

Report of the
**National Commission for
Religious and Linguistic Minorities**



EXECUTIVE SUMMARY

INTRODUCTION

The commission and its task

On October 29, 2004 the Government of India resolved to constitute a national commission consisting of (i) a chairman (ii) three members and (iii) a member-secretary with administrative experience, to be entrusted with the following terms of reference:

- ❑ to suggest criteria for identification of socially and economically backward sections among religious and linguistic minorities;
- ❑ to recommend measures for welfare of socially and economically backward sections among religious and linguistic minorities, including reservation in education and government employment; and
- ❑ to suggest the necessary constitutional, legal and administrative modalities required for the implementation of its recommendations.

The commission's terms of reference were (later) modified so as to add the following to its original terms of reference:

- ❑ To give its recommendations on the issues raised in writ petitions 180/04 and 94/05, filed in the Supreme Court and in certain high courts, relating to para 3 of the Constitution (Scheduled Castes) Order 1950 in the context of ceiling of 50 per cent on reservations as also the modalities of inclusion in the list of Scheduled Castes.

On March 21, 2005 the following took charge as chairman and members of the commission:

- ❑ Justice Ranganath Misra: Former Chief Justice of India and Ex-Chairman, National Human Rights Commission ... (Chairman)
- ❑ Professor Dr Tahir Mahmood: Former Chairman, National Commission for Minorities and Ex-Dean, Faculty of Law, Delhi University
- ❑ Dr Anil Wilson: Principal, St Stephen's College, Delhi
- ❑ Dr Mohinder Singh: Director, National Institute of Punjab Studies, Delhi
- ❑ Mrs Asha Das, a former secretary, Government of India, was later appointed as the member-secretary of the commission and assumed charge of her office on May 10, 2005.

In view of the extensive work required to be done by the commission to answer its various terms of reference, original and extended, its tenure was periodically extended – finally up to May 15, 2007.

CONSTITUTIONAL AND LEGISLATIVE PROVISIONS REGARDING MINORITIES

Who are the minorities?

The National Commission for Minorities Act 1992 says that "Minority, for the purpose of the act, means a community notified as such by the central government" – Section 2(7). Acting under this provision, on October 23, 1993 the central government notified the Muslim, Christian, Sikh, Buddhist and Parsi (Zoroastrian) communities to be regarded as "minorities" for the purpose of this act. (4)

The Supreme Court in TMA Pai Foundation & Ors vs State of Karnataka & Ors (2002) has held that for the purpose of Article 30 a minority, whether linguistic or religious, is determinable with reference to a state and not by taking into consideration the population of the country as a whole. (5)

The state Minorities Commission Acts usually empower the local governments to notify the minorities... In several states (e.g. HP, Jharkhand, MP, Maharashtra, Uttar Pradesh and Uttarakhand), Jains have been recognised as a minority. The Jain community approached the Supreme Court seeking a direction to the central government for a similar recognition at the national level and their demand was supported by the National Commission for Minorities. But the Supreme Court did not issue the desired direction, leaving it to the central government to decide the issue (Bal Patil case, 2005). In a later ruling however, another bench of the Supreme Court upheld the Uttar Pradesh law recognising Jains as a minority (Bal Vidya case, 2006). (6)

Rights of minorities

The Universal Declaration of Human Rights 1948 and its two International Covenants of 1966 declare that "all human beings are equal in dignity and rights" and prohibit all kinds of discrimination – racial, religious, etc. The UN Declaration against All Forms of Religious Discrimination and Intolerance 1981 outlaws all kinds of religion-based discrimination. The UN Declaration on the Rights of Minorities 1992 enjoins the states to protect the existence and identity of minorities and encourage conditions for promotion of that identity; ensure that persons belonging to minorities fully and effectively exercise human rights and fundamental freedoms with full equality and without any discrimination; plan and implement national policy and programmes with due regard to the legitimate interests of minorities; etc. (7)

In India, Articles 15 and 16 of the Constitution prohibit the state from making any discrimination on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them either generally, i.e., every kind of state action in relation to citizens (Article 15) or in matters relating to employment or appointment to any office under the state (Article 16). However, the provisions of these two articles do take adequate cognisance of the fact that there had been a wide disparity in the social and educational status of different sections of a largely caste-based, tradition-bound society with large-scale poverty and illiteracy... Therefore the Constitution permits positive discrimination in favour of the weak, the disadvantaged and the backward. It admits discrimination with reasons but prohibits discrimination without reason (8)

