking minority; finally, Punjabi received the status of official language in Delhi in the year 2003 (The Times of India 25 June, 2003).

Bhoti is spoken by large numbers of Buddhist across Himalayan Belt, particularly in Jammu & Kashmir, Himachal Pradesh, Sikkim and Arunachal Pradesh. While preparing a report on socio-economic conditions of the Buddhist community, Ven G. K. Bakula

found that one of the major causes of poverty among Buddhists was educational backwardness. Bakula's study suggested that the main hurdle in educational advancement of Buddhist community of Ladakh was 'medium of instruction'. While Buddhist spoke Bhoti language, Urdu was recognized as official mother tongue in place of Bhoti, and educational instructions were imparted in Urdu at primary level (Ninth Annual Report 1986-87: 230). On the other hand, state government introduced Dogri as medium of instructions at the primary level in Jammu. Bhoti was used just as an optional subject (not medium of instruction) up to High School, but it was '*not taught at all at university level'*.[18] The Commission was very critical to the state government of Jammu & Kashmir for the kind of treatment accorded to Bhoti (ibid.) which engendered a sense of sense of discrimination among Buddhists.

The demand for according fair treatment to Bhoti language was kept reappearing in the representations made by the Buddhists. In order to ensure just treatment to Bhoti, Buddhist demanded inclusion of Bhoti in the Eighth Schedule of the Constitution which was subsequently forwarded by the Commission to the central government. Thus, in the year 2003-2004, the Commission recommended inclusion of Bhoti language in the Eight Schedule of the Constitution.

In view of persistent demand from various organizations (predominantly Buddhist), individuals and Parliamentarians for inclusion of Bhoti in the Eighth Schedule of the Indian Constitution, the Commission decided to diagnose appropriateness of Bhoti for that purpose. In 2008, the Commission entrusted a study to the Central Institute of Indian Languages, Mysore to examine the fitness of Bhoti language for its inclusion in Eighth Schedule. The report of the study suggested that Bhoti was a part of long literary tradition and most valued script of Indian origin. It is spoken in a long stretch of Himalayan region from Ladakh to Arunachal Pradesh. Its vast storehouse of literature matches existing scheduled languages. Moreover, the study recognized that Bhoti as a cultural language of Buddhist tribes of the region and offered an opportunity to link several other tribal languages. The study described the possible utility of Bhoti as, 'Bhoti offers lexical resources that can aid modernization of languages like *Ladakhi* or *Bhutia*,

[18] Emphasis supplied.

and can perform for Bodic group of languages in the Tibeto-Burman group of languages the role Sanskrit has performed for several Modern Indian Languages' (NCM Annual Report 2008-09: 35). Highlighting the cultural value of Bhoti, the study commented that 'it is a symbol of unity in diversity and performs the role of lingua franca for all concerned communities. It would reaffirm the symbolic order of a diverse pluralistic nation whose many components are in constant dynamic exchange' (ibid.). Taking into account the richness of the language in literature, its usefulness in education, media, administration, association with Buddhist identity, the report concluded that Bhoti should be accorded the status of national language under Eighth Schedule of the Constitution (ibid.: 36). The Commission adopted the report and recommended the central government accordingly. However, the government put this recommendation on hold.

The Minorities Commission seemed not much engrossed in tackling linguistic concerns of religious minorities though languages, Urdu, Punjabi and Bhoti have been deeply knitted in the community identity of Muslims, Sikh and Buddhist. Deeply entangled socio-economic issues of employment and preservation of cultural identity with languages seemingly not informed the Commission's discourse on linguistic concerns of religious minorities.

III

Assimilating and demonizing Minority Cultures: Issue of Biased Text Books

India's cultural policy has been largely *ad hoc*, usually an outcome of bargains among officials rather than results of informed choices based on coherent formulations which might act as 'policy guidance' and subjected to public accountability (Rudolph & Rudolph 1983: 15-37). Nehru kept the contentious issues of religious minorities minimized by encouraging such text books that presented Muslims in terms of 'political and class'. When the Janata government came to power in 1977, it attempted to interrupt Nehruvian 'secular consensus' by injecting Indian identity which was necessarily Hindu in the text books (ibid.). It tried to replace secular text books with Hinduized books to inculcate respect for Indian culture and history in the minds of young pupils. This

episode engendered a sense of insecurity among minorities as cultural identity might be lost by the books that depict in bad shade. As an implication of demonising minorities in text books, social relations between majority and minority become tense. Although, forced religious intructions are prohibited under Article 28 of the Constitution, it may be imparted in the guise of moral education leading to cultural assimilation of minorities.

In this context, one of the earliest recommendations of the Commission was the replacement of such text books in schools and colleges that tend to inculcate in young minds feelings of animosity against one or the other community with the books which would instil the sense of 'equality and brotherhood between the members of all communities' (First Annual Report 1978: 8).

In 1981-82, the Commission received representation from All India Backward Minority Communities Employees Federation, Agra about the objectionable contents against Lord Buddha and Buddhism in Hindi book '*Kal Vijay*' by Laxmi Narain Mishra. It was alleged that this book was approved by Agra and Rohilkhand Universities as part of their syllabus. Representation demanded ban on the book. The Commission examined the matter and requested the Ministry of Education to consider banning the book. The Ministry informed the Commission that the book was removed from the syllabus of the Universities. However, the Commission felt that issue of complete proscription on the book for general reading should be left with the government when '*Kal Vijay*' was no more a prescribed text book. The Uttar Pradesh government apprised that it would be improper to completely ban the book or to take legal action against the author (Fourth Annual Report 1981-82: 48).

In April 1989, the Commission received representation from Abdul Lai of Jamat-e-Islami Hind raising objection to inclusion of 'Sankshipt Ramayan' and 'Sankshipt Mahabharat' as a part of supplementary readers in Hindi for class VI and VII of Delhi government run schools. These readers were prepared by the NCERT also contained Sanskrit slokas which were compulsory for children to memorize. Abdul Lais raised the point that inclusion of religious epics was against the National Education Policy 1986 which provided that educational programmes must confirm to secular values. Moreover, Lais referred to the Article 28 (1) which prohibits religious instructions in entirely state funded educational institutions (Twelfth Annual Report 1989-90: 37). The Commission took up the matter to the Delhi administration. According to Administration, these books

did not contain any religious matter, and also comprised the Commission that the third book in series would contain biographies of five religious leaders including Gautam Budh, Mohammed Sahib, Christ and Nanak Dev. The Administration further clarified that sufficient care was taken to present the only social background of the Indian culture. Because of the visible weakness of Delhi Administration's response, the matter soon became controversial, thus, Shiv Shankar, the minister of Human Resource Development sent a copy of the letter he wrote to Syed Shahabuddin in which he informed that a Committee would be constituted to review these books and consider the case their replacement (Twelfth Annual Report 1989-90: 37-38). The Commission, though took up the matter to Delhi Administration, it appeared not much concerned about the case of forced religious instructions in schools. However, the Commission in the eleventh annual report carried recommendation for better and unbiased treatment of history and single set of text books on history for the entire country (1988-89: 120). Biased history which may deteriorate communal relations seems to be the concern of the Commission, but not the forced religious instruction which was a part of assimilatist state tendencies.

The Commission sponsored a study on 'Communal Riots: Prevention & Control' in 1998-99 which was undertaken by activist and scholar, Iqbal A. Ansari from Aligarh Muslim University. Ansari proposed a separate body, 'Community Relations Commission' to combat communalism and communal violence. Apart from addressing several legal and administrative issues involved the controlling violence, the proposed Commission was to review contents of teaching materials and media coverages related to religious, cultural and historical aspects of Indian society to reduce possibility of communal discord because of distorted/biased presentation of facts and take required rectifying measures and actions under law (NCM Annual Report 1998-99). The Commission's reasoning of forced religious instruction and biased history seems to be informed by the concerns of national integration and communal harmony.

Conclusion

The working of cultural and educational rights as intervened by the state and interpreted by the judiciary, has not been very encouraging and witnessed gradual dilution (Mahmood 2007: 20, Nariman 2014, Wilson 2007). According to Fali S Nariman, Article 15 and 29 (1) and (2) are used to refute the strength of Article 30 (1) reducing it

to the position of fundamental right guaranteed under Article 19 (1) (g), a right to occupation, i. e. to run a minority educational institution (2014: 44). The working of educational safeguards to minorities has been disappointing as the state has extended only shabby treatment to them. Tahir Mahmood pointed out that Constitutional provisions for the vulnerable sections like Scheduled Castes and Scheduled Tribes have been supported with further legislations and policy interventions. Whereas minority rights, that are special constitutional assurances to minorities against majority's assimilative tendencies, could not be elaborated with supportive legislations, rather they encountered erosion through routine state practices in the name of social justice and quality education (2007: 20).

