

## *Challenges to Governance in a Diverse Society*

*---Wajahat Habibullah*

India represents an unprecedented experiment in nation building after centuries of being part of empires that have laid the foundations of its geographic boundaries. This experiment is unprecedented because it differs radically from the idea of a Nation State based on European experience which based national boundaries on the strength of ethnic, linguistic and religious commonalities. Switzerland indeed presents a successful experiment in holding three nationalities together in a form of State based on maximum autonomy. The concept of 'nation' was no doubt disseminated across the world in an age of colonialism, when subject people looked with envy upon the concept that had fuelled such domination. US President Wilson's insistence at the time of drafting the Treaty of Versailles that the concept be respected gave a formal basis to such an approach. And so small states, emerging from colonial rule, often ethnically diverse with these diversities sometimes hostile were, as in the division of the Ottoman empire, sought to be molded into nation states, with, as we can now see, lasting resentments or, in breaking the yoke of colonial power, seeking themselves to build nations. In Asia, Pakistan, inspired by an outstanding Indian lawyer with a solid background in English law, sought to build a nation on grounds of religion. Malaysia sought to build a secular State, with a bias towards the 'bhoomiputra' (indigenous Malays, overwhelmingly Muslim) in a nation with two dominant ethnic communities. The Philippines and Indonesia, ethnically more homogeneous but with differences in religion have also sought, with varying degrees of success, to build their nations by recourse alternating between democratic and dictatorial means.

India on the other hand, has been a cultural and economic multi-ethnic entity for centuries, of which the Taj Mahal can be described as apotheosis. This mausoleum (a concept not in keeping with orthodox Islam) built by a Muslim

Sunni Emperor, son and grandson of a Rajput mother and paternal grandmother, in memory of his Shia Muslim Empress, is, in the tradition of India's temple architecture, located on a plinth, and is built of marble from the Sind-Rajasthan region, semi-precious stones from the farthest reaches of a vast Empire, yet to reach its zenith, patterned into mosaic on its walls and ceiling by artisans drawn from India's rich crafts tradition in gems, stonework and sculpture, silver and gold smithy, mostly Hindu, and calligraphy of majestic proportion, all coalescing into what is the highest achievement of Indian artistry, crowned with a gold plated spire rising from an inverted lotus on its dome, surmounted by an Islamic crescent reminiscent of the Hindu Shiva trident *kalash*.

In framing its Constitution, India, describing itself as a 'Union of States' gave to itself a Federal Constitution with a strong unitary bias, with three lists defining the powers of the Union, States and concurrent, in the last of which the Centre has the final say, by which residual powers are specifically left with the Union. Emerging from a bloody Partition amidst doubts, most famously voiced by former British Prime Minister Sir Winston Churchill was not even a nation, India sought to weave itself together, while acknowledging diversities, particularly of religion, education, culture and language, into a cultural fabric that allowed for minimum political autonomy to ethnic diversities. "India is an abstraction," said Churchill, India is no more a political personality than Europe. India is a geographical term. It is no more a united nation than the Equator." "None knows," pondered Lord Wavell, Viceroy of India 1943-47 "where the partition of India, once it starts, will end, short of Balkanisation<sup>i</sup>."

To this day there is a view that multiethnic states cannot become nations. In a closely argued essay "Us and Them" in Foreign Affairs<sup>ii</sup>, Jerry Z Muller, Professor of History at the Catholic University of America has so argued. "In short", Muller argues, "ethno nationalism has played a more profound and lasting role in modern history than is commonly understood, and the processes that led to the dominance of the ethno national state and the separation of ethnic groups in

Europe are likely to reoccur elsewhere. Increased urbanization, literacy, and political mobilization; differences in the fertility rates and economic performance of various ethnic groups; and immigration will challenge the internal structure of states as well as their borders. Whether politically correct or not, ethno nationalism will continue to shape the world in the twenty-first century.” His conclusion, remarkable in the light of India’s history: “Partition may thus be the most humane lasting solution” How has India’s experiment worked for India’s Muslims?

India’s Planning Commission’s *India Human Development Report 2011* focuses on Scheduled Castes, Scheduled Tribes, which have traditionally been regarded as the excluded groups, and Muslims. The report has focused primarily on income, poverty, education, employment, health and infrastructure. The findings, then give at best a partial picture of status. Most notably, it does not cover a sense of physical insecurity felt by sections of the community. Notwithstanding, together with other sources, they can be used to assess the quantitative impact of India’s various flagship programs meant for ‘excluded’ groups, including Muslims.

Although the report shows improvement on a few indicators as regards Muslims, the increase is only marginal and the rate of growth much lower than for Scheduled Castes and Scheduled Tribes. The situation has improved little since a report of 2006 of a committee set up by government known as the Sachar Committee. Muslims live primarily in urban areas, making the incidence of poverty more visible there. According to the 2011 report, in 2007-08, 23.7% of Muslims in urban areas and 13.3% in rural areas were poor, down from 34.2% and 26.8% respectively based on the National Sample Survey (NSSO) of 1999-2000. Compared to Scheduled Castes and Scheduled Tribes, and other social and religious groups<sup>iii</sup>, whilst urban poverty is in 2011 highest amongst Muslims, rural poverty amongst Muslims is also higher than that of other religious groups and, indeed, than that of other backward classes (OBCs). Besides, as will be

evident from these statistics the rate of decline in poverty has also been slowest in the Muslim community, whereas for the Scheduled Castes and Scheduled Tribes community urban poverty has declined by as much as 28.2 points and 19.5 points respectively.