Article 15 permits the state to make "any special provisions" for women, children, "any socially and educationally backward class of citizens" and scheduled castes and scheduled tribes. Article 15 has recently been amended by the Constitution (93rd Amendment) Act 2005 to empower the state to make special provisions, by law, for admission of socially and educationally backward classes of citizens or scheduled castes/tribes to educational institutions, including private educational institutions, whether aided or unaided by the state, other than minority educational institutions. (8)

Chapter 2

Article 16 too has an enabling provision that permits the state for making provisions for the reservation in appointments of posts 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". Notably, while Article 15 speaks of "any socially and educationally backward class of citizens" and the SCs and STs without qualifying backwardness with social and educational attributes and without a special reference to SCs/STs, Article 16 speaks of "any backward class of citizens". (8)

The Supreme Court, in *Indira Sawhney & Ors vs Union of India*, has held that an entire community can be treated as a 'class' based on its social and educational backwardness. The court noted that the government of Karnataka, based on an extensive survey conducted by them, had identified the entire Muslim community inhabiting that state as a backward class and have provided for reservations for them. (9)

In the *Indira Sawhney* case, the Supreme Court had also observed: "Economic criterion by itself will not identify the backward classes under Article 16(4)". (10)

However, in the chapter of the Constitution relating to Directive Principles of State Policy, Article 46 mandates the state to "promote with special care the educational and economic interests of the weaker sections of the people... and... protect them from social injustice and all forms of exploitation." (11)

Other constitutional safeguards

The other measures of protection and safeguard provided by the Constitution in Part III or elsewhere having a bearing on the status and rights of minorities are:

- ❑ Freedom of conscience and free profession, practice and propagation of religion (Article 25);
- ❑ Freedom to manage religious affairs (Article 26);
- ❑ Freedom as to payment of taxes for promotion of any particular religion (Article 27);
- ❑ Freedom as to attendance at religious instruction or religious worship in certain educational institutions (Article 28);
- ❑ Special provision relating to language spoken by a section of the population of a state (Article 347);
- ❑ Language to be used in representations for redress of grievances (Article 350);
- ❑ Facilities for instruction in mother tongue at primary stage (Article 350A);
- ❑ Special officer for linguistic minorities (Article 350B). (13)

Articles 29 and 30 have been grouped together under a common head, namely "Cultural and Educational Rights". Together they confer four distinct rights on minorities. These include the right of:

- ❑ any section of citizens to conserve its own language, script or culture;
- ❑ all religious and linguistic minorities to establish and administer educational institutions of their choice;
- ❑ an educational institution against discrimination by state in the matter of state aid (on the ground that it is under the management of a religious or linguistic minority); and
- ❑ the citizen against denial of admission to any state-maintained or state-aided educational institution. (18)

Legal framework for protection of religious minorities

Legislation such as the Protection of Civil Rights Act 1955 [formerly known as the Untouchability (Offences) Act 1955] and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 has been enacted by the central government to protect persons belonging to SCs and STs from untouchability, discrimination, humiliation, etc. No legislation of similar nature exists for minorities though it may be argued that is applicable across the board to all cases of untouchability-related offences regardless of religion. Therefore if a scheduled caste convert to Islam or Christianity (or any other person) is subjected to untouchability, the perpetrators of the offences may be proceeded against under the provisions of the act. There is a case for sensitising the law enforcement authorities/agencies in this regard. (20)

The Protection of Civil Rights Act 1955 has failed to make much of an impact due to its tardy implementation notwithstanding the fact that the offences under this act are cognisable and triable summarily. The annual report on the Protection of Civil Rights Act for the year 2003 (latest available), laid on the table of each House of Parliament under Section 15A(4) of the act, reveals that only 12 states and UTs had registered cases under the act during that year. The report also reveals that out of 2,348 cases (out of 8,137 cases, including brought/forward cases) disposed of by courts during the year, a measly 13 cases constituting 0.55 per cent ended in conviction. (20).

