THE INCLUSION OF MINORITIES IN INDIA: THE LEGAL AND POLITICAL FRAMEWORK

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INTRODUCTION

The state in India is constitutionally mandated to accommodate diversity and difference arising out of differential location of social and cultural groups. The state is additionally obligated to protect and promote the identity and rights of minorities. How the federal state in India has attempted to protect the distinctive identities and cultural practices of minorities and created enabling space for promotion of equity through a network of public institutions, and intervention through public policies remains a critical area of enquiry. The paper is an attempt to reflect on this issue. It examines how the federal state in India has created space for accommodating minorities and touches upon the extent to which the state, over the years, has initiated policies and programmes for promoting equity and inclusion of minorities. Creating enabling conditions for realizing the economic and political rights of minorities is one of the basic requisites of accommodation. How the federal state in India has been advancing this goal through policy intervention is one of the critical concerns of the paper.

CITIZENSHIP RIGHTS OF EQUALITY AND RIGHTS OF CULTURAL AUTONOMY

Constitutional protection and recognition of minorities can be located both in the context of equality clauses of citizenship rights and differential rights of autonomy. The equal rights of citizenship provided in the constitution are enabling rights. These entitle the members of the minority communities to claim equal treatment without being discriminated against because of their socio-cultural location and religious affiliation. The citizenship rights of equality guaranteed under the Articles 14, 15(1) and 29(2) of the Indian Constitution are particularly relevant in this regard. Besides equality rights of citizenship, minorities have also been provided distinctive rights for protecting their autonomy sphere. Creating a sphere of autonomy for groups and communities and protecting them constitutionally and institutionally is envisaged as a prerequisite of multicultural accommodation and its political and institutional manifestations in India. The fundamental rights of religious freedom and secular positioning of state and different affirmative measures of the state towards protection and promotion of diversity and group difference are important pointers in this regard. The sphere of cultural autonomy in India can be located in three interrelated contexts: (a) freedom of religion and conscience as ensured under the Articles 25-28, (b) cultural and educational rights guaranteed to minorities in Articles 29 and 30 and (c) cultural autonomy guaranteed to all tribal groups covered under the provisions of the fifth and sixth Schedules of the constitution (Suresh, 2009).

POLICY OF SECULARISM AND RELIGIOUS FREEDOM

Freedom of Religion is ensured under the Articles 25-28 of the Constitution. This set of rights envisages secularism as the fundamental principle, basic to the constitutional structure of India. The principle of secularism is pronounced in the constitutional positioning of the state as "religion neutral," meaning thereby that the state in India has no religion. This may have two different contextual implications: (i) no preference to be given to any religion and there is no privileging of one over the other. It additionally underscores that no religion would be unequally treated except in accordance with the demands of welfare and equalizing instance of the state, and (ii) non-intervention of the state in the religious affairs of the community, with exception of public order, morality and health (Bhargava, 2010). In other words, the state is supposed to act without prejudice and discrimination. The issue of inter-group equality and full enjoyment of religious freedom is not as simple as it appears. The problem of discrimination on grounds of religion and religious intolerance is experienced by minorities in various forms. This limits the possibility of religious freedom, equality rights of citizenship and the full realization of minority rights (Majeed, 2004).

PLURAL LANGUAGE POLICY AND PROTECTION OF LINGUISTIC MINORITIES

The official language policy of the Union of India recognizes the multilingual character of Indian society. It follows a plural language policy as a viable option to address the language issue in the multilingual context of India. However, the language policy of India constitutes a problematic site as it has its own criteria of language classification. This system recognizes and classifies a language by its inclusion in the Eighth Schedule. If a language is classified as national language it is entitled for state support and patronage. However, the Eighth Schedule of the Constitution of India lists only twenty-two languages as national languages of India. All other languages are classified as "dialects." Most of the languages outside the Eighth Schedule are struggling for official recognition and state patronage.

Urdu, one of the national languages included in the Eighth Schedule is generally associated with the Muslim minority community. In order to promote Urdu, the Government of India had set up the National Council for Promotion of Urdu Language (NCPUL). The Council has been functioning since April 1996 as an autonomous body for the promotion of Urdu, Arabic and Persian languages. The Government has also set up the National Council for Promotion of Sindhi Language. However, minority linguistic groups have their own grievances regarding the promotion and development of their respective languages. The official approach to language policy is subjected to criticism because of its classification of languages in different categories: national languages, regional languages, dialects and mother tongues.