Literacy shows a similar trend when we compare 2004-5 with the 2007-8 reference period of the report; urban literacy in general (from 1999-2000 to 2007-8) is indeed found to have increased from 69.8% to 75.1% and rural literacy from 52.1% to 63.5%. Nevertheless, if we compare the rate of increase of literacy amongst Muslims with other social and religious groups, it is once more the lowest. Urban literacy in the Scheduled Castes has increased by 8.7 points and among the Scheduled Tribes by 8 points. Amongst Muslims, it has increased by only 5.3 points. Similarly, with health indicators, the decrease in the under-5 mortality rate for Muslims between 1998-9 and 2005-6 is 12.7 points, whereas it is 31.2 for Scheduled Castes and 30.9 for Scheduled Tribes.

The gap, therefore, in the rate of decrease in poverty, illiteracy, infant mortality rate (IMR), etc., when compared to other social and religious groups, reiterates the Sachar Committee's stark findings in its report of 2006 that the Muslim community has not benefited from the country's development in terms of socio-economic status at the same rate as other social and religious groups.

The Sachar Committee report was the first that went beyond the coverage of minorities in general to specific reference to the Muslim community. It revealed the failure of India's policy, declared since Independence, of inclusion of the Muslim community, designed to counter what were looked upon as the specious arguments that had precipitated Partition. The diligently reasoned report established extreme deprivation of Muslims in India and the demeaning status that the community had been reduced to, laboring under numerous exclusionary situations of violence, insecurity, identity crisis, discrimination in the public

sphere, and, in the inevitable aftermath of India's bloody Partition, suspicion from other communities, of being 'unpatriotic'.

The subsequent Ranganath Mishra Commission report (2007) recommended 10% reservation for Muslims in central and state government jobs and 6% within OBC quotas for Muslim OBCs, and the inclusion of Muslim and Christian dalits among scheduled castes, are yet to be implemented. Many argue that a large section of Muslims is already covered under reservations meant for other backward classes (OBCs). However, Sachar's report has put paid to that myth. In the context of Muslim OBCs, the committee concluded that their abysmally low representation suggests that any significant benefits of entitlements meant for the backward classes are yet to reach them. The committee also concluded that "the conditions of Muslims in general are also lower than the Hindu OBCs who have the benefits of reservations". Recent efforts by government of India in introducing a 4½ % reservation within OBC quotas for Muslim OBCs have met with resistance.

The report shows that up to the matriculation level in education, Hindu OBCs trail behind the national average by 5%, while the figure for Muslims in general and OBC Muslims is 20% and 40% respectively. When it comes to education up to the graduate level, general and OBC Muslims trail by 40% and 60% respectively. In the field of employment in formal sectors, general and OBC Muslims trail the national average by as much as 60% and 80% respectively. Even in landholdings, Muslims are far below the national average: general Muslims: 40% and Muslim OBCs: 60%, whereas Hindu OBCs is approximately 20% below the national average. General and OBC Muslims are poorer by 30% and 40% respectively than the national poverty level, while Hindu OBCs are less poor by 10%. So the reservation policy meant for OBCs has not impacted Muslim OBCs.

What were the major findings of the Sachar Committee report? Muslims record the second highest incidence of poverty, with 31% of people below the poverty

line, following Scheduled Castes and Scheduled Tribes, who are the most poor with a Head Count Ratio (HCR) of 35%. Not only was the literacy rate for Muslims far below the national average in 2001 but the rate of decline in illiteracy has also been much lower than among Scheduled Castes and Scheduled Tribes. According to the Sachar Committee's findings, 25% of Muslim children in the 6-14 age-groups either never went to school or dropped out at some stage.

In no state of the country is the level of Muslim employment proportionate to their percentage in the population, not even in the State of Jammu & Kashmir with a 66% Muslim population. West Bengal, which has recently emerged from over three decades of communist rule, where Muslims constitute 25% of the population, and where the left had consistently had Muslim support, the representation in government jobs is as low as 4%. Not only do Muslims have a considerably lower representation in government jobs, including in public sector undertakings, compared to other excluded groups, Muslim participation in professional and management cadres in the private sector is also low. Their participation in security-related activities (for example in the police) is considerably lower than their population share, standing at 4% overall. The exception to this is the State of Gujarat, where Muslims account for 10%, against a population percentage of 9.1. Other figures on Muslim representation in civil services, state public service commissions, railways, and the department of education, are discouraging.

The Sachar Committee therefore recommended as follows:

1. While there is considerable variation in the conditions of Muslims across states, the community exhibits deficits and deprivation in practically all dimensions of development.
2. Mechanisms to ensure equity and equality of opportunity to bring about inclusion should be such that diversity is achieved and at the same time the perception of discrimination is eliminated.

