
Exclusion Of Muslim Minorities from The Indian Discourse on Reservation: A Critical Study

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Abstract

Religious identities in India were always fragmented. However, they were probably exacerbated the most during Partition of 1947 which brought untold horrors upon the communal landscape of India. Heterogeneity and difference had never been so violent. The nations' leaders scampering in a bid to remove any weed of religious communalism changed the discourse of the Constitutional Assembly from one of acknowledgement to ignorance to downright denial of any form of affirmative action towards religious minorities. Conformity had to be with the grand vision of nationalism which would unite India. Hence constitutionally sanctioned reservation measures acknowledging religious differences had to be obliterated. Then did India succeed? Or in its vision of creating unity, did it fail to acknowledge equality miserably? This article examines how even after seventy years of independence, the Indian experiment failed its promises of equality towards the most predominant religious minority at the time of Partition, the Muslims.

Keywords: Religious Minority, Reservation, Constitutional Assembly Debates.

Introduction

The Partition of India fragmented the then existing Indian community. Communal divides marked the landscape of the country rampant with already existing inequality and discrimination. India had been home to castes and creed many of whom had been subjected massive discrimination since pre-British times. In such circumstances, the then Constituent Assembly faced the eminent thinker Thomas Nagel's question of whether governments should do something in their power to reduce inequalities which are not caused by any fault of the victims.[1] In pursuance to such a question, the Constituent Assembly after intense debates and deliberations inserted the provisions of the "right to equality" within the constitution through articles 14-18. Article 46 of the Directive Principles of the State Policy was particularly inserted to act as a tool of social justice for the weaker sections, especially the Schedules Castes and the Schedules Tribes. The state is thus mandated to promote the educational and economic interests of the weaker sections and also to protect them from social injustices and all forms of exploitation. In pursuance of such a notion of justice, the system of reservation was introduced. However, after seventy years of the Indian experiment, the implementation of such system varies with each community. The article will examine how the Constitutional vision of reservation become questionable in its treatment of religious minorities, especially Muslims.

Religious Minorities and The Constituent Assembly Debates

The Constituent Assembly Debates occurred before and after the Partition. In the pre-Partition discourse of Constituent Assembly Debates, minority rights in terms of religion had been considered to a certain extent. For instance, on 27th July 1947, reservations were suggested for Sikhs, Muslims and Christians in public employment and legislatures, which would be in proportion to their population and on the basis of joint electorates by the Sub-Committee on Minority Rights in its Report to the Advisory Committee on Fundamental Rights. The Advisory Committee chaired by Sardar Patel recommended reservation in legislatures to minorities.[2] This scenario changed however following the Partition. Following the Partition, demands for political representation weakened within the minority communities themselves. [3] The political discourse following Partition of India structured the approach towards social justice without focusing on the aspect of religion being a denominator of minority status.[4] Previously religious minorities had historically been safeguarded by political representation to legislatures and public services through laws such as

Indian Councils Act 1909 and further through Government of India Act 1935. Such notions were questioned during the transition period due to the rise in the ideas of nationalism and common nationhood which intensified in the post-partition period of the Constituent Assembly Debates.

When the Assembly Deliberations began in 9th December 1946, three types of minorities were considered: “religious minorities”, “backward castes and tribals”. [5] All of these groups had been conferred privileges by the British government and princely states. The aim of these political safeguards in the nationalist discourse was to envisage a circumstance where the requirements of political safeguards for minorities would not be necessary in order to establish an egalitarian society. Political safeguards were viewed to be averse to this notion since it demanded recognition of a person’s religion or caste which would undermine secularism. [6] Safeguards were feared to become inciters for separatist politics in the future.