With a view to evaluating progress and development of minorities, monitoring the working of safeguards provided to them under the Constitution and laws, etc, the central government had constituted a non-statutory Minorities Commission in 1978. In 1992 the National Commission for Minorities Act was enacted to provide for constitution of a statutory commission. The National Commission for Minorities was set up under the act in 1993. (21)

A Constitution amendment bill, viz the Constitution (103rd Amendment) Bill 2004, has been introduced so as to add a new article, viz Article 340A, to constitute a National Commission for Minorities with a constitutional status. A bill to repeal the National Commission for Minorities Act 1992 has simultaneously been introduced. (22)

According to the provisions of clause (9) of Articles 338 and 338A, the Union and every state government shall consult the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes on all major policy matters affecting the scheduled castes and the scheduled tribes respectively. Such a consultation is mandatory. A corresponding provision does not exist in the National Commission for Minorities Act 1992. Therefore the National Commission for Minorities Act 1992 needs to be suitably amended. (25)

A very important mechanism of ensuring the welfare of scheduled castes is constitution of a Parliamentary Committee on Scheduled Castes. The successive committees have been doing yeoman work towards safeguarding the interests of scheduled castes. A similar mechanism to safeguarding the interests of minorities could be an effective step for ensuring the welfare of religious minorities. (26)

The National Commission for Minority Educational Institutions Act 2004 was enacted to advise the central/state governments on any matter relating to education of minorities that may be referred to it.. The act was extensively amended in 2006 (Act 18 of 2006) empowering the commission to inquire suo motu or on a petition presented to it by any minority educational institution. (27)

CRITERIA FOR IDENTIFICATION OF OBCs AMONG RELIGIOUS MINORITIES

Observations of the Commission

The existing criteria for identifying the socially and economically backward, whether based on caste or tribe or class, has not been totally satisfactory for several reasons. The reliability of the lists prepared is highly questionable, as it is not based on any scientific data. Neither in the case of SCs nor of STs was such a survey undertaken either before or after independence. The OBC lists which were prepared by the Mandal Commission and thereafter by the National Commission for Backward Classes and state governments on the basis of limited information relied heavily on subjective assessments... The dynamics for inclusion suggests that whether it be Jats or Vokkaligas, contingencies arising out of political compulsions have guided inclusion rather than the concern for the backward or the need for reaching out to that segment of the community. The lack of a system to regularly assess the impact on castes, tribes or classes enlisted for schemes and programmes under implementation, to exclude categories either wrongly included in the list or no longer being eligible, has further complicated the situation. (41)

There is a growing dissatisfaction amongst all categories – SCs, STs, OBCs and minorities – with the existing dispensation. The poorest and most backward in each category, whether included in the list or not, have not been able to benefit from the services and facilities being provided for ameliorating their poverty and enhancing their socio-economic status for various reasons. (42)

The criterion for identifying the socially and economically backward should satisfy the following norms:

- Religion, caste or class do not determine 'backwardness' and therefore there is a need for evolving a uniform criterion.
- Caste, religion, class, are no longer homogenous groups. They include both the backward and forward categories, literate and illiterate, socially and economically advanced and backward also. Hence the socially and economically backward amongst all categories should be identified on the basis of uniform criteria. (49)

In order to ensure that 'benefits' reach the poorest and weakest, it is necessary that those who have reaped advantage from government programmes are excluded on a regular basis and criteria evolved which takes into account the local conditions, the family's social and economic status and responsibilities and in no way either encourages a stake in backwardness or adversely impacts on an individual or household's initiative or investments necessary for enhancing status. (65)

RESERVATION AS A WELFARE MEASURE

Historical background of reservation

Reservation during pre-independence period

By the late 19th century the British had started preparing a list of "depressed classes" and they set up scholarships, special schools and other programmes for their betterment. Also, with a view to assuaging the sentiments of the growing movements against the Brahmin domination in the government and administration, the British introduced some form of reservations. In Bombay, seats were reserved for all except Brahmins, Marwaris, Banias, Parsis and Christians. In 1927 in Madras presidency, government reserved five of every 12 jobs for non-Brahmin Hindus, two each for Brahmins, Christians and Muslims and one for others. A few princely states like Baroda, Travancore and Kolhapur also introduced similar provisions. In Kolhapur (Maharashtra), Sahuji Maharaj reserved 50 per cent of the vacant seats in his administration for non-Brahmins. (2.1)

Subsequently, the efforts of Dr BR Ambedkar in particular and the all-India depressed classes in general eventually helped to expand the net of reservations. While the British had earlier reserved seats only in legislative bodies, in 1943, reservations in services came into effect. Accordingly, 8.33 per cent posts against direct recruitment made through open competition were reserved for scheduled castes. These instructions issued in 1943 can be called as origin of reservation in government services. (2.2)