3. Creation of a National Data Bank (NDB) where all relevant data for various SRCs are maintained is recommended.
4. An autonomous Assessment and Monitoring Authority (AMA) is needed to evaluate the extent of development benefits which accrue to different SRCs through various programs.
5. While equity in the implementation of programs and better participation of the Community in the development process would gradually eliminate the perception of discrimination, there is a need to strengthen the legal provisions to eliminate such cases.
6. 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.
7. The Committee recommends that an Equal Opportunity Commission (EOC) should be constituted to look into the grievances of the deprived groups.
8. A carefully conceived 'nomination' procedure should be worked out to increase inclusiveness in governance.
9. The Committee recommends the elimination of the anomalies with respect to reserved constituencies under the delimitation schemes.
10. The idea of providing certain incentives to a 'diversity index' should be explored. A wide variety of incentives can be linked to this index so as to ensure equal opportunity to all SRCs in the areas of education, government and private employment and housing.
11. Relevant functionaries should be sensitive to the need to diversity and the problems associate with social exclusion.
12. The Committee recommends that a process of evaluating the content of the school text books needs to be initiated and institutionalized.

13. The University Grants Commission (UGC) should be encouraged to evolve a system where part of allocation to colleges and universities is linked to the diversity in the student population.
14. To facilitate admissions to the 'most backward' amongst all the SRCs in the regular universities and autonomous colleges, alternate admission criteria need to be evolved.
15. Providing hostel facilities at reasonable cost for student from minorities must be taken up on priority basis.
16. Teacher training should compulsorily include in its curriculum components which introduce the importance of diversity / plurality within the country and sensitize teachers towards the needs and aspiration of Muslims and other marginalized communities.
17. Given the commitment to provide primary education in the child's mother tongue, the State is required to run Urdu medium schools.
18. Work out mechanisms whereby Madrassas can be linked with a higher secondary school board so that students wanting to shift to a regular / mainstream education can do so after having passed from a Madrasa.
19. Recognition of degrees from Madrassas for eligibility in competitive examinations is desirable.
20. The Committee recommends promoting and enhancing access to Muslims in Priority Sector Advances.
21. The real need is of policy initiatives that improve the participation and share of the Minorities, particularly Muslims in the business of regular commercial banks.
22. It is desirable to have experts drawn from the Community on relevant interview panels and Boards.



23. The country is going through a high growth phase. This is the time to help the underprivileged to utilize new opportunities through skill development and education.
24. Government should provide financial and other support to initiatives built around occupations where Muslims are concentrated and that have growth potential.
25. The registration of trusts set up by the Community, such as Waqf institutions and mosque committees should be facilitated.
26. Lack of access to crucial infrastructural facilities is another matter of concern for the Muslims.

The report concludes with the comment that *“issues relating to disparities across socio-religious communities are of utmost importance to our nation today. If this Report contributes in any way in constructively dealing with these issues and in facilitating a more informed discussion on them, the Committee’s efforts would be well rewarded.”*

A subsequent report by the Justice Ranganath Mishra Commission, published in 2007, which examined the conditions of all minorities, further emphasized the deplorable condition of Muslims on socio-economic indicators and endorsed the findings, arguments and recommendations of the Sachar Committee report. These statistics show that Muslims have been denied equal participation in the development process (evident from poverty and discrimination indicators), have been denied fair and equal access to justice in the case of both targeted violence during communal riots as well as day-to-day, and identity-based discriminatory practices in accessing rights and entitlements.

***Exclusion from development schemes and non-implementation of policy suggestions***

Government response to the Sachar Committee report was to launch the Multi-Sectoral Development Program (MSDP) in 2008, aimed at upgrading infrastructure in 91 districts spread over 20 states of India<sup>iv</sup> where minorities comprise 25% or more of the population, classified as minority concentration districts (MCDs). These 91 MCDs identified after an examination of districts throughout the country are also relatively backward, falling behind the national average in terms of indicators for socio-economic status and access to basic amenities. Under the MSDP, district-specific plans focus on provision of better infrastructure for schools and secondary education, sanitation, secure housing, drinking water and electric supply, besides beneficiary-oriented schemes to create income-generating activities.

Nevertheless, it is the exclusion of Muslims that stands out in the planning, design and implementation thus far of the Multi-Sectoral Development Program. Muslims are not the target group and instead the scheme is under the larger umbrella of “minorities”, contrary to the recommendation of the Sachar Committee report that the Muslim community needed targeted interventions to bring it socially and economically at par with the mainstream. Nevertheless, This has been recognized by the Planning Commission which notes in its Steering Committee on Empowerment of Minorities, sine included in the final draft Plan, that *“Since the entire scheme rests on the suitability of the district plans prepared by the District level committees, these must be preceded by prior dissemination of information throughout the minority concentration areas (hamlet/ward). Such information dissemination must include traditional and locally accessible forms of communication, and not remain restricted to placement of information on the website of the concerned department/government”<sup>v</sup>*

But the MSDP is also flawed inasmuch as it leaves out large numbers of Muslims from its schemes by concentrating only on districts which have an ‘economically backward’ minority concentration. Thus the MSDP covers only a small

percentage of the minority population of India, entirely ignoring them in non-MCD districts<sup>vi</sup>. Another major shortcoming is that it takes the district as the unit of planning rather than villages or blocks with minority concentrations, which would have made benefits accessible to more if not all. How does the government justify its claim of improving the condition of its minority populations when Muslims, who constitute the largest minority (over 70% of the total minority population) and who fare abysmally on socio-economic indicators, are significantly ignored in a development program meant specifically for minorities?