On the protection of linguistic minorities the constitution of India makes provision under Articles 29, 30, Article 350A and Article 350B of the constitution. Article 350A provides that it "shall be the endeavor of every state and of every local authority to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any state as he considers necessary or proper for securing the provision of such facilities." Article 350B says: "(i) There shall be a Special Officer for linguistic minorities to be appointed by the President. (ii) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned." As a part of the provision made in Article 350B, the Commissioner for linguistic minorities investigates all matters relating to safeguards provided for linguistic minorities. Despite constitutional protection, the problem of protecting the linguistic minorities remains baffling. Many languages are subject to neglect in the absence of state support.

CREATION OF INSTITUTIONAL MECHANISMS

In spite of the safeguards provided in the Constitution and the laws in place, the incidence of violence and discrimination was widely reported especially during the first three decades of independence. In order to address this problem, the Government of India established the *Minorities Commission* in 1978, consisting of a Chairman and two other members. Though the Commission was given a wide array of functions, there was a lack of corresponding power. It functioned as a non-statutory body for 14 years until the Parliament enacted the National Minorities Act in 1992, changing the name of the Commission to National Commission for Minorities and giving it a statutory status. The *National Commission for Minorities* (NCM) now consists of a Chairperson, a Vice-Chairperson and five members nominated by the Central Government. Five members including the chairperson must be from the minority communities. The Commission works under the Ministry of Minority Affairs of the Government of India. The main function of the Commission is to monitor the working of the safeguards provided in the Constitution and laws enacted by Parliament and the State Legislatures. It also investigates specific complaints regarding deprivation of rights and safeguards of minorities and takes up such matters with the appropriate authorities.

The Minorities Commission (1978-1991) and the statutory body of the National Commission for Minorities (1992-till date) have not been very effective because of a number of constraints including the operational dynamics of politics and limited power.

A significant intervention by the federal government towards the protection and promotion of minority rights is the creation of the National Commission for Minority Educational Institutions (NCMEI) which has been established through the promulgation of an Ordinance in 2004. The Commission is mandated to look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice as enshrined in Article 30 of the Constitution. This was an attempt to redress the grievances of minority educational institutions. This Commission acts as a quasi-judicial body and has been endowed with the powers of a Civil Court. It has three roles namely adjudicatory function, advisory function and recommendatory powers.

Though it is too early to pass any authentic judgment about the effectiveness of the institution, a critical review of the power and competence of the institution indicates that the institution can go a long way in protecting the rights of the minority educational institutions.

AFFIRMATIVE ACTION AND CAPACITY BUILDING PROGRAMMES

A number of affirmative measures have been initiated by the federal state during the past two decades for the welfare, development and overall protection of minorities. The efforts are directed towards correcting the imbalances, which have emerged over a period of time. The Gopal Singh Committee, constituted under the chairmanship of Gopal Singh back in 1983 had pointed out the deficit of development and inter-group inequality, for example among the Muslim minority. In order to correct this imbalance the first major public policy intervention came in the form of the 15 Point Programme in 1983 as guidelines to the states and union territories. The objective was the welfare of minorities. The 15 Point Programme focused on three critical areas of minority protection and development: (i) prevention and adequate measure of checking the communal riots; (ii) ensuring adequate representation of minorities in the work force; and (iii) improvement of the socio-economic conditions of minorities through specifically focused programmes. The ambit of the 15 Point Programme has been expanded significantly in recent years in the light of the observations and recommendation of the Sachar Committee, a high power committee constituted by the government of India to study and report on the socio-economic status of the Muslim Minority (Government of India, 2006). In its Report submitted in 2006, the Committee pointed out the backwardness of the Muslim minority groups. In light of these developments, the 15 Point Programme has been recast. The Prime Minister's New 15 Point Programme has a wider coverage, addressing the overall development of minorities. The focus areas of the programme include enhancing both the opportunities for education and the equitable representation of minorities in economic activities and in the job market.

As a part of the affirmative action, different ministries of the federal government have initiated programmes and schemes specifically directed towards enhancing educational and employment opportunities for minorities, especially Muslims. In order to enhance opportunities in education, the ongoing programmes have been extended specifically to the minority areas. Modernization of *madrasas* (educational institutions), the improvement of their quality of education and of their infrastructure, an equitable and accessible education, and scholarship schemes for the students belonging to the minority communities are some of the areas in which the federal government has intervened.