In this context, as a long awaited policy response the National Commission for Minority Educational Institution (NCMEI) was made a reality in 2004 to resolve the problems of minority educational institutions (more precisely recognition and issue of minority certificate to educational institutions run by the minorities). The primary mandate of the NCMEI is to look into the complaints regarding deprivation or violation of the rights of minorities to establish and administer educational institutions of their choice as given under Article 30 of the constitution. The NCMEI is a quasi-judicial body like the NCM; nonetheless its decision relating to affiliation of any minority educational institution to a university is final. Other than that, Minority Cells are created in regulatory and administrative bodies of education such as the University Grants Commission (UGC), the All India Council for Technical Educational (AICTE), the Central Board of Secondary Educational (CBSE), etc. Minority Cells in these Institutions are to enable minorities and their institutions overcome some of the problems they are facing in this respect.

These initiatives including the NCMEI appear unable to protect rights guaranteed under Article 30 in the shadow of the Judicial interpretations of this Article. Problematically, the NCMEI, Like the NCM, has become almost defunct as the positions of chairman and a member are vacant since December 2014 and March 2017 respectively (Mustafa 2017).[19] In the web of institutions, both the NCM and the NCMEI look into the grievances of minorities arising out of threat to their cultural and educational rights.

[19] Although fresh appointments on the Panel of the NCM were made on 25 May 2017 after the interregnum of three months, the appointees were closely associated with the BJP. Their sincerity in taking the NCM out of state of defunctness is yet to be seen.

However, the influence area of both these Commissions also comes under the purview of the Judiciary that has been actively involved in matters coming under Article 29 and 30 and whose verdict is almost absolute. Yet, the role played by the judiciary in the matters of cultural and educational rights of minorities has not always been encouraging. In the initially years of the republic, the judiciary worked as facilitator and protector of these rights, but gradually it has emerged as inhibitor preventing minorities to claim these rights (Nariman 2014).

The Commission noted that Guidelines for the Recognition of Minority Educational Institutions were often flouted by the state authorities (NCM Annual Report 1996-97: 43). Because of the Commission's initiatives, several grievances of minorities concerning educational rights have been resolved. The Commission pursued such cases vigorously with state governments and their educational authorities. In Uttar Pradesh alone 77 schools and one degree college run by minorities were accorded minority status in the year 2004 (http://ncm. nic.in/Major-Initiatives-of-the-Commission.html accessed on 20/07/2016). On the other hand, Commission's performance was dismal in resolving the linguistic issues of religious minorities.

Iqbal A. Ansari (1999) argued that provisions of cultural and educational right proposed under Draft Constitution 1947 were equivocally minority specific. Article 23 of the Draft Constitution upheld minorities' right of protection in 'respect to their language, script and culture', specified that *no discrimination against minorities*'[20] whether based on religion language, or community' should be exercised in the matter of admission in state educational institution and religious instructions should not be imposed on them (Ansari 1999: 127). Moreover '*all minorities'*[21] should be 'free to establish and administer educational institution of their choice' and state was prohibited to discrimination against such institutions while providing aid (ibid.: 127-28). Altering the meaning of Article 23 (2) of the Draft Constitution, the term minorities was replaced with citizens, reading, 'no citizen shall be discriminated' that too in state aided educational institutions on the ground of religion, race, caste, and language etc. (ibid). This replacement converted minority specific clause into a general 'non-discrimination' provision, inflicting ambiguity in most celebrated minority rights. The language of Article 29 (2), '*No*

[20] Emphasis supplied, Clause 23 (2) of the Draft Constitution.
[21] Emphasis supplied.

citizen[22] shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them' took the spirit of a differentiated minority right out of it. In practice, Article 29 (2) overshadowed the provisions of Article 30 (1). Rochana Bajpai argued that broad minority rights espoused at the initial proceeding of the Constituent Assembly were narrowed down. The minority safeguards adopted at the final stage show a compromised position between opponents and supporters of these rights. In case of cultural and educational rights, attenuation was done by expanding the scope of cultural and educational for 'all citizens' (2010: 287-89 which later showed the effect of nullifying cultural and educational rights as minority rights.

As this chapter has shown that the Minorities Commission has emerged as adamant supporter of cultural and educational rights of minorities. The reason behind unequivocal support to cultural and educational rights seems to be rooted in better normative vocabulary behind these rights that was forwarded in the Constituent Assembly. Rochana Bajpai argues that unlike political safeguards minority cultural and educational rights did find some support within the nationalist normative vocabulary. But Bajpai pointed out that there was tension in the nationalist normative vocabulary on the issues cultural rights when it was to be treated beyond common individual rights. Justice constructed in individualist difference blind terms, and concerns for national unity minorities seems to erode differentiated rights (Bajpai 2010: 284-295). The Judiciary seems to be trapped in this tension when it preferred Article 29 (2) on Article 31 (1). On the other hand the Commission uncompromisingly upheld educational rights of minorities consistently deriving force of its argument from the history of these Articles and history of the educational institutions.

[22] Emphasis supplied.

Conclusion

Shrinking Avenues of Minority Protection in India's Liberal Democracy

The leaders of the national movement imagined the ideals for the future polity in which minority protection had been one of the dominating themes. Last three decades of the colonial rule proved very crucial for Indian leaders who had the obligation to formulate a consensus on minority protection for the future polity. During the national movement and in deliberations on future Constitution, many alternatives surfaced and were discussed. These included separate representation, reservation of seats in legislatures, quotas in government jobs etc. with the aim to keep minorities protected and integrated. Several minority groups came up their own set of claims highlighting their socio-economic and cultural uniqueness. Muslims and depressed classes remained the most prominent minorities to put forward their set of claims including separate electorate. Although, the Muslim and Sikh demands of separate electorate were accommodated through Lucknow Pact 1916 earlier, claims of Depressed Classes for separate electorate were never really conceded by the nationalist leaders to keep them strategically united with Hindus. The Poona Pact 1932 successfully curbed Depressed Classes' claim of separate electorate and ultimately encompassed them within Hindu folds, escalating Hindu community's numerical strength making it a permanent numerical minority. On the other hand, consensus could not achieve between the nationalist and Muslim representatives on issues of minority safeguards and federalism that consequently resulted into partition.

In the initial phase of deliberations in the Constituent Assembly, separate electorate as differentiated measure for protecting minorities was discarded, and reserved seats in the institutions of representations, quotas in government employment along with cultural right were approved for Scheduled Castes, Scheduled Tribes and religious minorities. Because of the separation of Depressed Classes from minority category on the question of reservations, Sikh, Christian, and Muslims remained the groups asking for differentiated provisions and placed under the category minority. Muslims placed foremost importance to their identity and pursued cultural and educational rights along

with community autonomy. Sikhs emphasized and secured schedule caste status for four Sikh castes along with strong provisions of freedom of religion reflected in the Article 26 that included carrying *kirpan*, wearing turban etc. as essential part of their religious freedom. On the other hand, the leaders of the Christian community preferred right to propagate religion in exchange of the claims of special political representation. Thus, in the final version of the Constitution, special socio-political rights for minorities were withdrawn and they were included as equal citizens with common set of fundamental rights along with differentiated provisions of cultural and educational rights for nurturing their cultural uniqueness.

Chapter one has shown that the framework of rights as evolved in the Constituent Assembly carried certain complexities and limitations as far as rights of religious minorities were concerned. Religious community *per se* could not emerge as a legitimate category (Bajpai 2011, 2002, 2008) on which state could legislate preferentially. It was 'backwardness' and 'historical injustice' that occupied the heart of legitimate justificatory basis for affirmative action (ibid.). Secularism was adopted as a prerequisite of individual as well as group equality and marked as the most significant value that empowered religious minorities to claim their equal citizen-hood in the Indian state. As a political doctrine it had offered solution of the problem of relationship between religion and state in the west, but in India it was considered as a prerequisite of equal citizenship in India (Mahajan 1998). So, the questions arise whether state practices enabled secularism to offers equality, non-discrimination, and freedom to profess, practice and propagate religion to minorities. These rights were well-written in the Constitution as a corollary to the commitment of Constitution makers to secularism. Nevertheless, the idea of secularism has not been supported with precise legislations elaborating equality of citizens as far as religious minorities and their rights are concerned.

The Constituent Assembly dropped the provision related to the institutional mechanism for the protection of minorities, on the basis of the argument that federal Judiciary would be responsible for protecting right of minorities in the same way it would protect all common citizenship rights. Although, the framers of the Constitution have chartered equality, liberty, and justice as founding principles of the Indian democratic republic in the preamble and supported them with a detailed scheme of rights, but this scheme could not brought minority citizens at par with majority citizens. The Constitutional protection of religious minorities given in this scheme of rights falls short in practice (Mohapatra

2010). One the most important reason for this shortage has been the absence of a robust regime of laws which could facilitate the enjoyment and redressal of these rights by minorities. Assertion of majoritarian politics in India elucidates the limitations of the Constitutional scheme of the protection of rights of religious minorities and points towards the urgent framing of remedial measures and concrete legislative measures.