When demands for separate electorates were made, the argument of a common nation was used to reject such demands. The demand was made during the Constituent Assembly Debates based on the notion that minorities were a perpetual component of human society rather than creations of colonial mechanisms. The existence of these communities required their representation in the legislatures so that their needs could be accounted for while formulating policies. [7] Separate electorates were also deemed to be the best mechanisms for procuring the confidence of the community members. For instance, B Pocker Sahib Bahadur, proclaimed that separate electorates would allow voices of the Muslim community to be heard. [8] However, other members often objected to separate concepts by citing nationhood, justice, equality, and the repetition of the horror which followed Partition. [9]

The demands for proportional representation for minorities varied throughout the different stages of the Constitution making process. During the early stages, inclusion of religious minorities through provision of quotas for legislatures led to proportional representation being seen as promoting a greater voice and authenticity of representation of minorities. In the later stages when quotas were discarded, proportional representation was supported as an instrument to facilitate the representation of minority opinion. [10] Proportional representation was also seen to be promoting democracy and eradicating the power concentration scattered in few hands.

What is noteworthy here is the shift from the concept of separate electorates to proportional representation which would conform more with the notions of nationalism. [11] One of the best illustrations is the argument of democracy which had been previously used as an excuse to reject separate electorates. Proportional representations were vouched to not be in conflict with secularism and national unity and even promote democracy. Nevertheless, they were also rejected in the end on the same basis of communalism and separatism. [12] In the end, political safeguards for religious minorities failed to find any supports and no alternative was suggested either for such process. [13]

Political safeguards were devised with the objective of subsequent incorporation into the nation by communities which were unequipped till then. [14] Claims of the minority groups were based on some form of disadvantage suffered by them rather than numerical strength. While the religious minorities contended that through retaining their culture they could become a part of a nation backward castes did not claim minority status on the basis of cultural distinctness rather their contention was mostly based on the removal of socio-economic disabilities they have suffered in the past on account of being a part of the Hindu culture. [15] Although safeguard on the basis of caste was justifiable owing to a reparation based approach, the cultural distinctness of religious minorities failed to procure them any such legitimacy in the nation-building process. Therefore, it was deemed that reservation policies which enabled religious minorities to retain their cultural distinctiveness were sufficient and the question of political representation for such minorities were not discussed. To ensure this, three kinds of protections were introduced in the Constitution of India. Article 25 ensured individual liberty to practice profess and propagate one’s own religion, thereby also protecting the community’s power to regulate personal laws. Article 26 enabled minority communities to establish and maintain institutions. This article was inserted in acknowledgment of the positive undertakings by religious institutions in various aspects of public life, such as setting up educational institutions, providing fellowships, making provisions for drinking water. [16] Article 29 and 30 provided minorities the right to establish and administer educational institutions, protection of language and imparting education of their choice and receiving funds from the State to perform these functions.

In debates regarding reservation in employment, quotas for backward classes were deemed to be required in the short run. Several arguments were raised against such quotas. Quotas were deemed to recognize a particular caste as backward which again was averse to the concept of a single nationhood. It also threatened the idea of secularism since it marked a departure from non-discrimination and equal treatment irrespective of the community they belonged to. Merit-based objections were also raised in this quota system. [17]

However, the quota system was favoured on basis of historical discrimination being meted against such communities. A difference of opinion arose as to which group should be included in the backward classes. There had already been quite confusion about the meaning of the term. Mohammad Ismail asked for clarification as to whether the term included the backward classes of minority communities. [18]

The exclusion of religious minorities within backward classes was widely protested by Muslim and Sikh representatives. Aspiring equality of opportunity principle, they appealed for backward status and quotas [19]. It was also needed to promote integration by alleviating minority fears. [20] The dominant opinion however recognized only the lower castes and tribals to be entitled to claims of backwardness not religious minorities. [21] Hence the reservation policy was not extended to religious minorities.

Developments In the Post-Constitution Period

The Constitution provides preferential treatment for three categories: a) Scheduled Caste b) Scheduled Tribe c) Backward classes. The definition of what constitutes a backward class is unavailable under the text of Constitution. The Constitution empowers the State to make special provisions for socially and educationally backward classes. Such special provision including the power to reserve seats in appointments or other posts in their favour. Article 340 of the Constitution provides for a Backward Classes Commission aimed to continuously investigate the ground realities and to outline criterion required to identify OBCs. [22] This section attempts to deal with the treatment of Muslims among religious minorities through the scope of the term 'OBC'.