Similarly, in order to expand economic and employment opportunities, a variety of programmes and support systems have been created. The establishment of the National Minorities Development and Finance Corporation (NMDFC) in 1994 on the recommendations of the National Commission for Minorities is one such measure. The major objectives of the corporation include: promoting economic and developmental activities for the benefit of backward sections amongst minorities, assisting individuals or groups of individuals belonging to "belonging to a minority" by way of loans and credits, establishing economically and financially viable schemes and projects; promoting self-employment and other ventures for the benefit of minorities; extensions of loans and credit to the eligible members of minorities for pursuing general/ professional/technical education or training at graduate and higher levels; assisting the state-level organizations for dealing with the development of minorities by way of providing financial assistance or equity contribution and in obtaining commercial funding or by way of refinancing; working as an apex institution for coordinating and monitoring the work of the corporation/boards/other bodies set up by the State Governments/Union Territory Administrations for, or given the responsibility of, assisting minorities in their economic development.

There are different schemes initiated by the NMFDC. The Loan scheme is one of the most important components of these activities. Four different categories of loan schemes are provided to the minority communities through NMFDC. These include: 1) term loan scheme for any commercially viable and technically feasible venture; 2) margin money loan scheme to give monetary assistance to beneficiaries; 3) education loan scheme with the aim of facilitating job-oriented education among the weaker section of minorities; and 4) micro-financing schemes, providing micro-credit to the poorest through NGO's. Other schemes include vocational training to members of minority communities, marketing assistance to craft persons, and assistance for design development and skills development.

Furthermore, ninety districts of the country, having large minority populations, have been identified as backward. These districts constitute the major focus of programmes and schemes directed towards development and inclusion. Similarly capacity building programmes among the members of minority communities are in operation. Coaching schemes for disadvantaged groups including minority students are being supported by the government within and outside the university system. Special training and programmes for skill building have been initiated keeping the minority community at the centre of focus.

CONCLUSION

It is then evident that the federal state in India has created space for the protection of minorities and the promotion of equity and inclusion through the mechanism of constitutional engineering, the network of necessitated institutions and an array of public policies including affirmative action and capacity building programmes. The provisions appear to be comprehensive and inclusive. But the gap between policy and practice still exists. The Sachar Committee Report clearly points to the deficits of democracy and development and the exclusion of a large section of minority population. This is indicative of the deficient functioning of the federal state so far as the issue of equity, security and inter-group equality are concerned. Unless the gap between policies and their actual implementation is bridged, there can hardly be any possibility of equity and inter-group-equality. Minorities will continue to lag behind.

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L'INCLUSION DES MINORITÉS EN INDE: LES ENCADREMENTS LÉGAUX ET POLITIQUES

En vertu de sa constitution, l'État indien a l'obligation de protéger et de promouvoir l'identité et les droits des minorités. Les membres de ces minorités sont reconnus comme citoyens à part égale et leur identité distincte est protégée. Les droits fondamentaux concernant d'une part, la liberté de religion et le positionnement laïque de l'État, et d'autre part, les différentes mesures d'affirmation favorisant la protection et la promotion de la diversité, constituent d'importants mécanismes constitutionnels. L'autonomie culturelle en Inde se trouve dans trois contextes différents mais interdépendants: (a) la liberté de religion et de conscience, assurée par les articles 25 à 28, (b) les droits culturels et éducatifs garantis pour les minorités dans les articles 29 et 30 et (c) l'autonomie culturelle garantie pour les groupes tribaux, tant pour ceux vivant sur un même territoire que pour ceux qui sont dispersés sur le territoire, en vertu des dispositions des 5e et 6e réservations dans la constitution.

La liberté de religion est garantie en vertu des articles 25 à 28 de la Constitution. La laïcité y est définie comme le principe fondamental à la base de la structure constitutionnelle de l'Inde. Le principe de laïcité fait partie de la position constitutionnelle de l'État et de sa « neutralité religieuse » ; il n'y a donc pas de religion propre à l'Inde. Cela peut avoir deux implications contextuelles: (i) aucune religion ne sera favorisée ou privilégiée par rapport à une autre. Cela sous-entend qu'aucune religion ne sera traitée injustement, sauf si c'est nécessaire pour le bien-être de l'État et ses objectifs de société égalitaire, (ii) la non-intervention de l'État dans les affaires religieuses des différentes communautés, à l'exception des interventions concernant la sécurité, la moralité publique et la santé. Dans un contexte de grande diversité religieuse, et en présence d'une religion majoritaire et de nombreuses minorités religieuses, l'État se doit d'agir pour maintenir l'égalité entre les groupes, sans préjugés et sans discrimination.