As an institutional response, the Minorities Commission was founded in 1978 precisely on the reasoning that rights of minorities were routinely invaded and there was a pervasive feeling of discrimination among minorities that needed to be addressed. The punch line of the NCM reads 'institution for safeguarding Constitutional and legal rights of minorities', that are same set of rights for which Judiciary alone was considered as sufficient protector in the Constituent Assembly. The Minorities Commission was not an outcome of mass based minority movement as the NHRC and the NCW were, neither its inauguration was precipitated by any research study (sponsored or unsponsored by the state authority). However, there are no substantial evidences available to suggest that the demand for such institution came either from linguistic or religious minorities in post independent India, except one news item that appeared in 1974 *The Tribune* in which Catholic Union of India urged the Prime Minister Indira Gandhi to constitute a Minorities Commission. The Minorities Commission institution was proposed and created by the liberal secular leadership in post-emergency context. Even when the Sapru Committee recommended such machinery during the national movement, the recommendation was not informed by a demand from religious or linguistic minorities. However, during working of the CA, a memorandum from the Jain community and Dr. Ambedkar raised such demand. Need of institutional mechanism for protecting minorities was re-opened in post-emergency scenario which was characterized by renewed sensitivity about civil rights. The Minorities Commission was brought into existence but could not be empowered with Constitutional status. Thus, the moment of its birth does not provide normative justification for its creation.

The debate on the Minorities Commission reopened in 1992 in a very changed context. The decade of 1980s and afterward, witnessed an unprecedented upsurge of identity politics based on communal mobilization around a dominant Hindu-Muslim identity and assertion of caste identities. The Mandal recommendations instigated new era of caste assertive politics. 1980s witnessed incidents of communal mobilizations such as Sikh

nationalism in Punjab, the Shah Bano controversy, the Ramjanambhoomi mobilizations and opening of the Babri Masjid gates for Rama's worship. Thus, the ground for expansion of the protective institutional arrangement for human rights, rights of religious minorities, women, SCs/STs and OBCs were all set in this fragmented political field. The Congress and the National Front promised to give Constitutional status to the Minorities Commission and to the NCSC/ST. when the Bill was debated in the Lok Sabha, there was much contestation over whether 'religion' could be made a basis for any special provision given to minorities. Either supporting or opposing the NCM Bill 1993, members of the Parliament made use of the Constituent Assembly Debates and of the final provisions of the Constitution to justify their positions, signifying a kind of *continuity* of *the debate over 'religion' and 'differentiation' for minorities*. The debate was focused on 'why a Commission for minorities', not on 'how the Commission will protect the rights of minorities'. The opponents of the Bill accused the supporters that special institutional arrangement for the religious minorities was rooted in political manipulations, vote bank politics, and minority appeasement that would ultimately harm *unity and integrity of the country*. Similar arguments were forwarded in the Constituent Assembly to withdraw differentiated political and socio-economic rights of minorities (Bajpai 2011). Mohapartra rightly point out that contending political parties have not yet achieved minimum level of consensus on minority policy in India. This deficiency in political consensus is one of the reasons for making any offer of the special provision for religious minorities controversial (Mohapatra 2010: 232). The reason behind granting Constitutional status to the NCSCST and not extending the same to Minorities Commission seems to be rooted in consensus achieved for the protection and the welfare of the SCs/STs in the Constituent Assembly. This consensus is reflected in strong legal and Constitutional basis to preferential policies and anti-atrocities' laws covering these groups along with the institutional mechanism with the constitutional status. Contrarily, 'religious community' emerged as a reluctant category in the Constituent Assembly which made it difficult to legislate preferentially and create sound protective institutional mechanism around religious communities. However, the NCSCST was also criticised for dismal performance (Jayal 2006, Mohapatra and Jayal 2004), the existence of supportive legislations enable it rank better than the Minorities Commission.

Interestingly, the Minorities Commission tried to evolve some ways to cop up with the inherent structural weakness such as Tahir Mahmood tried to get some powers to the

Commission by offering to connect the broken threads of the web of institutions. Moreover, it evolves certain discretionary rules to deal with the cases of discrimination. However, it cannot issues of political appointment, lack of investigating agencies, not tabling of annual reports in the Parliament, and ignorance of recommendations made by the Commission.

The Commission remained trapped in legitimacy-illegitimacy debate of religious community as subject to policy considerations since its inception. Right leaning sections have questioned the very existence of a separate body for the protection and promotion of the interests of religious communities. While opposing extension of Constitutional status to Minorities Commission, V. P. Bhartiya, a right leaning scholar, argued that the danger of special rights based on religious identity was recognized at the time of independence and buried by the Constituent Assembly; there was no point in reviving the ghost via creation of the Minorities Commission (1979: 271). Moreover, Bhartiya argued that the provision of the Backward Classes Commission had already there to assure non-discrimination on the ground of religion, thus, this was no need to create a divisive Minorities Commission (ibid). There also prevailed a sense of fear about the Commission. Sundaram believes that the decision to create a Minorities Commission was politically inspired and was based on the assumption that in 1977 elections Muslims voted for the Janata Party. Thus, the Minorities Commission should be abolished as it has 'potential nucleus' for creating another state within the Indian Union on the basis of religion(http://www.boloji.com/index.cfm?md=Content&sd=Articles&ArticleID=7637assessed on 22/10/2016).

Once it came into existence, the Commission was seen as a potential avenue for protection of rights of religious minorities which could instil confidence among them. Conservative and liberal sections of minorities alike approached to the Commission during its initial years of existence. Asghar Ali Engineer sent representation for protecting rights of Bohra community; T K Oommen sent representation on behalf of Dalit Christians, Syed Shahabuddin also approached the Commission on several occasions. As a matter of fact, most of the grievances reaching to the Commission come from educated and well aware sections of minority communities. The Commission has also not able to reach to uneducated and poor people. Even during peace time visits and tours, people from forward section, self-appointed representatives of minority

communities, particularly clerics etc. come up with representations. Common people who face discrimination, prejudices and live with stereotypes could not usually reach to the Commission.[1]

The Commission has to deal with so called 'symbolic issues' of minorities such as personal laws, Babri Masjid, Urdu, AMU, Stephen's College etc. which are also happens to be the difficult questions of differentiated rights of minorities within the universalistic framework of Indian citizenship. When universalistic tendencies try to encapsulate minority cultures, protective institutional mechanisms like the Minorities Commission are expected to align with minorities. However, the Commission's responses to these crucial issues not very often reflect the concerns for differentiated rights of minorities; it seems inclined towards universalistic individualism. In the Shah Bano case, the Commission failed to read the complex positing of Muslim women as individual and as holder of the community identity. This ambiguity in the response of the Commission actually reflects the unresolved tension on rights of minorities in the Constituent Assembly. On the other hand, the Commission refused to align with the Judicial reasoning on the issue of AMU and Stephen's College, showing unabated concerns for educational rights of minorities.

The fraught consensus on rights of minorities made it difficult for minorities to claim their rights in the context majoritarian hampering. The limitations of the Commission to provide redressal in case of infringement of the rights of minorities indicate problems in the institutionalisation of rights of minorities in the Constituent Assembly. The set of rights that were successfully bargained by the religious minorities have been under legislative and majoritarian scanner since independence as shown in each of the chapters. Freedom of religion has met with series of anti-conversion legislations enacted in a number of states (Mathew 1982, Mahmood 2016). Christian priest, nun and other activists have been subjected to violence on the suspicion that they carry out proselytizing activities. State too seems to legitimize Hindu fundamentalist forces and predator of Christian's rights by legislating anti-conversion laws, assigning some sort of

[1] Interestingly the NCM and the NCSC and NCST operate in the same building. The NCSC and NCM even share the same floor. The NCSC appeared always busy and crowed with common people with peculiar rural look. Even seating arrangement seems inadequate for these assertive people; many of them could be seen sitting on the floor. On the other hand, the NCM looks elitist, its corridors generally empty. During visits to the NCM, I met several petitions who came to resolve issues related to recognition of their school or college as minority educational institution. But they were generally reluctant to name themselves.

validity to the anti-Christian activities of these forces. Moreover, Muslims, Christians and Scheduled Castes are lynched in the name of cow protection anti-conversion derive by Hindu fundamentalists. After Dadri lynching, Maharashtra government passed its long pending cow protection law. Haryana went ahead with the creation of a post for 'Honorary Animal Welfare Officer' in each of its districts. The eligibility criteria for such post include possession of a history of being *Gau Rakshak*. These kinds of state actions are actually vindicate majoritarian violence against minorities. Writing in the context of cow vigilantism, Christopher Jaffrelot has offered three reasons to explain why Hindu nationalists opt for vigilantism and how state appears in this frame? Firstly, since beginning RSS desired to transform society by instilling its own sense of discipline among common people. Secondly, Hindu nationalist claims to represent society so they are not willing to prioritize state over society taking social affairs in their own hands. Thus, society should be regulated to achieve 'social order and harmony', but it should be done from within society not from state as 'people's will is beyond law' and RSS claims to embody that. Thirdly, vigilantism is also convenient for the state as it would not be held guilty of minority witch-hunt. Thus, state would not found to be harassing minorities, at the same time allowing to vigilantes to do so would satisfy majoritarian feelings (Indian Express May 13, 2017). This argument could be extended to make sense of vigilantism practices against Christian community. What vigilantes do extends beyond maintaining Hindutva styled social discipline by imposing majoritarian ideals on minorities, infringing Constitutionally guaranteed rights of religious freedom.