In 1955, Kaka Kalelkar Commission's report identified several criteria to find out the socially & educationally backward. Some of them were the position in the traditional caste hierarchy, lack of educational advancement, inadequate/no representation in government services & Inadequate representation in trade, commerce, and industry. In its final report, the Commission adopted caste to be the criteria for identifying backwardness.[23] This was perceived as a fuel to ignite feelings of separatism in the nation and so the Report was tabled indefinitely in the Parliament.[24] In 1961, the responsibility of devolving the conditions for determining backward classes was devolved upon the States.

The Second Backward Classes Commission also known as the infamous "Mandal Commission" was constituted in 1976 to identify conditions on social and educational backwardness and consider issues related to reservation. The Commission identified 3743 "Backward" communities, recommended 27% reservation for OBCs (who constituted 52% percent of India's population) apart from the 25% given to SCs & STs in public sector jobs and government aided educational institutions. The recommendations thus brought the total percentage to reservation to 49.5%. The Report submitted in 1980 went into cold storage in some years until in 1989-1991, the VP Singh led government decided to implement it. The additional reservation for Other backward Classes apart from the 25% already there for SCs and STs in public sector created a furore and changed the politics of caste in India. [25]

With regards to hierarchy among Muslims, the Mandal Commission had noted caste like conditions among Muslims and included them among OBCs.[26] There is a notion of hierarchy among Muslims, though the criteria of ranking among them cannot really be compared to the Hindu model.[27] Hierarchy among Muslims, though weak is existent.[28] Other indicators for ascertainment of a caste or any social group as 'backward' included the position in the caste hierarchy, age of marriage within the group, rate of female work participation, high school dropout rate, and so on. The Commission recommended a list of Backward Classes on the following criteria (ii) The backward groups of Muslims given to lowly and unclean occupations to be treated as Backward classes; and, (iii) The Christian converts from the Harijan Community to be given the status of Backward.[29] Thus religious minorities were explicitly included in this category. A state wise list was also prepared by the Commission. The Commission estimated the portion of Other Backward Classes to be 52 percent of the total population. Post Mandal Commission, Muslims were included in backward classes and certain state governments also included them under the reservation categories.

The term "classes" was used instead of caste in the constitution of India to refer to the refer to the OBCs under Article 15 (4) and 16 (4) and 340 (1) led to a range of legal issues. The courts have accepted 'caste' as a basis of classification. In *Venkattarama*, [30] the Supreme Court upheld the list of backward Hindu castes compiled by the Madras government. In *Balaji*, [31] the Supreme Court fixed a ceiling on total reservation at fifty percent. It was reluctant to include caste as a criterion, primarily because caste as a criterion becomes inapplicable to non-Hindu groups. In *Chitralekha* the court held that caste cannot be the sole test. [32]

The Supreme Court held in *Rajendran*[33] that if a caste is, as a whole socially and educationally backward, it can be taken as a separate class. This was reaffirmed in *U.S.V. Balram*[34] when the Supreme Court scrapped allowed the use of caste as a determinant to define backwardness. The issue of social backwardness as caste versus economic backwardness by poverty was discussed by the Supreme Court in *K.C Vasanth Kumar*[35] which recognized caste as an important consideration during that time.

Finally, in *Sawhney*, [36] the economic criterion was rejected as the criterion of determining backwardness. The court came to the finding that a caste is quite often is a social class in India. The court further held that backward classes among the non-Hindus, should be identified through their traditional occupations. Thus, backward classes essentially mean those caste groups which lay somewhere in the middle and which falls behind both socially and economically.