Reservations during post-independence period

Reservation in services in favour of SCs and STs

After the Constitution was promulgated, the then ministry of home affairs in its resolution of September 13, 1950 provided five per cent reservation for scheduled tribes apart from the 12.5 per cent reservation that was already in effect for the scheduled castes. On March 25, 1970, the central government increased the seats reserved for SCs and STs from 12.5 per cent and five per cent to 15 per cent and 7.5 per cent respectively. SC reservation is also available to Sikhs and Buddhists and ST to all minorities, as ST identity is caste/religion-neutral. (2.3)

Reservations in services in favour of other backward classes (OBCs)

The princely state of Mysore instituted a system in which all communities other than Brahmins were denominated "backward classes" from 1918 and places were reserved for them in colleges and state services. In independent India, several states implemented the reservation in services and admissions in educational institutions in favour of backward classes much earlier than the Government of India. (2.6)

The Government of India took initiatives for providing reservation to the backward classes immediately after the commencement of the Constitution and the first Backward Classes Commission, also known as Kaka Kalelkar Commission, was constituted in 1953. The commission submitted its report in 1955. The central government did not accept its recommendations because the caste-based reservations were considered a retrograde step. (2.7)

In 1979 the second Backward Classes Commission, popularly known as Mandal Commission, was constituted to investigate the conditions of socially and educationally backward classes and to determine the criteria for defining the socially and educationally backward classes and to examine the desirability or otherwise of making provision for the reservation in favour of such backward classes. The commission submitted its report to the government on December 31, 1980. (2.8)

Mandal commission estimated the population of other backward classes (OBCs) at 52 per cent of the total population. Its recommendations were implemented by the Government of India on August 13, 1990, providing reservation of 27 per cent of the vacancies in civil posts and services under the central government filled through direct recruitment for socially and educationally backward classes with effect from August 7, 1990. However, reservation for OBCs in promotion has not been provided. The reservation rule also applies to public sector undertakings, financial institutions, including banks, autonomous bodies, statutory and semi-government bodies and voluntary agencies receiving grants from the government. (2.8)

Reservation in admissions in educational Institutions

Education was the first and foremost commandment of Dr BR Ambedkar and he called it the "milk of the lioness"... Presently, reservations are available to SCs and STs in admissions to the various undergraduate and postgraduate general, technical, medical and other professional courses in the universities and colleges. In addition to the reservation in admissions, provisions have also been made for freeship, scholarship, coaching and hostel facilities with a view to strengthening the educational base of scheduled castes and scheduled tribes. The percentage of reservation was revised in 1982 as 15 per cent for scheduled castes and 7.5 per cent for scheduled tribes. (2.10)

Constitutional provisions and reservation policy

Extent to which posts can be reserved for scheduled castes and scheduled tribes/backward classes

The Constitution does not lay down any limit or specific percentage for reservation in favour of SCs, STs and OBCs. Successive decisions of the Supreme Court beginning with *Balaji vs State of Mysore* (1963) have fixed a general ceiling of 50 per cent for all reservations taken together. (3)

Institutional arrangements to implement and monitor the reservation policy

The central government has developed administrative mechanisms for regulating, monitoring and implementing the reservation policy and other programmes. At the national level there are the ministry of social justice and empowerment, ministry of tribal affairs, ministry of minority affairs and Planning Commission (Backward Caste Division) as the nodal set-up for policy formulation, finalisation and implementation of the programmes for the development of SCs, STs, OBCs and minorities and overseeing their overall development. (4.1)

Besides, the department of personnel and training (DOP&T) in the ministry of personnel, public grievances and pensions (Government of India) regulates and monitors the reservation policy in public services. (4.2)

In addition, there are independent institutions at the field level:

- National Commission for Scheduled Castes
- National Commission for Scheduled Tribes
- National Commission for Backward Classes
- National Commission for Minorities (4.3)

Chapter 8

Reservations (education) available to OBCs

Reservations in educational institutions were earlier available only to the SCs and STs. However, Moily Committee recommended reservations to OBCs in educational institutions, which has been accepted by the government. No separate reservations are available to the religious and linguistic minorities excepting those included in the lists of SCs, STs and OBCs. (5.1)

Impact of reservation policy on employment and education

The policy of reservation had a salutary effect in terms of induction of SCs, STs and OBCs into public sector employment and in educational institutions. However, their existing share in employment and educational institutions still falls short of the target in certain categories of jobs and higher education. (8.1)

The policy of reservations in the field of employment and education has a long and complex history in India. There is a range of reservation policies. While there is a single central policy on reservation, different states in India have devised their own policies and many of these differ significantly from the central policy. To ensure proper implementation of the reservation system, constitution of a separate body – a high-powered commission – is recommended. (14.12)