Similarly, right to cultural autonomy is constantly under pressure in the guise of universalization of gender equality as evident from the controversy on Muslim personal law and uniform civil code. The cultural autonomy and freedom to manage religious affairs were made ambiguous by the Article 44 in the Constitution.

Right to equality interpreted as 'equal treatment to equals' is deeply shattered as disadvantaged castes from Muslim and Christian communities are kept out of Scheduled Caste net on account of their conversion. Contrarily, Scheduled Caste converts to Indian religion like Buddhism and Sikhism were made beneficiaries of preferential state policies immediately after independence (Smith 1963, Galanter 1994) on the account that they were referred as Hindus under the Article 25 b explanation II of the Constitution for the purpose of personal laws and social reforms. The state denial of positive discrimination

to ameliorate socio-economic conditions of minorities means that the framework of minority rights offers religious minorities an alternative identity as citizens without political and socio-economic rights that are marked as of the crucial aspect of citizenship (Hasan 2009: 48). The recent initiative taken by the state to bring disadvantageous sections from religious minorities, such as the Sachar Committee and the Ranaganath Misra Commission, have advocated 'religion neutral' net of preferential policies. The most significant gain of the Sachar Committee was the successful legitimization of religious community for the purpose of state policy. However, ambiguous state response towards religious minorities has not facilitated these recommendations to be implemented. In fact, Post Sachar Evaluation Committee was criticised for having its focus on Muslims only, therefore again delegitimizing religious community as a subject of state policy. The benefits of preferential are prevented from further extension as the Supreme Court settled 50% ceiling on reservations in government employment and in educational institutions. This ceiling has freezed the possibility of further inclusion of any other sections under the net of affirmative policies. Moreover, the judiciary declares void any reservation policy which is extended to minorities based on religion.

Non-discrimination is made almost redundant in absence of anti-discrimination legislations targeting religion based social discrimination (Verma 2015). The Sikh and Muslim suffered from puzzling social stigma on wearing turban and carrying *kirpan* and wearing turban, sporting beard, wearing scarf or *burqa* or skull caps etc. Particularly Muslims face fierce discrimination from state and non-state agencies because of their Muslim identity. The SCs/STs have been supported by legislations aimed at preventing discrimination and atrocities. Similar legislations don't exist for discrimination and atrocities taking place on the basis of religion.

Lastly, minorities were assured only non-intervention rather than positive assistance to pursue and cherish their identity as there is no positive obligation on the state to establish institution for the development and protection of language or script of minorities in the Constitution. Although, state cannot discriminate against minority educational institution in providing financial aid, but this obligation is contingent upon its commitment to fund education (Mahajan 1998: 95). The working of these rights as intervened by the state and interpreted by the judiciary, has not been very encouraging and witnessed gradual dilution (Mahmood 2007: 20, Nariman 2014, Wilson 2007). Article 15 and 29 (1) and (2) are used to refute the provision of article 30 (1) reducing it to the position of fundamental

right guaranteed under Article 19 (1) (g) a right to occupation, that is to run a minority educational institution (Nariman 2014: 44). The working educational safeguards to minorities have been disappointing as the state has extended only shabby treatment to them. Tahir Mahmood maintained that Constitutional provisions for vulnerable sections like scheduled castes and scheduled tribes are usually supported with further legislations and policy interventions. Whereas minority rights, that are special Constitutional assurances to minorities against majority assimilative tendencies, could not be expanded with supportive legislations, rather encountered erosion through routine state practices (2007: 20). The Minorities Commission championed the cause of educational rights of minorities which was not favourably responded by the state and the judiciary. In the AMU controversy, the Commission supported minority status of the AMU on logical reading of Constitutional provisions. It kept advocating minority status to JMI. It had formulated first guidelines for recognition of minority institution as early as in 1987. But the governments could not utilize its recommendations.

At the end, one may wonder what secularism actually offers to religious minorities in absence of favourable legislation and in the presence of hostile legislations for minorities which impedes their practice of Constitutionally guaranteed rights.

Although, the NCM is at one of the lowest moments of its existence, its study has opened up several avenues to comprehend the complex relationship between the state, institutions and minorities. The exploration of the political context, in which the NCM came into existence and received statutory status, signifies inherent weaknesses in the political consensus around minority specific policies. Moreover, the political context in which it has been functioning, confirms that the greater political competition and political uncertainty provides favourable environment for the working of institutions (Kapur 2005) such as the NCM and drafting of policies targeting vulnerable sections like minorities and SCs/STs, and women. A major part of Commission's ineffectiveness may be attributed to state's deliberate attempt to keep it innocuous by making political appointments, assigning mandate without power, and ignoring crucial recommendations etc. at the same time using its token presence as face saving at international front.

The state's response to the Commission has always been discouraging under the majority regimes of the Congress and the BJP. The Commission has been used more as a political

tactic for these parties, and, its creation itself was the outcome of the electoral promise of the Janata Party on a fragmented political field and it was assigned statutory status under coalition government headed by the Congress, again on fragmented political field. In fact, the entire regime of protective institutional mechanism came into existence on the fractured political fields of post-emergency scenario or of coalition governments of early 1990s. On the other hand, during the reigns of strong single party governments and stable political fields, policies and institutions targeting disadvantageous sections become insular. For instance, in the rhetoric of *sabka sath sabka vikas*, exclusion and suffering of minorities are masked, and so called super minorities' commission; the judiciary seems not to be of significant relief for them.

As an 'institution of negotiation and recommendation', the NCM could have contributed better in the larger process of democratization enabling inclusion of minorities into the national life as equal citizens if it was based on sound political consensus with the focus how it would enable minorities to claim their rights. The political contexts in which the NCM has emerged and now operates are frequently disrupting its efficient operation. These disruptions also limit the manner in which the NCM articulate question of minorities and their rights. For instance, while the Minorities Commission was seriously engaged in the process of introducing reforms in minority personal laws, it was seriously disrupted by the Shah Bano controversy and enactment of Muslim Women Protection on Divorce Bill 1986 and fierce advocacy for UCC from right wing group. Ruling Parties have consulted the Commission strategically without acknowledging its advice or without necessarily involving in the final policy decisions concerning minorities. When the issue of MPL was referred by the Rajiv Gandhi government, the Commission had formulated its response and sent back, but the government finally drafted the Muslim Women Bill without considering the Commission's reply.

While attributing so much focus on the performance of the Commission having bearing on policy outcomes, the adjudicatory function of the Commission are ignored. By utilizing it quasi-judicial powers, the Commission has produced appreciable out comes in individual cases of discrimination and deprivation of rights.[2] It receives average 2500-2600 complaints every year and successfully resolves most of them. On occasions, the NCM works like 'post office' (Najiullah 2011: 126) where all sorts of complaints are

[2] During the period of internship, this researcher met some of the petitioners who informed that they were satisfactorily helped by the Commission. However, they were reluctant to be named.

deposited, and it forwards them to their concerned offices, departments, and ministries. Najiullah used the term 'post office' in sceptic manner, while it is used here with a positive connotation. During the informal interactions, the clerical and administrative staff of the Commission repeatedly said that minorities come here for all sorts of problems that even when no minority issue was apparently involved.[3] When asked about victimhood sense of minorities as central to the complaints or whether there are fake complaints coming to the NCM, Farida Abdullah Khan clarified that it would be wrong to say that complaints are fake or they are only an outcome of perceived victimhood as minorities particularly Muslims as they actually suffer from discrimination and biases by the local administration, they tend to file complaint in the NCM. She said

> I don't call any complaint fake, there are *no fake complaints*[4]. Sometimes we get complaints, you may call them 'misplaced'. It may not be a complaint 'appropriate for the Commission'. There are people, who are trying to protect themselves. Justice is all delayed in this country. A complaint might not involve a communal angle. Muslim particularly, Christian and Sikh also from UP often complain for one or the other thing, there is this feeling that they are being discriminated…We get complaints over roads, over fencing and on other issues of civic amenities...because minorities live there, we take position from the Commission and prefer to intervene in those matters. But we don't follow up such cases in the sense that we don't force local government and administration to do something. We ask them to investigate to determine whether there is a case or not (interview with Khan 2016).