Even for the small percentage of minorities who are covered under the MSDP programme, there have not been very positive outcomes. In fact, the minorities have experienced exclusion in the identification of areas for development, allocation and delivery mechanisms even in those MCD districts. This identity-based discrimination was highlighted in a recent study by the Centre for Equity Studies (CES) in 2011, entitled 'Promises to Keep', which evaluated 'flagship programs' for minority development initiated as a response to recommendations by the Sachar Committee<sup>vii</sup>. The study, which selected three districts in three states -- South 24 Parganas in West Bengal, Darbhanga in Bihar, and Mewat in Haryana -- says that despite the focus on minority districts, the Muslim community was not benefiting much as officials were often under orders to avoid Muslim villages, hamlets or urban settlements in plans designed by them. This conclusion is substantiated by reports of India's National Commission of Minorities on Districts Bagpat of UP and Araria of Bihar, with a Muslim population of 25% and 41% respectively. In consequence, although money from this modestly funded program is spent on districts with a greater proportion of Muslims, these studies have found that the programs selected were neither located in nor benefited Muslim populations. In Mewat district in Haryana -- with a Muslim concentration of 80%, most of the Meo community, in a state in which Muslims constitute barely 5% of the total population -- there are less than 5,000 Muslim students in secondary school. When the author visited a Muslim village in the adjoining Meo area of Palwal District I found the primary school had, in the

words of the CES on schools in neighboring Mewat District, “a dilapidated building, barren courtyard and dingy classrooms”. Instead of spending MSDP funds to upgrade the school, the government preferred to spend money on a neighboring wealthier non-Muslim village. This pattern was repeated in all the other districts visited by the CES. In Darbhanga, under the Sarva Shiksha Abhiyan-a scheme to universalize education-in 2009-10, 66 new primary schools were opened ostensibly to enhance access for children from minority backgrounds. Curiously, only seven of these were in minority concentrated areas. The Mewat, Araria and Bagpat cases also establish that even when funds do go to a district with a high concentration of minorities, the money fails to reach the community as the authority’s negligence or outright discrimination makes them divert funds to other villages.

A seeming prejudice is exposed by the Sachar Committee when it talks of discrimination and practices of exclusion in government structures, especially in security-related jobs -- defence, police and security forces -- where the percentage and number of Muslims is highly skewed. In recognition of this flaw the Report of the Steering Committee of the Planning Commission for Empowerment of Minorities now recommends that direct targeting of minority populations and minority habitations should be made a specific condition for approval of all plans under PM's 15 Point Programme and MSDP.

Various key recommendations of the Sachar report fare little better. For instance, establishing an equal opportunities commission with a structure and membership along the lines of the National Human Rights Commission (NHRC) to examine and analyze the grievances of deprived groups, and making equal opportunities a legal right; developing a ‘diversity index’, a statistical tool to measure exclusion in specific areas (education, housing, etc.) which can be used for inter-institutional comparisons as well as to assess patterns over time which, in turn, will help in policy targeting; enhancing Muslim participation in governance. This proposal has foundered in the face of opposition from vested interests from other

'excluded' groups that see themselves as already benefitting from existing structures.

Minority-related schemes like the Prime Minister's New 15-Point Program, replacing a similar programme dating from the time of Prime Minister Indira Gandhi, covering issues of education, employment, housing and credit have, except notably in the school scholarship program, but that too only in some states, also failed to address minority deprivation, or deliver any benefits to the bulk of poor communities. The programme is clubbed with existing welfare schemes like the Indira Aawas Yojana (IAY), which aims to provide housing to the rural poor, Integrated Child Development Scheme (ICDS), Sarva Shiksha Abhiyan (SSA), Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA), etc., wherein it aims to locate a certain proportion of development projects in minority concentration areas and, wherever possible, earmark 15% of target and outlays under these schemes for minorities. Clearly, this suffers from the same drawbacks as the MSDP wherein the unit for planning is the district and projects can be located anywhere, not necessarily in minority concentration areas. Also, vagueness in terms like "certain portion" and "wherever possible" allows for prejudice to be sustained. Moreover, individual beneficiary schemes like the MGNREGA or SGSY-a scheme launched in 1999 to provide sustainable income to the rural poor-are demand-driven; therefore, 15% cannot apply to them in practice. The NCM has therefore recommended to government that the administrative unit of a Block, a sub-unit of a District devised in the '50s to channel development finance, be made the deciding factor in assignment of finance under the MSDP rather than the District. This will also bring Muslims in states like Rajasthan, which has Blocks with a Muslim population of as much as 70%, but not a single District qualifying as an MCD, under the spread of the MSDP; and exclude such areas, in existing MCDs, that do not have the minimum requirement of population. These recommendations find place in the report of the Planning Commission Steering Committee discussed above. The recommendations of this Steering committee now find place in the 12<sup>th</sup> Plan

### ***Minorities' Commissions***

The National Commission for Minorities (NCM) which was constituted by the Government of India in 1978 and became a statutory authority in 1992, to monitor the development of minorities in India has been ineffective in addressing the grievances and developmental gaps of the Muslim minority. The functioning of the Commission has been limited to issues like investigating complaints. The NCM lacks both the financial and political autonomy needed for independent and effective functioning. In 2009-10, its budget was Rs. 451 lakh, 72% of which went towards paying salaries (Rs. 323.43 lakh). The National Commission for Scheduled Castes and National Human Rights Commission have more political leverage than the NCM, and they are more independent. But like them, reports from the NCM are not binding on the Government of India. 13 states in India are yet to form state minority commissions<sup>viii</sup> .