Chapter 9

DEMANDS FOR AMENDING CONSTITUTION (SCs) ORDER, 1950

Conclusion

Inclusion of castes in the old Government of India (Scheduled Castes) Order 1936 was based on general impressions and not on any actual survey of the caste situation in the country. The same can be said about the Constitution (Scheduled Castes) Order 1950 which was based on the old SC Order of 1936; inclusion of additional castes from time [to time] to the lists under the present order of 1950 is also not based on a scientific survey of the actual caste situation in the country. (1)

By all available evidence we find the caste system to be an all-pervading social phenomenon of India shared by almost all Indian communities irrespective of religious persuasions. (2)

It is claimed and agreed to by almost all sections of society in India, in various contexts and especially in respect of the issue of reservations that no special benefits can be given to any community or group on the basis of religion. At the same time however, it is generally insisted upon that the class of scheduled castes must remain religion-based. This seems to be illogical and unreasonable. (3)

Chapter 10

RECOMMENDATIONS AND MODALITIES FOR THEIR IMPLEMENTATION

◀ Ideally, there should be no distinction on the basis of caste, religion or class. There should be a single list of socially and economically backwards, including religious and linguistic minorities, based on common criteria. The existing lists prepared on the basis of backwardness of caste or class should cease to exist after the list of socially and economically backwards is ready. The new list of socially and economically backwards has necessarily to be family/household-based. It should be all-inclusive and based on socio-economic backwardness. (4)

◀ Education is crucial for development and enhancement of social and economic status, the focus has to be not only on extending the facilities for education to all equally but also ensuring the quality of education. (5)

◀ There is an urgent need for taking a comprehensive view of socially and economically backwards of all communities in an integrated manner and not deal with the issue of educational backwardness in a segregated manner. The need for expanding coverage and providing quality education, focusing on girls' education and strengthening vocational education is vital for educational development of weaker sections among all backward classes, SCs and STs and minorities. (6)

◀ Now that national programmes like Sarva Shiksha Abhiyan are available to all sections of society throughout the country, there is a need to ensure participation in the programme by all children belonging to religious minorities, SCs/STs and OBCs. (7)

◀ The enrolment of children of religious minorities at the primary level is better than that of SCs/STs. However, the dropout rate of Muslims is higher at the middle and secondary level... The intelligentsia among the religious minorities should convince the community for active participation in educational programmes/schemes and nurture initiative and spirit of competition amongst them. (8)

◀ While percentage of people living below the poverty line among Muslims approximates to that of Hindus in the rural areas, the percentage of Muslims living below the poverty line in the urban areas is high. (9)

◀ By and large the religious minorities are more urban-based than rural-based. While more Christians are engaged in wage employment, more Muslims are employed in household industries and are by and large self-employed. Despite these variations, it is apparent that the population of religious minorities is as dispersed as that of the majority community. It is therefore necessary that to economically empower the poor in a holistic manner, adequate infrastructure has to be created and access through state and community interventions ensured keeping in mind their varied needs and requirements both in the rural and urban areas. The status of women in society largely determines the social and economic well-being of a society and country. It is therefore important that equal rights are not only guaranteed to them but are ensured in all spheres. (10)

◀ Ideally the criteria for reservation should be socio-economic backwardness and not religion or caste. Article 16(4) should be the basis for providing reservation benefits to minority groups who are socially and economically backward. Reservation should be provided only as a short-term, time-bound measure for enabling greater participation, both in education and employment. The lists of SCs/STs and OBCs have not been scientifically prepared either on the basis of a proper survey or reliable data on socio-economic status of a particular caste or class. Therefore the entire system of reservation, including that for SCs/STs and OBCs, needs to be overhauled. Since BPL lists are prepared on the basis of social/educational and economic criteria, they are more scientific. BPL lists should therefore be made eligible for grant of reservation without distinction on caste, class, group or religion basis. (14)

◀ It is essential to ensure that the creamy layer among the backward classes is kept out. (15)

Term of reference No. I

Criteria for identifying socially and economically backward classes among the religious and linguistic minorities

Religious minorities

Recommendations of a general nature (for all minorities) are not only for the communities notified as "minorities" by executive action under the National Commission for Minorities Act 1992 but for all religious minorities – large or small – including the Hindus in the union territory of Lakshadweep and the states of Jammu and Kashmir, Meghalaya, Mizoram, Nagaland and Punjab. (16.1.4)

In the matter of criteria for identifying backward classes there should be absolutely no discrimination whatsoever between the majority community and the minorities; and therefore the criteria now applied for this purpose to the majority community must be unreservedly applied also to all the minorities. (16.1.5)