The Question of Muslim Representation

The Gopal Singh Committee Report showed the percentage of Muslims in IAS to be 3.22% in 1988. [37] The Sachar Singh Report showed that in 2006 Muslims constituted barely 3.2% of IAS, IFS, IPS. Such data is one of the several instances of underrepresentation of the Muslim Communities. Muslims also rank poorly in terms of literacy and employment rates. Though Muslims have 13.4% of the country's population their share in government jobs is 4.9 percent only. Even in private sector, a little over 1% of corporate executives were Muslims.[38] Such statistics are even starker considering the social and economic growth following the Nehruvian ideals over the past few decades. To bridge the gap between Muslim community and other communities, the Justice Ranganath Misra Committee recommended a 15% reservation in education and jobs for Muslim communities. [39] It also recommended amending the Constitutional Order of 1950 making Scheduled Class religion neutral.[40] However, the report became controversial because of such proposals, and thus it was not implemented. [41]

Till date, caste has been the predominant criterion for inclusion into the backward class category. Although the concept of caste is generally associated exclusively with Hinduism, it is not limited to the same. The word first appeared in the first ever census report conducted by the British to demarcate India's population. J. H Hutton, under whom the census of 1931 was prepared, identified the castes being subjected to untouchability in each region noted that even though Muslims don't recognize its validity, practice it. [42] Such behavior is common among other religious minorities as well. For example, Sikhism does not recognize caste, yet sections such as Mazhabis (who are the counterparts of the Hindu Balmikis, the Christian Masihs, and the Muslim Halalkhors, Labegis and Mehtars), Ramdasis, Ravidasis and Sikligars continue to suffer from casteism and untouchability. Christianity also does not the caste system. [43]

The Census of India, 1901 recorded around 133 social groups wholly or partially Muslim. The social structure of the Muslims entails Ashraf, Ajlaf and Arzal respectively. Ashraf generally consist of Muslims of foreign blood and converts from upper caste. On the other hand the Ailaf consist of carpenter, traders, painters, etc. It also consists of numerous functional groups for instance Kulu or oil-presser, Jolaha or weaver, Dhunia or cotton-carder and many others. The Census also contained another very lowly class i.e., Arzal entailing Halalkhors, Labegis, Abdals, and Bediyas.[44] Under the OBC category, the non-Ashraf section is generally included which consist of middle and lower caste Muslims generally recognized with their traditional occupation. [45] Due to the Constitutional Order (Scheduled Caste) Order, 1950 restricting the 'Scheduled Caste' status to only Hindus with "unclean occupations", non-Hindu groups like Muslims have been covered by middle caste converts and declared OBCs.[46] OBCs among Muslims are constituted in two overarching categories. The 'Arzals' and 'Ajlaf's'. *Arzals* are the untouchable converts to Islam that have found their way in the OBC list. *Ajlaf's* are the converts from the so-called 'clean' occupational castes. So, within the Muslims there is the existence of three groups that can be identified: *Ashrafs*[47], the *Arzals* & the *Ailafs*. Those who are referred to as Muslim OBCs combine (2) and (3).[48]

This social stratification system among Muslims for OBC categories was also noted by the National Commission for Religious and Linguistic Minorities (Government of India 2007) i.e., the Ranganath Misra Commission.[49] In *Indra Sawhney*, the Supreme Court referred to the definition of *Encyclopaedia Britanica* which stated that "caste is not confined to castes among Hindus". "It extends to Non-Hindu religions like Islam, Christianity and Sikhs.[50] Justice Sawant in his concurring opinion also noted the presence of hierarchy i.e. Ashrafs and Ajlaf's among the Muslims, despite the concept of caste being seemingly absent from the religion. In his words, such a phenomenon was nothing beyond expectations given the fact that the followers of almost all non-Hindu religion are converts from Hindu religion and that the concept of caste was intricately linked with occupation for a long time. [51]

Muslims, despite being the second biggest minority still remains backward as a community as a whole. Muslim OBCs have traditionally have not been benefitted from their inclusion in the OBC list as evident from the above discussion. [52] Since caste is used as a yardstick for reservations, Muslim minorities which do not rely upon caste cannot be considered to be socially backward and hence deprived from the system of reservations although caste exist among Muslim communities. [53] The Mandal Commission to a large extent gave due recognition to backwardness amongst Muslim community. It identified around 80 backward Muslim groups and thereby declaring half the Muslim population as backward. However, the Commission opposed identifying caste or poverty as a standard to categorize non-Hindu groups reasoning that these faiths stood essentially egalitarian in their outlook. [54] Considering, the circumstances, the Justice Ranganath Commission Report recommended a "sub-quota" for backward Muslims groups amongst the 27% OBC quota with the numbers be adjusted as per the share in population. [55] However, this proposal have not seen the light of the day.