The NCM has attempted to address the critical issues of socio-economic exclusion and discrimination suffered by Muslims in India. But the Commission could have played a pivotal role in evaluating the progress of minorities, especially after the findings of the Sachar Committee. It has instead, for want of effective state mechanisms, failed to effectively monitor the MSDP or the Prime Minister's 15-Point Program. Three years after these schemes were initiated, the NCM has been discussing with government means of making such monitoring effective.

In relation to recent incidents of communal violence, however, the Commission has been more effective in gaining redress for victims and action against defaulting policemen, notably in the October 2011 violence in Bharatpur District of Rajasthan, which had left 9 dead, all Muslims of the Meo community, and the principal mosque of the township seriously damaged.

### ***Ministry of Minority Affairs.***

The Ministry of Minority Affairs (MoMA) also suffers limitations in delivering its mandate. The Ministry was constituted in 2006 to target socio-economic conditions specifically of minority communities through affirmative action and inclusive development. It is responsible for mainstreaming the minority community, initiating development programs for the socio-economic uplift of minorities, coordinating between central and state agencies to implement minority-related schemes and programs, and monitoring and evaluating these. MoMA has indeed taken steps like identifying minority-concentration districts, which now number 90, launching schemes like the MSDP, scholarships for minorities, monitoring the Prime Minister's revived 15-Point Program, etc. Yet it has failed to effectively address the poverty and exclusion of minorities, a shortcoming arising principally from weak coordination with other central and state departments, which are not answerable to MoMA for inadequacies in implementation. The Prime Minister's 15-Point Program suffered the most because of this; no single authority actually owns this program as it only calls for earmarking 15% of outlay and physical targets for minorities in other selected welfare schemes without prescribing any mechanism, making it a top-up approach. The CES study says that the *"ministry is ill-equipped to accept innovative ideas and ways of working, engage creatively with stakeholders to deliver targeted interventions for Muslims"*.

What emerges then is that institutions and development programs meant for minorities have not thus far delivered much by way of addressing bias and discrimination faced by minorities. And apart from faring poorly on development indicators, Muslims live in an insecure environment where they face targeted and communal violence, coupled with day-to-day discrimination in accessing rights and entitlements. How has government responded to these shortcomings in its initiatives?

### ***Communal violence and response of the government-Role of the NCM***

Targeted communal violence like the Mumbai and Gujarat riots of 1993 and 2002 are heavily publicized. However many less known riots regularly take place in India, among the more recent being the Moradabad riots in Uttar Pradesh in August 2, 2011, the Bharatpur riots in Rajasthan in September, and the Rudrapur riots in Uttarakhand in October, 2011. All recent cases of communal violence have seen the trend of police complicity wherein they have colluded not only with the dominant community but also with right-wing groups to perpetrate violence against the Muslim minority.

The Commission brought to the attention of the government of Rajasthan, in a meeting with the Chief Minister and his colleagues in Jaipur on November 4<sup>th</sup>, that the local population was dissatisfied with the amount and disbursement of relief provided and with measures taken<sup>ix</sup>. It was therefore, recommended that the State consider adopting standard relief measures contained in Schedule IV of the NAC draft of a 'Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011'. Chief Minister Ashok Gehlot, after verification, agreed that this proposed standard compensation would be adopted for application in the Gopalganj incident. NCM has been receiving monthly reports since of the State's implementation of its recommendations. Yet, in the meeting of the State Minorities Commissions hosted by the National Commission on March 14, complaints were still voiced by delegates from Rajasthan of inadequate compensation for damage to houses.

Police excess against the Muslim minority were again evident within three weeks of the Bharatpur violence, when Muslims in Rudrapur (Uttarakhand) went to the police to complain about two incidents of desecration and burning of the Quran within a span of three days. Both times they were sent back with only an assurance that action would be taken against the miscreants. Not only did the police refuse to lodge an FIR, they also took no action against the culprits. When the group of Muslims protested and refused to leave the police station without an FIR being lodged and action taken, the police started a lathi-charge, which



resulted in stone-pelting by protestors. In response, the police opened fire killing four Muslims and injuring many others. A Hindu mob that had gathered during the firing began destroying shops and setting vehicles on fire. The fracas was followed promptly by a visit of the State Chief Minister General Khanduri, who took action against the administrative leadership of the District. But in subsequent arrests, among those accused of killing Muslims in rioting were three Muslims!

In both cases, NCM intervened through visits of members and recommendation of action to the State governments. But to be noted here is that, in both incidents, Muslims merely approached the police to demand action instead of behaving as the miscreants had. Instead of controlling the situation by taking immediate action, the police played the role of catalyst in escalating the violence. The police's response of not only denying justice but actually participating in the rioting against Muslims reiterates the communal bias entrenched in the police machinery. To address this kind of bias, and stem the level of mistrust felt by the minority towards the justice mechanism, which had resulted in deep skepticism about the state's protection and justice machinery, the National Commission of Minorities had made Police and Minorities the subject of its annual Conference of Minorities Commissions held in New Delhi on March 13 and 14, 2012.

India has faced communal riots ever since the onset of colonial rule. But since Independence, on most counts, victims have failed to get justice and the perpetrators have never been held accountable despite the rule of law, in the absence of any strong and exclusive legislative tool to address this violence. In all these cases, existing provisions of India's Penal Code (IPC) have proved inadequate in addressing targeted violence. Yet, the trial of policemen charged with murder<sup>x</sup> at the instance of no less than the then Prime Minister Rajiv Gandhi, in the killing of 40 Muslim youth in Hashimpura in western UP, while in police custody after riots in Meerut in 1986, still lingers in the Sessions courts, and the

criminal policemen have continued with regular service, including promotion, many by now having retired with honors.