The Sachar Committee Report also indicated that minority concentrated areas usually have inadequate infrastructural facilities. There is general lack of infrastructural facilities particularly civil amenities; sanitation, water and electricity, poor roads and transport, health facilities, *anganwadis*, government schools and government ration shops in Muslim concentrated areas. But the administrative officials deny the claims of discrimination against them (2006: 23). In fact, when the local administration get directives from a central body they are likely to look into the matter seriously. Even if the complaint is not that critical in legal sense, intervention of the Commission ensures some kind of relief to the local minority population and local administration try to fix the problem (Khan 2016). For minorities, the Commission, then, meant to be a small

[3] Sometimes a sense of disgust was visible in their interactions. A non-minority Administrative Officer said that "many of them (minorities) tend to come here even when they meet an accident of the road or have a fight within their families" (informal interaction January 2014).
[4] Emphasis original.

window that could relieve them from frustration of the institutional biases, and here the Commission works as a 'mechanism for inclusion of minorities'.

In some instances, the Minorities Commission acted like a 'passage' for minorities who wished to reach the state in exercise of their agency seeking state's engagement. Representations soliciting Commission's intervention in policy issues like demands of Scheduled Caste status for Dalit Muslim and Dalit Christians, complaints of encroachment of religious freedom because of anti-conversion laws etc., reflect active engagement of minorities with the state via Minorities Commission. On the other hand, the state is keen to utilize the Commission mere conveniently. The state referred quite a few crucial minority issues, such as Muslim personal law, excommunication in Bohra community, demands of minority status from unofficial minority groups etc., to the Commission to put the matter on hold for some time or because it was reluctant to turn down the demands of minorities at the outset or unwilling to take the blame on its own. In doing so, meanwhile, the state would have formulated its own pragmatic responses to the issue raised or it could simply apprise the Commission view (if it was in conformity of the state's stand) to the concerned parties. Thus, to assure minorities that the state was doing something on the line of their demands, it referred such matters to the Commission. In case of the Bohra community (discussed in chapter three), the central government forwarded memorandums sent by reformist Bohras to (sent to the PMO or Ministry of Home Affairs) the Commission. Reformists wanted dilution of priestly class's hold from the lives of common Bohras and abolition of the practice of excommunication against dissidents. The state consistently followed the policy of cultural autonomy of the Bohra community and was not willing to intervene in internal affairs of the community, at the same time; it was hesitant to turn down the reformists instantly. Therefore, state forwarded reformists representations to the Commission. However, if the state received a discordant note from the Commission that may disrupt the state's stand on the particular issue, it inclined to be silent with 'no reply' to keep its stand ambiguous or give vague response to Commission's recommendation (Mahmood 2016). Mahmood wrote in this matter:

> I am not saying that the chain of successive Commissions made no efforts to improve the minority situation. Of course they-all of them according to the ideology and conscience of those who manned them-but their viewpoint, if adverse to rulers, have remained confined to the pages of the Commission's Annual Reports (Mahmood 2016: 271).

Moreover, there was a basic difference in that ways in which the Minorities Commission worked before and after attainment of statutory body in terms of reflecting on minority issues. The Non-statutory Commissions, particularly under Hameedullah Beg worked more as government mouthpiece; but three Commissions headed by Minoo Masani, M Ansari and Burney had developed serious disagreements with the contemporary governments on issues like minority status of AMU and ant-conversion laws. However, none of them reflected nuanced understanding regarding preferential policies for weaker sections within religious minorities. The representations demanding schedule caste status to Dalit Muslim, Dalit Christians and neo-Buddhist though treated sympathetically, the Commission recommended Schedule Caste like benefits for them on *humanitarian* grounds only. Pre-statutory Commission was inspired by the individual centric understanding of rights and citizenship, whereas statutory Commission evolved group centric approach to the rights of religious minorities with attempts to develop a balance between individual and group rights. Still, overall minority discourse evolved in the Commission shows its emphasis on minority protection within the frames of national integration and unity rather than in justice, equality and citizenship.

The NCM has raised all the very important issues that are generally debated and discussed in minority discourse such as recognition and protection of regional minorities, reservations for Muslim and Christian Dalits, due, timely and equal compensation for victims of communal riots, sensitization about communalism, secularization of school text book contents, socio-economic schemes for development of minorities. Although the Commission has raised these crucial issues, still, it cannot be seen as the flag bearer of minorities as on several occasions, like the state, Minorities Commission also exercises reluctance in recognizing and picking up emerging minority issues, particularly when it involves crucial Constitutional questions. However, the Commission has begun to realize most crucial issues affecting minorities, for instance, it has pinpointed absence of certain laws such as Anti-communal violence law, legislations supporting educational rights of minorities and the presence of laws that hamper exercise of citizenship rights by minorities such as anti-conversion laws, TADA-POTA, etc.

While there is so much to accuse the state, successive governments and the electoral politics, former chairman of the Commission, Wajahat Habibullah emphasized that the people constituting the Minorities Commission should perform the task assigned to them

with greater consciousness and creativity which categorically stated by pro-active chairman of the Commission, Tahir Mahmood. Similarly Fali S Nariman also advised the members of the Commission to use their creative faculties to enable minorities to claim their rights (2014). Moreover, Nariman said on the occasion of the NCM annual lecture

> If we minorities (through the statutory body set up by Parliament) do not stand up for the rights of minorities and protest against hate speeches and diatribes, how do we expect the government to do so? A majoritarian government is elected and exists mainly on the vote of the majority community. On the other hand, the commission is an independent statutory body. Its chairman is not a minister of government. And though it receives grants from the central government, it is not expected to be a mere mouthpiece of that government (2014).

Tahir Mahmood at the National Conference of the State Channelling Agencies organized by the NMDFC enthusiastically declared that the 'if justice to and equality of all Indians irrespective of religion and language are the part of Nation's conscience, then the NCM and its State counterparts are surely Nation's conscience keeper' (1997: 17). Over the time, Mahmood's faith the Commission has gradually shaken because of the kinds of politics it has been subjected to since its inception. Concluding comments in the first edition of *Minorities Commission: Minor Role in Major Affairs* reflected his disillusionment with the ways government chose to deal with the Commission. He said that

> The National Commission for Minorities; all the governments must realize, is not their political rival; nor can it be treated as a subordinate department of any government, or publicity division of any political party. It has to work as an impartial statutory body to oversee the performance of the governments of the day in respect of minorities and help them in a faithful discharge of their Constitutional obligations to the minorities. Instead of scorning or dreading the Commission, or dictating terms to it, they should allow and enable it to discharge its legal obligations, duly listen to it, take counsel, objectively looks into its reports and recommendations, and also expediently take proper action on them. If all this is not possible, the present over Rs. Sixteen million annual budget of the Commission can be justifiably regarded only as avoidable drain on the national exchequer and tax-payers money (Mahmood 2001).

Successive chairmen of the Commission have demanded Constitutional status for the Minorities Commission for its effective functioning. Disenchanted with the government's approach towards the Commission, Mohammad Shafi Qureshi and Tahir Mahmood expressed that either make it effective or wind it up, mere submission of

reports cannot serve minorities purpose (Mahmood 2001, 2016. Qureshi 2010 in Annual Report 2009-10). Farida Abdullah Khan added a very important point, Khan said that

> In spite of all its powerlessness, it has built up some moral authority by which it is able to do a lot of things. At least it publicizes and intervenes in such issues where minority's rights are being suppressed and make suggestions. That it is doing and it will do. But on the face of the kind of attacks on minorities and increasing right wing politics…that I think, is going to be much worse for minorities…then I think it will become more ineffective. It does not have so much power but has authority in moral sense.

Khan's words turned out to be true as the Commission became defunct in the absence of members and chairman for three months (March to May 2017). And there is less possibility that it would come out of its insular state keeping in mind the kind of appointments made to the Commission by Modi government. In wake of mounting nuber of mob lynching of members of minority communities, social activist, Shabnam Hashmi returned her 'National Minority Rights Award' to the Commission, conferred on her in 2008. While returning the award, Hashmi said that 'NCM had lost all its credibility' (The Indian Express 28 June, 2017). The notion of moral authority as raised by Khan has been constantly under pressure in the context of increasing internalization of majoritarian logic in the in the minds of common people.