Following the Mandal Commission Report recommendations, the demand for Muslim reservation in India got divided into two categories :1) The first category consisted of stakeholders who wanted reservation for the entire Muslim community 2) the second category consisted of stakeholders on the basis of caste or socio-educational backwardness. [56] The first proposal was stated at a Conservation in 1994, Delhi with the support of all Muslim upper-caste leaders.

Their understanding on this was that the whole Muslim community be recognised as ‘backward class’. They demanded that the benefits should first accrue to Muslims declared as OBC and then to the other Muslim sub-communities like Ashrafs, if there is any vacancy of Muslim quotas left. The stakeholders of the second category, elites of Muslim community had monopolized the advantages of reservation and feared that on a such a criterion of backwardness will deprive them of any opportunity left for upward mobilization. In their view, reservation in employment and education should mainly be reserved for the backward among them. [57]

Conclusion

Reservation to Muslims has been possible somewhat in terms of caste but not on the basis of minority. Traditionally caste alongside untouchability has been used as a benchmark in defining the scope of the term ‘backward class’. The justification of using the bench mark of caste has been to compensate the victimized communities for their suffering in the past. The caste identity is not exclusively restricted or limited to the Hindu community and is all pervasive since its presence can be noted among other communities as well.

The constituent assembly debates reveal that from the very beginning a tendency to alienate religious minorities from the mainstream system of reservation in apprehension of the growth of separatist policies and erosion of the idea of nationhood. This rang true more so when Indeed nationalism was dearer than religion which still remained an inconvenient and unfortunate reality in India as is evident form a reading of the Constituent Assembly Debates. This sentiment was also witnessed in the post-constitutional discourse when caste was being given primacy over any other criterion. Reservation policies were expanded with the widening of Constitutional definitions. The previously discarded religious minorities were now somehow included in the homogenous ‘backward classes’ category.

The communal interpolation in India for several decades before the existence of the Constitution had already given rise to a social hierarchy quietly practiced within almost all the communities within India. Within Muslims, this hierarchy had grown more prominent with the existence of Ashraf and Ajlafs and a host of other communities. Hierarchies had been created within hierarchies. Through the development of the mainstream judicial discourse, the only hierarchy recognized came to be known as ‘caste’. The term ‘caste’ introduced for the first time by British came to reflect the Hindu national discourse, despite being quite partial in its original sense. The notion of any other form of hierarchy or even a similar ‘caste’ like form of hierarchy was rejected by the very Commission that set the stage for advancement of reservation policies. Reservation policies once again reiterating the spirit of the Constituent Assembly discarded the concept of religious separatism and instead affirmed the homogeneity of backward classes leading to further inequality.

Thus, adherence to a homogenous form of ‘caste’ along with a homogenous conception of ‘other backward classes’ became a part of the nationalist discourse following the partition of India. However, as discussed earlier, Muslim community has been writhing under illiteracy, unemployment and stagnancy despite reservations afforded to them. Under such circumstances and considering the passage of time since the partition, the judicial interpretations as well as administrative attitudes towards such communities must be re-evaluated. A more heterogeneous definition preferably one that supports the notion of religious and communal variations may be more suitable to deal with the issues of not only Muslim minorities but religious minorities in general. In any case, such an approach, is worth a re-visitation in current context for it may become the bedrock to a new discourse which may lead to a more diversified and uplifted India.

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- [10] Supra note 5, 1841.
- [11] Ibid
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