All those classes, sections and groups among the minorities should be treated as backward whose counterparts in the majority community are regarded as backward under the present scheme of things. (16.1.6)

All those classes, sections and groups among the various minorities as are generally regarded as 'inferior' within the social strata and societal system of those communities – whether called 'zat' or known by any other synonymous expression – should be treated as backward. (16.1.7)

All those social and vocational groups among the minorities who but for their religious identity would have been covered by the present net of scheduled castes should be unquestionably treated as socially backward irrespective of whether the religion of those other communities recognises the caste system or not. (16.1.8)

Those groups among the minorities whose counterparts in the majority community are at present covered by the net of scheduled tribes should also be included in that net; and also, more specifically, members of the minority communities living in any tribal area from pre-independence days should be so included irrespective of their ethnic characteristics. (16.1.9)

Linguistic minorities

In our opinion, the concept of 'backwardness' is to be confined in its application to religious minorities, as it has no relevance for the linguistic minorities. The latter may be facing some other problems like discrimination and denial of constitutional rights in practice but no linguistic group may be regarded as backward by itself. (16.1.10)

Term of reference No. II

Measures of welfare for minorities, including reservation

▶ To provide protection to minorities from majority hegemony some recommendations are for the religious communities as such (Constitution a Directive Principle of State Policy, Article 46, speaks of "weaker sections of the people" – notably without subjecting them to the condition of backwardness – and mandates the state to "promote with special care" the educational and economic interests of such sections). Other recommendations are for the socially and educationally backward sections among the minorities. (16.2.1)

General welfare measures

Educational measures

▶ Measures for educational welfare of minorities must mean education till the highest level (16.2.4)

▶ As the meaning and scope of Article 30 of the Constitution has become quite uncertain, a comprehensive law should be enacted without delay to detail all aspects of minorities' educational rights under that provision with a view to reinforcing its original dictates in letter and spirit. (16.2.5)

▶ The statute of the National Minority Educational Institutions Commission should be amended to make it wide-based in its composition, powers, functions and responsibilities. (16.2.6)

▶ **As the minority intake in minority educational institutions has, in the interest of national integration, been restricted to about 50 per cent, by the same analogy and for the same purpose, at least 15 per cent seats in all non-minority educational institutions should be earmarked by law for the minorities as follows:**

- The break-up within the recommended 15 per cent earmarked seats in institutions shall be 10 per cent for the Muslims (commensurate with their 73 per cent share of the former in the total minority population at the national level) and the remaining five per cent for the other minorities.
- Minor adjustments inter se can be made in the 15 per cent earmarked seats but in no case shall any seat within the recommended 15 per cent go to the majority community.
- As is the case with SCs/STs, those minority community candidates who can compete with others and secure admission on their own merit shall not be included in these 15 per cent earmarked seats.

▶ **Concessions in terms of lower eligibility criteria for admission and lower rate of fee available to SCs/STs should be extended to backward classes among minorities. The same concessions should be extended for women among some minorities – especially the Muslims and Buddhists. (16.2.8)**

▶ In respect of the Muslims – who are the largest minority at the national level with a countrywide presence and yet educationally the most backward of the religious communities – we recommend certain exclusive measures as follows:

- ❑ Select institutions in the country like the Aligarh Muslim University and the Jamia Millia Islamia should be legally given a special responsibility to promote education at all levels to Muslim students by taking all possible steps for this purpose. At least one such institution should be selected for this purpose in each of those states and union territories which has a substantial Muslim population.
- ❑ All schools and colleges run by Muslims should be provided enhanced aid and other logistic facilities adequate enough to raise their standards by all possible means.
- ❑ The Madrasa Modernisation Scheme of the government should be suitably revised, strengthened and provided with more funds so that it can provide finances and necessary paraphernalia.
- ❑ The rules and processes of the Central Wakf Council should be revised in such a way that its main responsibility should be educational development of the Muslims. For this purpose, the council may be legally authorised to collect a special five per cent educational levy from all Wakfs and to sanction utilisation of Wakf lands for establishing educational institutions, polytechnics, libraries and hostels.
- ❑ In the funds to be distributed by the Maulana Azad Education Foundation, a suitable portion should be earmarked for the Muslims proportionate to their share in the total minority population.
- ❑ Anganwadis, Navodaya Vidyalayas and other similar institutions should be opened under their respective schemes especially in each of the Muslim-concentration areas and Muslim families be given suitable incentives to send their children to such institutions. (16.2.9)