In the period of five years that I took to finalize this thesis, the NCM seemed to change the gear thrice. Initially I met a dynamic and enthusiastic Commission under Wajahat Habibullah; everybody appeared fairly energetic and busy in the Commission. Under Naseem Ahmad, the NCM was moderate and its staff appeared not so engaged. Then came an interlude, the Commission was devoid of members and chairman for three months. Suddenly the absence was felt of what was conclusively declared as toothless, useless, ineffective, powerless, and wastage of exchequers money. All leading dailies noted that on the face increasing atrocities against minorities the Commission was defunct and nobody was sure about the NDA's decision on it (The Indian Express 24 May 2017). Finally the news about fresh appointments came. Keeping the decision on NCM on hold for some time, Modi government decided to keep its existence intact simultaneously taking life out of it. The government appointed close associates of BJP as members and chairmen. It was not a new phenomenon that government has appointed its close associates to extra judicial commissions, what was striking this time was the

majoritarian takeover of the body which was supposed to act as watchdog against majoritarianism.[5]

Working of protective institutions might not have commendably steered positive changes in the condition of religious minorities as evident from the study of the NCM. Experiences from these institutions like the NCM, the NCW, the NCSC, the NCST and the NHRC show that the Indian state has, although, created numerous institutional mechanisms for minorities, not really empowered any to them to meet their declared goals reflecting ambiguous state policy towards minorities. As a result many new institutions for promoting minority cause are coming into existence without having sufficient powers to do so (Jayal 2006, Hasan 2009b) creating a 'jungle' of institutions (Jayal 2006). The NCM is a classic case of state's elusive promise of safeguarding and protecting religious minorities through an institutional mechanism as it has not really empowered the Commission to perform its stated goals and has not sufficiently connected it to the wider political processes. It has become a neglected institution in the presence numerous other institutions with more or less similar mandate, they too carry similar public reason. Minority discourse in India also does not adequately acknowledge the need of a strong institutional mechanism in state's response to minority question.

The seizure of the NCM by the right wing membership along with the NHRC's gradual degradation as minority protector indicate shrinking avenues of minority protection in liberal democratic state of India. The NHRC's role in facilitating justice for minorities after Gujarat riot 2002 was hugely applauded as minority protector. But it is increasingly shedding this image; the NHRC came into limelight for its controversial report on riot victims of Muzaffarnagar who were shifted to Kairana. The report said that because settlement of riot affected Muslims, the demography of Kairana was distorted leading to migration of Hindus from there. This report gave BJP impetus to polarize Hindus in the area.

Fali S. Nariman made an important point about the need of independent institutions for the protection of vulnerable sections. Nariman reasoned that it may be correct to say that majority government is doing nothing to prevent minority witch hunt and tirades. But the fact is that all political parties, majoritarian or otherwise, act upon political expediency.

[5] The newly appointment Chairman Syed Ghayorul Hasan Rizvi made controversial statements showing his engrossment in majoritarian ideology such as people celebrating Pakistan's victory in Champions Trophy finals against India should be deported to Pakistan (Indian Express June 22, 2017). However, his sincerity to take the NCM out of state of defunctness is yet to seen.

That is why an independent and autonomous bodies like the NCM have been created by the Parliament to protect and promote minority interests irrespective of which political party is in power (Nariman 2014: 42). Therefore it is paramount that such bodies remain independent to protect vulnerable sections, and when their autonomy and independent is curtailed that signifies something more than just a failure of the institution and indicate undercurrents of general political culture of the state.

The thesis does not claim to present a complete analysis of the Minorities Commission. All the aspects concerning minorities and dealt by the Commission could not be taken up to maintain the consistency of the chapters and arguments of the thesis. It has explored and analysed the Commission from the perspective of citizenship and rights of religious minorities. Further researches may be required to bring other aspects of accommodation of diversity in through institutional mechanisms like the National Commission for Minorities.

Appendix I

NATIONAL COMMISSION FOR MINORITIES ACT 1992

[Act XIX of 1992 as amended by Act XLI of 1995][1]

An act to constitute a National Commission for Minorities arid to provide for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the forty-third year of the Republic of India as follows-

CHAPTER-I: PRELIMINARY

1. ***Short title, extent and commencement-***
1) This Act may be called the National Commission for Minorities Act 1992.
2) It extends to the whole of India except the State of Jammu and Kashmir.
3) It shall come into force on such date as the Central Government may, by notification in Official Gazette, appoint.

2. *Definitions-*

In this Act, unless the context otherwise requires-
(a) "Commission" means the National Commission for Minorities constituted under Section 3.
b) "Member" means a Member of the Commission *and includes tile Vice- Chairperson;*
(c) "Minority", for the purposes of this Act, means a community notified as such by the Central Government;
(d) "prescribed" means prescribed by Rules made under this Act.

CHAPTER-II: NATIONAL COMMISSION FOR MINORITIES

3. *Constitution of the National Commission for Minorities-*
1) The Central Government shall constitute a body to be known as the National Commission for Minorities to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.
2) The Commission shall consist of a Chairperson, *a Vice-Chairperson* and [six] *five* Members to be nominated by the Central Government from amongst persons of eminence, ability and integrity. Provided that the five members including the Chairperson shall be from amongst the minority communities.

4. *Term of office and conditions of services of Chairperson and Members-*
1) The Chairperson and every Member shall hold office for a term of three years from the date he assumes office.

---

1 Words put in parentheses appeared in the original Act of 1992; words italicized were inserted by the Amending Act of 1995.

2) The Chairperson or a member may, by writing under his hand addressed to the Central Government, resign from the office of Chairperson or, as the case may be, of the Member at any time.
3) The Central Government shall remove a person from the office of Chairperson or a member referred to in sub-section (2) if that person
a) becomes an undercharged insolvent
b) is convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude.

c) becomes of unsound mind and stands so declared by a competent court;

d) refuses to act or becomes incapable of acting;

e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or

f) has, in the opinion of the Central Government, so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the interests of minorities or the public interest: Provided that no person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matter.

4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination.

5) The salaries and allowances payable to, and then other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed.

5. ***Officers and other employees of the Commission-***

1) The Central Government shall provide the Commission with a Secretary such other officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Act.

2) The salaries and allowances payable to, and the other terms and conditions of service of, tlie officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.

6. ***Salaries and allowances to be paid out of grants-***

The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the officers and other employees referred to in section 5, shall be paid out of the grants referred to in sub-section (1) of section 10.

7. ***Vacancies, etc. not to invalidate proceedings of the Commission-***

No act or proceeding of the Commission shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution ofmthe Commission.

8. ***Procedure to be regulated by the Commission-***
1) The Commission shall meet as and when necessary at such time and place as the Chairperson may think fit.
2) The Commission shall regulate its own procedure.
3) All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorized by the Secretary in this behalf.

CHAPTER-III: FUNCTIONS OF THE COMMISSION

9. ***Functions of the Commission-***

1) The Commission shall perform all or any of the following functions, namely-

a) evaluate the progress of the development of minorities under the Union and States;

b) monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures;

c) make recommendations for the effective implementation of safeguards for the protections of the interests of minorities by the Central Government or the State Government.

d) look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities.

e) cause studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal;

f) conduct studies, research and analysis on the issues relating to socioeconomic and educational development of minorities;

g) suggest appropriate measures in respect of any minority to be undertaken by the Central Government or the State Government;

h) make periodical or special reports to the Central Government on any matter pertaining to minorities and on particular difficulties confronted by them; and

i) any other matter which may be referred to it by the Central Government.

2) The Central Government shall cause the recommendation referred to in clause (c) of sub-section (1) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

3) Where any recommendation referred to in clause (c) of sub-section (1) or any part thereof is such with which any State Government is concerned, the Commission shall forward a copy of such recommendation or part to such State Government who shall cause it to be laid before the Legislature of the State along with a memorandum

explaining the action taken or proposed to be taken on the recommendation relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations or part.
4) The Commission shall, while performing any of the functions mentioned in sub-clauses (a), (b) and (d) of sub-section (1), have all the powers of a civil court trying a suit and, in particular, in respect of the following matters, namely
a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
b) requiring the discovery and production of any document;
c) receiving evidence on affidavits;
d) requisitioning any public record or copy thereof from any court or office;

e) issuing commissions for the examination of witnesses and documents; and

f) any other matter which may be prescribed.

CHAPTER-IV: FINANCE, ACCOUNTS AND AUDIT

10. ***Grants by the Central Government-***

1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilized for the purposes of this Act.

2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

11. ***Accounts and audit-***

1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such adult shall be payable by the Commission to the Comptroller and Auditor-General.