These limitations are sought to be addressed in the pending Communal & Targeted Violence (Prevention) Bill, in which all of NCM's recommendations are included in the draft prepared by India's National Advisory Council (NAC). The most remarkable aspect of the proposed legislation is that it holds public servants accountable for their negligence or willful failure in controlling riots. An officer can be prosecuted if he fails to act without adequate reason. Not only the complicit officer, his superior officer too can be punished for failure in command, if it can be proved that the superior had information about the situation and he failed to issue appropriate orders and directions to his subordinate. The bill will also give rights to victims to be heard during the trial, and make the trial procedure more flexible and victim-friendly. This includes witness protection. Relief, restitution and compensation become the right of every victim of communal and targeted violence. Compensation will be in accordance with loss and damage; victims will have to be rehabilitated in their areas, and the state will have to ensure the safety and security of rehabilitated victims. The bill also defines the new offence of sexual assault which goes beyond a narrow definition of rape. It also constitutes a National Authority for Communal Harmony, Justice and Reparation and a state authority of the same name the objective of which will be to prevent acts of communal and targeted violence, control the spread of organized violence, monitor due investigation, prosecution and trial of offences, and monitor relief, reparation and restitution in a fair and impartial manner. This feature has however drawn criticism by State governments for its perceived encroachment onto areas considered the responsibility of the States under a Federal Constitution.

The draft bill, which still has to see a debate in Parliament, has also been attacked by right-wing groups calling it "anti-Hindu". But Hindu minorities too are covered under the bill in states where they form a minority population. Kashmir's

Pundit community that had been forced into a massive exodus in 1990-91, and is still to be rehabilitated, although its security stands restored, is covered in the category of 'internally displaced persons.' Further, it covers all religious and linguistic minorities in India and includes scheduled caste and scheduled tribe groups. Under the bill, relief shall be granted to all, including minorities, non-minorities, SCs, non-SCs, STs and non-STs affected by communal and targeted violence. We already have a similar legislative tool in India -- the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act -- which protects particular social groups like dalits and tribal. The new bill has been drafted along similar lines.

### ***Reservation or Affirmative Action?***

Does the answer then lie in reservation in government employment for Muslims as recommended by the Ranganath Commission? For decades, the issue of affirmative action for Muslims has been a politically fractious one in India. Many opponents, including right-wing Hindu groups, have long argued that affirmative action policies based on religion violate India's Constitution and run counter to the country's secular identity. Quotas, they said, should be strictly reserved for groups that have suffered centuries of caste-based discrimination.

But these arguments have been steadily eroded by an undeniable and worrisome byproduct of India's democratic development: Muslims, as a group, have fallen behind in education, employment and economic status, partly because of persistent discrimination. Muslims are more likely to live in villages without schools or medical facilities, as the Sachar Committee report found in 2006 and less likely to qualify for bank loans.

Now the issue of Muslim quotas has bubbled to the surface in the recent election in the state of Uttar Pradesh, where the winner, the regional Samajwadi Party, has promised to carve out a quota of jobs and educational slots for Muslims, an idea first raised by the Indian National Congress Party. Legal and political

obstacles remain, and some Muslims are skeptical that leaders will muster the political will to push through a quota, even as many consider such preferences justified and long overdue.

In Uttar Pradesh, the country's poorest and most populous state, with the largest Muslim population, all of India's caste and religious demarcations are on vivid display. It was here that one of India's most searing acts of religious violence occurred in 1992, when the Babri Masjid, built at the time of the Mughal conquest, was destroyed by right-wing Hindu activists.

But Uttar Pradesh has also witnessed the political rise of the Dalits. Before losing the recent election, Mayawati, the state's powerful Dalit chief minister (who uses one name), dominated Uttar Pradesh and used her position to reward many of her supporters with jobs, housing and other benefits. Dalits still remain overwhelmingly poor and marginalized in many parts of India, but Ms. Mayawati's extensive use of the reservation quota system and other preferential policies in Uttar Pradesh provided opportunity to many Dalits.

Most Muslims in India are the descendants of Hindus, many of whom were engaged in professions considered lowly in the then increasingly hide bound caste system, which turned to Islam over the centuries, often to gain social status. Yet class affiliations never fully disappeared, meaning that a hierarchy lingered among Muslims in India, in extreme cases with a rigid caste structure subsisting into the twentieth century as in the coral islands of Lakshadweep off the coast of Kerala. Two government commissions sought to include "backward" Muslims in the quota system by using their former professional identity, along with educational and economic indicators.