▶ As regards the linguistic minorities, we recommend the following measures:

- ❑ The law relating to the linguistic minorities commissioner should be amended so as to make this office responsible for ensuring full implementation of all the relevant constitutional provisions for the benefit of each such minority in all the states and union territories.
- ❑ The three-language formula should be implemented everywhere in the country, making it compulsory for the authorities to include in it the mother tongue of every child – including, especially, Urdu and Punjabi – and all necessary facilities, financial and logistic, should be provided by the state for education in accordance with this dispensation.
- ❑ Members of those linguistic minority groups whose education is limited to their mother tongue and who do not have adequate knowledge of the majority language of the region should be provided special facilities in the form of scholarships, fee concession and lower eligibility criteria for admission to enable them to acquire proficiency in the regionally dominant language.
- ❑ Urdu medium schools should be provided special aid and assistance – financial and otherwise – to enhance and improve their efficiency, standards and results. (16.2.10)

Economic measures

As many minority groups specialise in certain household and small-scale industries, an effective mechanism should be adopted to work for the development and modernisation of all such industries and for a proper training of artisans and workmen among the minorities – especially among the Muslims among whom such industries, artisans and workmen are in urgent need of developmental assistance. (16.2.11)

As the largest minority of the country, the Muslims, as also some other minorities have a scant or weak presence in the agrarian sector, we recommend that special schemes should be formulated for the promotion and development of agriculture, agronomy and agricultural trade among them. (16.2.12)

We further recommend that effective ways should be adopted to popularise and promote all the self-employment and income-generating schemes among the minorities and to encourage them to benefit from such schemes. (16.2.13)

We recommend that the rules, regulations and processes of the National Minorities Development and Finance Corporation be overhauled on a priority basis – in the light of the report recently submitted by the NMDFC Review Committee and in consultation with the National Commission for Minorities – to make it more efficient, effective and far-reaching among the minorities. (16.2.14)

We further recommend that a 15 per cent share be earmarked for the minorities – with a break-up of 10 per cent for the Muslims (commensurate with their 73 per cent share of the former in the total minority population at the national level) and five per cent for the other minorities – in all government schemes like Rural Employment Generation Programme, Prime Minister's Rozgar Yojana, Grameen Rozgar Yojana, etc. (16.2.15)

Reservation

Since the minorities – especially the Muslims – are very much underrepresented, and sometimes wholly unrepresented, in government employment, we recommend that they should be regarded as backward in this respect within the meaning of that term as used in Article 16(4) of the Constitution – notably without qualifying the word “backward” with the words “socially and educationally” – and that 15 per cent of posts in all cadres and grades under the central and state governments should be earmarked for them as follows:

- The break-up within the recommended 15 per cent shall be 10 per cent for the Muslims and the remaining five per cent for the other minorities.
- Minor adjustments inter se can be made within the 15 per cent earmarked seats; but in no case shall any seat within the recommended 15 per cent go to the majority community. (16.2.16)

We are convinced that the action recommended by us above will have full sanction of Article 16(4) of the Constitution. Yet should there be some insurmountable difficulty in implementing this recommendation, as an alternative we recommend that since according to the Mandal Commission report the minorities constitute 8.4 per cent of the total OBC population, in the 27 per cent OBC quota an 8.4 per cent sub-quota should be earmarked for the minorities with an internal break-up of six per cent for the Muslims and 2.4 per cent for the other minorities – with minor adjustments inter se in accordance with the population of various minorities in various states and UTs. (16.2.17)

The reservation now extended to the scheduled tribes, which is a religion-neutral class, should be carefully examined to assess the extent of minority presence in it and remedial measures should be initiated to correct the imbalance, if any. (16.2.18)

The judicial reservation recently expressed in several cases about the continued inclusion of the creamy layer in various classes enjoying reservation, inclusive of the scheduled castes and scheduled tribes, should be seriously considered for acceptance as a state policy. (16.2.19)

Additional term of reference

Para 3 of the Constitution (Scheduled Castes) Order 1950

Caste is a social phenomenon shared by almost all Indian communities irrespective of their religious persuasions. Many of the particular castes are found simultaneously in various religious communities, equally facing problems of social degradation and mistreatment both by their co-religionists and the others. (16.3.1)

The Constitution of India prohibits any discrimination between citizens on the basis of caste, and yet it sanctions special affirmative measures for scheduled castes. At the same time, it prohibits any discrimination on the ground of religion. Reading all these constitutional provisions together.. any religion-based discrimination in selecting particular castes for affirmative action will conflict with the letter and spirit of the constitutional provisions. (16.3.2)