3) The Comptroller and Auditor-General and any person appointed by him in connection with the adult of the accounts of the Commission under this Act shall have the same rights and privileges and the authority sin connection with such audit as the Comptroller and Auditor-General generally has in connection with the adult of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to suspect any of the officers of the Commission.

12. ***Annual Report-***

The Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government.

13. ***Annual report and audit report to be laid before Parliament-***

The Central Government shall cause the annual report together with a memorandum of action taken on the recommendations contained therein, so far as they relate to the Central Government, and the reasons for the non-acceptance, if any, of any of such recommendations, and the audit report, to be laid, as soon as may be after the reports are received, before each House of Parliament.

CHAPTER-V: MISCELLANEOUS

14. ***Chairperson, members and staff of the Commission to be public servants-***

The Chairperson, Members and employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

15. ***Power to make rules-***

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

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

a) salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members under sub-section (5) of section 4 and of officers and other employees under sub-section (2) of section 5;

b) any other matter under clause (f) of sub-section (4) of section 9;

c) the form in which the annual statement of accounts shall be maintained, under sub-section (1) of section 11;

d) the form in, and the time at, which the annual report shall be prepared under section 12.

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

3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such

modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

16. ***Power to remove difficulties-***

1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty. Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Appendix II

Questionnaire on Muslim Personal Law[2]

1. Have you come across nay difficulty in the administration of Muslim Personal Law?
2. If so, what are they and how they can be removed?
3. What do you think is the need of Muslims for a separate Personal Law and how could this need, in your opinion, be best satisfied?
4. In particular would you favour the codification only of Muslim Law or any uncertainties that may exist there?
5. In what ways could Muslim Personal Law be best safeguarded?

Shah Bano Case

1. Do you consider any part of the judgment of the Supreme Court in Shah Bano's case to be either erroneous or improper for any reason? If so, in what respect?
2. Do you know any provision of Muslim Personal Law, either in the Holy Quran or outside it, which prohibits payment of any maintenance to a divorced woman by her former husband? If so, kindly state this provision with correct source.
3. Kindly mention any cases, in your personal knowledge of divorces among Muslims with reasons, so far known to you, for these divorces.
4. Is the tendency, if any, to divorce among Muslims on the increase or on the decrease, and for what reasons?
5. How have divorce in Muslim families affected the welfare of members of the family? Kindly state matters within your personal knowledge preferably separating it carefully from what you may have only heard from others.
6. In particular what are the difficulties which arise on such divorces and how, in your opinion, are they to be overcome within the limits or outside the Muslim Personal Law?
7. Does in your opinion, Muslim shariat gives Husbands an absolute right to divorce even without any reason, and, if so, could you suggest any restriction to be placed on it and hoe? Please give your reasons for and against the view that the right of a Muslim husband to divorce is absolute citing the authorities you know to sustain your view.
8. How can problem, if any, created by the Muslim Law or marriage, divorce, and dower be resolved? Please indicate your definitions of marriage, divorce and dower, according to Muslim Shariat, in the course of your answer, and reasons for provisions of Muslim Shariat on these matters.

[2] Published as Annexure in Eighth Annual Report of the Minorities Commission, 1985-1986, pp. 222-223.

Appendix III

Form ‘B’

Acknowledgment

I.

No……
Dated…….

To,……..

……...

……

1. The Commission has received your complaint/representation dated…….....Relating to ……along with…….supporting documents.

Under the Commission’s Regulation you are required to fill Form ‘B’, a copy of which is given overleaf necessary you can use additional sheets to provide details of the particulars required.

Form ’B’ duly filled in, must be send back by you to the Commission, along with the additional documents mentioned below, latest by……..failing which your complaint will be rejected and may not be entertained if submitted in future.

Documents
required……

2. Your complaint being rejected under Regulations 7(2) of the NCM Regulations 1997 as amended in 2010 for the reasons stated below……

Date & Seal

Deputy Secretary

Form ‘B’

II. Particulars to be submitted by Complainants

(a) Particulars of complainant

(i) Name
……

(ii) Father / husband's name
……

(iii) Date of Birth
……

(iv) Education
…….

(v) Religion
…….

(vi) Designation / job/ occupation
……

(vii) Office address / mobile No
……

(viii) Home address
……..

(b) Particulars of persons / authority complained against

(i) Name
……..

(ii) Designation
……..

(iii) Office / organization
…….

(iv) Nature of authority
……

(v) Office address / phone/ fax no.
……

(vi) Home address of officer concerned
…….

(c) Particulars of complaint

(i) Did you approach your office for the redressal of your grievance / problem?

(a) Yes: what was its result?.....

(b) No: why?.....

(ii) Did you approach a court / other competent authority?.....

(a) Yes: which court / authority?.....

(b) No: why not?.....

(iii) Are you sure you are facing the grievance / problem complained about only /mainly since you belong to a minority community? If ye, why and how?

……
……
……

(iv) What do you expect the Commission to do for you?

……
……
……Declaration

I……. solemnly declare that the Particulars provided by me about true to the best of my intentions and belief.

Signature and date

Witness

I……..certify that I know the complainant personally and testify that the particulars given above are true to the best of knowledge and belief.

Signature and date

Appendix IV

(As amended in October, 2009)

Prime Minister's New 15 Point Programme for the Welfare of Minorities

(A) Enhancing opportunities for Education

(1) Equitable availability of ICDS Services

The Integrated Child Development Services (ICDS) Scheme is aimed at holistic development of children and pregnant/lactating mothers from disadvantaged sections, by providing services through Anganwadi Centres such as supplementary nutrition, immunization, health check-up, referral services, pre-school and non-formal education. A certain percentage of the ICDS projects and Anganwadi Centres will be located in blocks/villages with a substantial population of minority communities to ensure that the benefits of this scheme are equitably available to such communities also.

(2) Improving access to School Education

Under the Sarva Shiksha Abhiyan, the Kasturba Gandhi Balika Vidyalaya Scheme, and other similar Government schemes, it will be ensured that a certain percentage of all such schools are located in villages/localities having a substantial population of minority communities.

(3)Greater resources for teaching Urdu

Central assistance will be provided for recruitment and posting of Urdu language teachers in primary and upper primary schools that serve a population in which at least one- fourth belong to that language group.

(4) Modernizing Madarsa Education

The Central Plan Scheme of Area Intensive and Madarsa Modernization Programme provides basic educational infrastructure in areas of concentration of educationally backward minorities and resources for the modernization of Madarsa education. Keeping in view the importance of addressing this need, this programme will be substantially strengthened and implemented effectively.

(5) Scholarships for meritorious students from minority communities

Schemes for pre-matric and post-matric scholarships for students from minority communities will be formulated and implemented.

(6) Improving educational infrastructure through the Maulana Azad Education Foundation

The Government shall provide all possible assistance to Maulana Azad Education Foundation (MAEF) to strengthen and enable it to expand its activities more effectively.

(B) Equitable Share in Economic Activities and Employment

(7) Self-Employment and Wage Employment for the poor

(a) The Swarnjayanti Gram Swarojgar Yojana (SGSY), the primary self-employment programme for rural areas, has the objective of bringing assisted poor rural families above the poverty line by providing them income generating assets through a mix of bank credit and Governmental subsidy. A certain percentage of the physical and financial targets under the SGSY will be earmarked for beneficiaries belonging to the minority communities living below the poverty line in rural areas.

(b) The SwarnJayanti Shahari Rojgar Yojana (SJSRY) consists of two major components namely, the Urban Self-Employment Programme (USEP) and the Urban Wage Employment Programme (UWEP). A certain percentage of the physical and financial targets under USEP and UWEP will be earmarked to benefit people below the poverty line from the minority communities.

(8) Upgradation of skills through technical training

A very large proportion of the population of minority communities is engaged in low-level technical work or earns its living as handicraftsmen. Provision of technical training to such people would upgrade their skills and earning capability. Therefore, a certain proportion of all new ITIs will be located in areas predominantly inhabited by minority communities and a proportion of existing ITIs to be upgraded to “Centres of Excellence” will be selected on the same basis.

(9) Enhanced credit support for economic activities

(a) The National Minorities Development & Finance Corporation (NMDFC) was set up in 1994 with the objective of promoting economic development activities among the minority communities. The Government is committed to strengthen the NMDFC by providing it greater equity support to enable it to fully achieve its objectives.

(b) Bank credit is essential for creation and sustenance of self -employment initiatives. A target of 40% of net bank credit for priority sector lending has been fixed for domestic banks. The priority sector includes, inter alia, agricultural loans, loans to small-scale industries &small business, loans to retail trade, professional and self-employed persons, education loans, housing loans and micro-credit. It will be ensured that an appropriate percentage of the priority sector lending in all categories is targeted for the minority communities.