La politique indienne des langues officielles reconnaît le caractère multilingue de la société indienne. Elle suit une politique linguistique plurielle, une option viable pour répondre à la question de la langue dans le contexte multilingue de l'Inde. Cependant, cette politique linguistique est problématique car elle est régie par ses propres critères de classification linguistique. Le système de classification résulte dans la reconnaissance et la non-reconnaissance d'une langue et son inclusion dans la 8e réserve. Si une langue est classée comme langue nationale, elle a droit au soutien de l'État. Toutefois, la 8e réserve de la Constitution identifie seulement 22 langues comme langues officielles. Toutes les autres sont classées comme dialectes. La Constitution indienne prévoit des mesures pour protéger les minorités linguistiques (articles 29, 30, 350A et 350B de la Constitution).

L'État indien a créé certains mécanismes institutionnels dont l'objectif principal est d'assurer la protection et la promotion de l'identité des minorités, ainsi que d'assurer l'équité parmi les communautés

minoritaires. La *National Commission for Minorities* (NCM), la *National Commission for Minority Educational Institutions* (NCMEI), ainsi que la *National Minorities Development and Finance Corporation* (NMDFC) sont particulièrement importantes à cet égard. Tous ces mécanismes institutionnels ont des mandats et des objectifs variés, mais travaillent collectivement à la protection des minorités.

Au cours des deux dernières décennies, les politiques publiques de l'Inde ont permis la mise en place de certaines mesures en matière de bien-être, de protection sociale des minorités et de leur développement. Ces mesures cherchent à corriger les déséquilibres apparus au fil du temps. La première initiative d'importance en ce sens fut le Programme en 15 points de 1983, qui donnait des directives aux états et aux territoires de l'Union en matière de bien-être des minorités. Le Programme en 15 points était axé sur trois aspects essentiels de la protection des minorités et de leur développement: (i) comment prévenir les émeutes communales et les mesures à prendre, le cas échéant; (ii) comment assurer une représentation adéquate des minorités sur le marché du travail, et (iii) comment améliorer les conditions socio-économiques des minorités grâce à des programmes spéciaux. La portée du Programme en 15 points a été élargie de manière significative ces dernières années.

Différents ministères du gouvernement fédéral ont lancé des programmes visant spécifiquement l'amélioration des possibilités d'éducation et d'emploi pour les minorités, en particulier les Musulmans. Pour accroître les possibilités en éducation, les programmes en cours ont été implantés spécifiquement dans les zones à forte population minoritaire. Parmi les interventions gouvernementales en matière d'éducation pour les minorités, mentionnons la modernisation et l'amélioration des infrastructures des madrasas, une éducation de qualité et accessible, ainsi que des programmes de bourses pour les étudiants issus des communautés minoritaires.

Le gouvernement a également créé des programmes et des systèmes de soutien pour accroître les possibilités en matière d'économie et d'emploi, parmi lesquels la mise en place de la NMDFC. Cet organisme contribue à élargir les perspectives économiques et le pouvoir d'action des minorités désavantagées. Il apporte un soutien économique sous forme de prêts. Il fournit également du micro-crédit aux plus pauvres par le biais des ONG. D'autres programmes comprennent, entre autres, de la formation professionnelle pour les communautés minoritaires; de l'aide à la commercialisation pour les artisans et de l'assistance pour le développement du design et pour la mise à niveau des compétences.

Ces dispositions semblent exhaustives et inclusives. Toutefois il y a encore des écarts entre les politiques et la pratique. Le rapport Sachar mentionne clairement d'un côté, le déficit démocratique et le retard de développement, et de l'autre, l'exclusion d'une grande partie de la population minoritaire. Ceci indique certainement que l'État fédéral n'est pas si efficace dans la gestion de l'équité, de la sécurité et de l'égalité entre les groupes. À moins de combler l'écart entre les politiques et leur réelle mise en œuvre, l'équité et l'égalité entre les groupes restent quasiment impossibles.