India's four southern states have extended some affirmative action benefits to Muslims, if not explicitly along religious lines, but elsewhere Muslims have largely been excluded. And in the State of UP particularly, many Muslims have watched

as Dalit neighbors have on jobs, or college slots, through quotas that, over time, brought better jobs and salaries. But many Muslims concede that they were also to blame because for too long they did not push their children to stay in school. That has changed. There is today a yearning in the community for education, particularly for girls

What then should be clear is that there is in government not only a consciousness, but indeed a roadmap for addressing the challenges faced by the Muslim community, and the means of amelioration. The instrumentalities for affecting this are also in place. Yet, the progress in advancing along that roadmap has been tardy. As for political will, as has been discussed, the subject and the extent to which government might address it has indeed been the subject of vigorous debate. And the federal structure of the administration, particularly inasmuch as it applies to investment in development work, has consistently worked to the disadvantage of the Central government accounting for the foundering of many of its major initiatives in the field of infrastructure and development. This has been exacerbated by the end in the 1980s, of what had been in effect a nation with the same political party ruling at the Centre and in most if not all States. Thus States with competing political ideology have often jostled with assertion of policy, without either the determination or the strength to enforce implementation

But this in turn has sparked rising initiatives in whole sections of minorities, including Muslims, both intellectual and working class who, in partnership with others but who understand the issues, have taken recourse to civil society initiatives. The Mazdoor Kisan Shakti Sangathan (MKSS), born in Rajasthan in 1990, an NGO credited with having taken the lead in conceiving of and formulating India's path breaking Right to Information Act, 2005, sought to use modes of struggle and constructive action for changing the lives of its primary constituents, the rural poor. In the period leading up to its formation it had taken up issues of re-distribution of land and minimum wages. These were seen as the

two basic issues of the rural landless and the poor of the area. But this endeavor was launched with a declared consciousness that the Muslim community were prominent among the targeted constituency and required a concerted effort at inclusion.

A Dehradun based NGO, the Rural Litigation & Entitlement Kendra (RLEK) has been working for nearly 4 decades in Uttarakhand. This was set up by a group of vibrant and enthusiastic youth who started development work in the tribal area of the then State of Uttar Pradesh and is now part of the State of Uttarakhand. Today RLEK is working in 6 states Uttarakhand, Uttar Pradesh, Himachal Pradesh, Jharkhand, Chhattisgarh & Haryana. RLEK has, through its work realized how vital human life is to the conservation and sustenance of the environment. This has led RLEK to play a positive role in furthering the cause of human rights and environmental protection within the vast forest areas of Uttarakhand and UP, the habitat of the Muslim Van Gujjar, with whom it has been striving to secure the rights of the community as forest dwellers. In the process RLEK has helped greatly in promoting awareness of the community through education, both adult and child, legal literacy, human health, veterinary health, milk marketing-which is the basis of the earning of van Gujjar-and informal adult literacy

The opening decade of the 21st century has seen the rise of a number of NGOs with a leadership of Muslims, but consciously reaching for the support of civil society in general. ANHAD (Act Now for Harmony and Democracy) is an Indian socio-cultural organization established in March 2003, as a response to 2002 Gujarat riots. Shabnam Hashmi, sister of a slain young Marxist Safdar Hashmi and founder of SAHMAT, Marxian historian Prof. K N Panikkar and social activist and Harsh Mander, an IAS officer who took his retirement from service consequent to that event, were the founding members. Based in Delhi, ANHAD works in the field of secularism, human rights and communal harmony.<sup>[1]</sup> ANHAD's activities include secular mobilization, sensitizing people about their

constitutional rights, research and publication of books and reports, welfare programs for marginalized sections of society, launching creative mass mobilization campaigns. It has sought to address issues through convening People's tribunals. It also works as a pressure group among political circles to take action against communalism. Members are often the first to arrive in response to reports of communal clashes. Most recently this was the case in Araria District of Bihar, where three civilians died in police firing, and in Bharatpur District, site of the communal clash between Muslim Meos and Hindu Gujjars, discussed earlier in the presentation.

The Institute of Objective Studies (IOS) , chaired by Justice Ahmadi, former Chief Justice of India, was established in the year 1986 with a view to promote empirical and conceptual research. Research is carried out on ideologies and problems relevant to Indian polity, society, economy, religion and culture. Attention has been focused on the problems of Muslims and other minority groups. The studies include the problems of development processes, community relations, social tensions, status of women etc. Within this period the Institute has established itself as a Centre of research and intellectual activities, which is known for its objectivity in the academic world. Its achievements and program have received recognition from the Economic and Social Council (ECOSOC) of the United Nations. The IOS is in Consultative Status (Roster) with ECOSOC of UN.

The Institute has, since its initiation tried to fill the academic vacuum in approaching societal issues faced by the Indian people in general and Muslims in particular. It has in the opening decade of the 21<sup>st</sup> century increasingly provided a platform for serious intellectual endeavor in the areas of Social Sciences and Humanities, and became a trendsetter in the fields of conceptual and investigative research on the Qur'anic approach to human problems and the problems of Muslims in India. Various survey projects, which focus on the

problems of Muslims and other weaker sections of Indian society, are fulfilling a long felt need for statistical information and analysis in different areas.

MEGA-Sky (Minority Education for Growth and Advancement-Skills for Youth), operating out of New Delhi, on the other hand focused on educational opportunity for disadvantaged Muslim children. This program was initiated in 2009 with the assistance of USAID and now covers children both in and out of school in selected blocks in four states, Bihar, Rajasthan, UP and Delhi, mobilizing local charitable organizations to access outlying and conservative Muslim neighborhoods. An interesting feature of their curriculum is providing education in English through Madrassas.