Accordingly, the caste system should be recognised as a general social characteristic of the Indian society as a whole, without questioning whether the philosophy and teachings of any particular religion recognise it or not. (16.3.3)

Para 3 of the Constitution (Scheduled Castes) Order 1950 – which originally restricted the scheduled caste net to the Hindus and later opened it to Sikhs and Buddhists thus still excluding from its purview the Muslims, Christians, Jains and Parsis, etc – should be wholly deleted by appropriate action so as to completely delink the scheduled caste status from religion and make the scheduled caste net fully religion-neutral like that of the scheduled tribes. (16.3.5)

All those groups and classes among the Muslims and Christians, etc whose counterparts among the Hindus, Sikhs or Buddhists are included in the central or state Scheduled Castes lists should also be covered by the scheduled caste net. If any such group or class among the Muslims and Christians, etc is now included in an OBCs list, it should be deleted from there while transferring it to the Scheduled Castes – placing the same persons in the Scheduled Castes list if they are Hindu, Sikh or Buddhist but in the OBCs list if they follow any other religion – which is the case in many states – clearly amounts to religion-based discrimination. (16.3.6)

Once a person has been included in a Scheduled Castes list, a willful change of religion on his part should not affect adversely his or her scheduled caste status – as that would in our opinion conflict with the basic constitutional provisions relating to equality, justice and non-discrimination on religious grounds. (16.3.7)

Term of reference No. III

Modalities for implementing our recommendations

No amendment in the Constitution needed for implementation of recommendations. They can be fully implemented by legislative or/and administrative action. (16.4.2)

All central and state acts, statutory rules and regulations be suitably amended to implement those recommendations which may require such amendments. (16.4.3)

Legislative actions needed –

- ❑ Enactment of a detailed law to enforce the dictates of Article 30 of the Constitution;
- ❑ Amendment of the National Commission for Backward Classes Act 1993;
- ❑ Amendment of the Constitution (Scheduled Castes) Order 1950 and the Constitution (Scheduled Tribes) Order 1951 as also of the central and state lists of the Scheduled Castes and Scheduled Tribes;
- ❑ Review of the laws and rules, processes and procedures relating to selection and notification of OBCs at the central and state levels;
- ❑ Enactment of a law to clothe with statutory status and judicial enforceability the Prime Minister's 15-Point Programme for Minorities 1983 as modified in 2006;
- ❑ Amendment of the National Commission for Minorities Act 1992 and the National Commission for [Minority] Educational Institutions Act 2004 so as to make it necessary for the government to appoint as the chairpersons and members of these bodies – through a search committee as in the case of the National Human Rights Commission – only reputed experts in the constitutional, legal, educational and economic matters relating to the minorities;
- ❑ Necessary amendments in the Wakf Act 1995 and all the rules framed under its provisions;
- ❑ Review and necessary overhaul of the laws, rules, regulations, procedures and processes relating to the National Minorities Development and Finance Corporation and the Maulana Azad Education Foundation. (16.4.4)

Administrative measures –

- ❑ Establishment of a Parliamentary Committee to consider and decide in the light of the Constitution policy matters relating to the minorities;
- ❑ Establishment of a National Committee consisting of chairpersons of relevant existing commissions along with nominated experts for monitoring the educational and economic development of the minorities;
- ❑ Creation of similar bodies in all the states/UTs for the same purpose and consisting of local top-level officials dealing with minority-related matters and independent experts;
- ❑ Establishment of a National-level Coordination Committee consisting of representatives of all the nationalized banks and other financial institutions to work under the Reserve Bank of India for monitoring credit flow to the minorities;
- ❑ Establishment of state Minorities Commissions and Minority Welfare Departments in all those states and UTs where these do not exist as of now;
- ❑ Decentralisation of all minority-related schemes, programmes and plans so as to create suitable district-level mechanisms for their day-to-day implementation;
- ❑ Revision of the list of Minority-Concentration Districts as suggested by the National Commission for Minorities in the 1990s and initiating special educational, economic and general welfare measures there through the local administration;
- ❑ Appointment of a Minority Welfare Committee consisting of officials and local experts in all districts of the country to act [as] nodal agencies of the National Commission for Minorities, state Minorities Commissions and all other central and state-level bodies working for the minorities. (16.4.5)

(The figures in brackets in this executive summary refer to the paragraph numbers in the Commission's Report)