(10) Recruitment to State and Central Services

(a) In the recruitment of police personnel, State Governments will be advised to give special consideration to minorities. For this purpose, the composition of selection committees should be representative.

(b) The Central Government will take similar action in the recruitment of personnel to the Central police forces.

(c) Large scale employment opportunities are provided by the Railways, nationalized banks and public sector enterprises. In these cases also, the concerned departments will ensure that special consideration is given to recruitment from minority communities.

(d) An exclusive scheme will be launched for candidates belonging to minority communities to provide coaching in government institutions as well as private coaching institutes with credibility.

(C) Improving the conditions of living of minorities

(11) Equitable share in rural housing scheme

The Indira Awaas Yojana (IAY) provides financial assistance for shelter to the rural poor living below the poverty line. A certain percentage of the physical and financial targets under IAY will be earmarked for poor beneficiaries from minority communities living in rural areas.

(12) Improvement in condition of slums/areas inhabited by minority communities

(a) Under the schemes of Integrated Housing & Slum Development Programme (IHSDP) and Jawaharlal Nehru National Urban Renewal Mission (JNNURM), the Central Government provides assistance to States/UTs for development of urban slums through provision of physical amenities and basic services. It would be ensured that the benefits of these programmes flow equitably to members of the minority communities and to cities/slums, predominantly inhabited by minority communities.

(b) Under Urban Infrastructure and Governance (UIG) scheme, Urban Infrastructure Development Scheme for Small and Medium Towns (UIDSSMT) and National Rural Drinking Water Programme (NRDWP), the Central Government provides assistance to States/UTs for provision of infrastructure and basic services. It would be ensured that the benefits of this programme flow equitably to cities/towns/districts/blocks having a substantial minority population.

(D) Prevention & Control of Communal Riots

(13) Prevention of communal incidents

In the areas, which have been identified as communally sensitive and riot prone, district and police officials of the highest known efficiency, impartiality and secular record must be posted. In such areas and even elsewhere, the prevention of communal tension should be one of the primary duties of the district magistrate and superintendent of police. Their

performances in this regard should be an important factor in determining their promotion prospects.

(14) Prosecution for communal offences

Severe action should be taken against all those who incite communal tension or take part in violence. Special court or courts specifically earmarked to try communal offences should be set up so that offenders are brought to book speedily.

(15) Rehabilitation of victims of communal riots

Victims of communal riots should be given immediate relief and provided prompt and adequate financial assistance for their rehabilitation.

***

Appendix V
Guidelines for Determination of Minority Status, Recognition and Related Matters in Respect of Minority Educational Institutions under the Constitution of India 1986

_____

1. Determination Of Minority Character Of An Educational Institution :

The benefits of Article 30(I) can be claimed by the community only on providing that it is a religious or linguistic minority and the institution was established by it. The question of proof in a Court of law is regulated by the provisions of the Indian Evidence Act. This act requires that when there is a written document, other evidence is to be excluded but if there is no written document, other evidence is admissible.

2. Objects of Establishment of Minority Educational Institution :

It is not always necessary that the objects for which a minority may establish an educational institution must include the conservation of its language script, or culture Article 30(I) only emphasises that the body establishing and administering an educational institution belongs to a minority based on religion or language. It says nothing about the character of education to be imparted by them. Hence an institution will be a minority institution, even if it imparts secular education. Once it is proved to be a minority institution, the character of education who can administer it. In these matters, the choice cannot be of any who can administer it. In these matters, the choice cannot be of any one else.

3. Fulfilment of Statuary Requirements for seeking Recognition:

An institution seeking recognition must fulfill the statuary requirements concerning the academic standards, the qualifications of teacher, and of students seeking admission. It must have the financial resources and the capability to run on a sustained basis. When the applications seeking recognition are not considered favourably, grounds of rejection must be communicated to the educational institutions filling such applications so as to enable them to overcome obstacles to their early recognition.

4. Medium of Instruction in Minority Educational Institutions:

The State Government or the University is not empowered to prescribe the medium of instruction to be followed by minority educational institutions. However, in case of institutions receiving grant-in-aid, there are certain standards or proficiency to be observed. No decision, within our knowledge lays down that teaching of State language compulsorily is within such conditions for grant of aid. But, if such a condition is laid down, the institution receiving the aid will be well advised to observe it.

5. Constitution of Governing Bodies in minority Educational Institutions:

The Minority educational institutions must be free to induct competent and reputed individuals from other communities in the Managing Committees/ Governing Bodies. The minority character of an institution is not impaired so long as the constitution of the Managing Committee/ Governing Body provides for an effective majority to the members of the minority community. The State should not have any power, directly or through the University, to direct the constitution of governing bodies in a manner so as to deprive a minority of effective administration of its educational institutions. However, the State or the university may lay down general guidelines to ensure that only qualified persons find a place in the Governing Bodies.

6. Disciplinary Control over Staff in Minority educational institutions:

While the managements should exercise the disciplinary control over staff, it must be ensured that they hold an inquiry and follow a fair procedure before punishments is given. With view to preventing the possible misuse of power of management of Minority Educational Institutions, the state has the regulatory power to safeguard the interests of their employees and their service conditions including procedure for punishments to be imposed.

7. Admission of students in minority Educational Institutions:

The minority educational institution must have the freedom to give special consideration to the students of their own community in matters of admission. Government should not insist on admission in these institutions being thrown open to all strictly in order to merit. The government cannot enforce the rules of reservation in favour of Scheduled castes, scheduled tribes, and other backward communities for admission of students in these institutions. In granting admissions to the children belonging to the minority community itself, rules of natural justice and fair play must be applied and donations or other extraneous factors should not be allowed so as to discriminate against the less advantaged children from the same minority community.

8. *Appointment of Teachers in Minority educational institutions:*

The Government cannot enforce the rules of reservation in favour of Scheduled Castes, Scheduled Tribes and other Backward Classes for the posts of teachers and other staff in minority educational institutions.

Appendix VI

Policy Norms and Principles for Recognition of Minority Managed Educational Institutions Other Than Those Meant Exclusively for Imparting Religious Instruction 1989

1. Minorities can be based on either on religion or on language.

2. Minorities may be in terms of a religious or linguistic community which is numerically less than 50 percept of the population of the State concerned.

3. The agency managing the educational institution will have to possess some legal status – an Association of persons registered under the Societies registration act or a body with corporate soul etc.

4. Admission into minority managed educational institutions need not be confined to members of the minority.

5. Right to administer educational institutions shall be subject to reasonable regulations, which may include :-

   - stipulations regarding conditions of recognition by relevant authorities (such as Directorate of education, Boards of secondary education, University, AICTE);

   - qualifications and conditions of service of teachers;

   - a requirement that the educational institutions run by a minority shall do nothing which may come in the way of communal and social harmony;

   - a requirement that the institution will use its privilege as minority administered institution for pecuniary benefits of an individual group;

   - disciplinary rules of the institutions in respect of their teaching and non-teaching staff being consistent with principles of natural justice;

   - observance of principles of sound administration;

   - Enforcement of general laws of the land pertaining to te educational institutions concerned.

6. The minority managed educational institution should have the freedom to appoint any qualified candidate, but it would be advisable for them to select teachers and other employees through Employment Exchange or open advertisement

7. Teachers in minority managed educational institutions should possess requisite qualifications.

8. The regulations shall not be such as render the constitutional rights of the minorities nugatory, for example :

   - conditions that the government shall have the right to take over the management of the institution;

   - that the Government shall have powers to constitute managing committees;

   - that the Governing Body of the institution shall include persons other than members of the minority community;

   - that the Government can require the institution to reserve the seats;

   - that the scholars of the institution would not be eligible to opportunities in higher education;

   - that the Government shall have the right to insist on use of any language as medium of instruction;

   - that the institution shall not charge fees from students, etc.

The stipulation should be regulatory and/or educational character and conducive to making the institutions effective vehicles of education for minority communities.

9. There shall be no discrimination between minority and non-minority institutions in the matter of sanctioning grant-in-aid. Such grant-in-aid can be made conditional upon appropriate regulatory measures to ensure that the funds are used for purpose for which they are sanctioned.

10. Minority managed educational institutions receiving State aid -

    - shall not deny admission to persons outside the minority on ground of religion, cast, etc.

    - shall not, without the consent of the pupil or his guardian, impart religious instruction or compel students to attend religious worship.

11. Procedure should be clearly laid down in respect of –

    - eligibility of society/ trust to be treated as minority;

    - competent authority to grant recognition;

- procedure for grant/withdrawal of recognition;
- time limits for making decision.

12. Where recognition is not considered favourably, ground of rejection shall be communicated to the educational institution to help it overcome obstacles in the way of recognition.

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