This may be placed in the context of the decentralization now mandated by the Constitution of India, wherein it makes every village a self-governing unit: Section 243 (d) of the Constitution of India reads: "Panchayat" means an institution (by whatever name called) of self-government<sup>1</sup> constituted under article 243B, for the rural areas. The objective of Prime Minister Rajiv Gandhi in bringing this amendment was to give voice to those without voice in the governance of their own neighborhoods. But the decentralization sought has not thus far become a reality. Given that the Gram Sabha under the Constitution is expected to be a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level, it was hoped that this provision would give each individual in his own habitation the power of a legislator; Hence the importance for the minority community, the challenges before whom have been described. But this fact should illustrate that the instrumentalities for rectification exist, and although they have not been widely adopted thus far, for a host of reasons, not least among which is resistance from the existing establishment, these have begun to be used. "Social audit" has become a catch phrase and its exercise has invariably been effective although admittedly this has been limited.

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<sup>1</sup> Underlined by me for emphasis



## **Conclusion**

Europe has had to pay a heavy price in cleaving to a narrow concept of nationhood and in the EU is now taking fitful steps towards building a multinational state. India's own quest in building a multi-ethnic nation state, the fundamental rights of equality and equal opportunity, guaranteed under its Constitution, have not been fully realized, in different measures, in the context of the minorities in India, where various exclusionary forces are entrenched deep in the systems and mechanisms that have kept sections of the minorities, Muslim, Christian and Buddhist, on the fringes of the development process. I have sought to describe the challenges faced by India in its struggle, complicated by an evolving democratic framework, with the dictates of the Union increasingly looked upon as an intrusion by the States, themselves increasingly politically self-sustaining, even if not, thanks to India's financial structure, not so financially. To address this, the government at the Centre and in each State, has to act proactively to create an environment where, first and foremost, the minority community feels protected and that it has access to strong legal tools and redress mechanisms already extant in the system, to address specific forms of exclusion and protection of its human rights. Emerging instruments of governance provide the leverage. We have decentralization of governance through the 73<sup>rd</sup> and 74<sup>th</sup> Amendments to the Constitution making Panchayat Raj, an instrument of local self-government, a constitutional imperative, thus making every registered voter a legislator for his own village or township. To ensure accountability and transparency in governance India has among the world's strongest laws on the subject, the Right to Information Act 2005, failure to comply with which has often brought government to grief. But it can at the same time not be denied that the community has in itself not availed of these levers, largely from a lack of knowledge. But within civil society the glimmer of consciousness is already discernible.

I might conclude with an exact replication taken from the internet, of a letter received by me by e-mail on Friday, April 13, 2012, which will, I hope,

demonstrate the access to authority that a Muslim, like every Indian today enjoys, and sums up the gist of my own presentation:

“To,

The Chairman  
National Commission for Minorities  
New Delhi

Sub:- PM's New 15 point program is not properly enforced in Bihar state

Sir,

I humbly submit that the PM's New 15 point programme is not properly implemented in letter and spirit as per guidelines .

In fact there are no such committees constituted neither in the state level nor in district level for the benefits of the minority communities.

As because it has been initiated by the P.M.O, the govt of Bihar is not seriously interested to implement the same on political bias perhaps . The govt of Bihar issued a notification No.456 dated 17/07/2007 in this regard without proper and proportionate representation of the minorities .

According to the Govt's notification No 456 dt.17/07/2007 only the govt.officials of the concerning department are included in such committees since last 5 years .

Hence virtually there is no progress at all in this regard.

I therefore request your kind honour to look after the same as it will change the face and status of the minority people at large economically, educationally and morally.

Thank,s

Your's Faithfully

(Haji) Zafeer Ahmad

Member , Finance, Audit and Yojana Committee

Zila Parishad, Katihar (Bihar)

**E-Mail-**azafeer85@yahoo.in

**Address-** Emarat Al-aziz,Flate no.214

**AT-**Chitkohara Gardanibagh

**PO-**Anisabad , Patna -800002

**Mob No-09431640851”**

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<sup>i</sup> See Viceroy of India (1943-'47) Lord Wavell's undated Minute, “None knows where the partition of India, once it starts, will end, short of Balkanisation;” Turnbull Papers, MSS.EURO/D.714/72

<sup>ii</sup> *Foreign Affairs* March/April 2008, Council on Foreign Relations, NY

<sup>iii</sup> NSSO of 1999-2000 percentages: ST Rural 45.8%, Urban 35.6%; SC Rural 35.9%, Urban 38.3%; OBCs Rural 27.0 % , Urban 29.5%

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<sup>iv</sup> Arunachal Pradesh, Assam, Bihar, Delhi, Jammu & Kashmir, Maharashtra, Manipur, Mizoram, Meghalaya, Uttar Pradesh, West Bengal, Orissa, Uttarakhand, Haryana, Kerala, Karnataka, Sikkim, Andaman and Nicobar Islands, Madhya Pradesh and Jharkhand

<sup>v</sup> *Report of the Steering Committee on 'Empowerment of Minorities'*;

[http://planningcommission.nic.in/aboutus/committee/strgp12/str\\_minorties2304.pdf](http://planningcommission.nic.in/aboutus/committee/strgp12/str_minorties2304.pdf) (Para 58)

<sup>vi</sup> UPA's Promises and Priorities: Is there a Mismatch? Response to Union Budget 2011-12'. Centre for Budget and Governance Accountability (CBGA). 2011

<sup>vii</sup> Promises to Keep -- Investigating Government's Response to Sachar Committee Recommendations'. Centre for Equity Studies, New Delhi. 2011

<sup>viii</sup> <http://news.outlookindia.com/items.aspx>

<sup>ix</sup> NCM website <http://ncm.nic.in/Tour-Reports.html>

<sup>x</sup> Section 302 IPC