

## Chapter 5 India

# Unable to Protect; Reluctant to Promote

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### Introduction

#### **Worsening Condition of Minorities in India**

India has traditionally enjoyed much international goodwill for its working democracy, secular values, and tolerance, all of which have a direct bearing on the freedoms and rights of its minorities. Lately, however, it has been the subject of much negative attention. The most recent edition of the Social Progress Index ranked India a dismal 104 (out of 128) on discrimination and violence against minorities (Social Progress Imperative 2018). A 2017 Pew Research Center Analysis of 198 countries ranked India as fourth worst in the world for religious intolerance, trailing only behind Syria, Nigeria and Iraq.<sup>1</sup> The US Commission on International Religious Freedom, in its 2017 reports, noted that ‘in 2016, religious tolerance and religious freedom conditions continued to deteriorate in India’.<sup>2</sup> These are worrying developments in India’s record on minority rights.

In this chapter we examine India’s record specifically on the socio-economic rights of minorities, to examine trends and patterns. In doing this, we use the framework of the Human Rights Indicators to systematically unpack and examine commitments and efforts by state parties, to understand and explain minority outcomes (United Nations, 2006, 2012;

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\* The writer is associated with Misaal Foundation. He gratefully acknowledges the research assistance provided by Shahnaaz Khan and Sneha Chandna.

1. ‘India is the fourth-worst country in the world for religious violence’, 14 April 2017. <https://qz.com/959802/india-is-the-fourth-worst-country-in-the-world-for-religious-violence/>
2. Available at: [www.uscirf.gov/sites/default/files/India.2017.pdf](http://www.uscirf.gov/sites/default/files/India.2017.pdf)

Equality and Human Rights Commission, 2015). We first define who minorities are in India's context. We then briefly survey the literature on the condition of India's minorities in terms of socio-economic conditions, including poverty; employment; health and nutrition; and education, to try to understand outcomes for minorities (Section 2), following this up with a quick scan of literature to try to understand the poor outcomes (Section 3). In Section 4 we look at India's commitment to minority rights, based on a reading of the Constitution, case laws and India's ratification of relevant International treaties. Section 5 examines India's efforts to provide for minorities – programmes and schemes put in place to close the gap, and resources targeted – and how they work. In Section 6, we conclude our discussion on understanding the missing links, examining this particularly in today's context, with heightened violence against minorities and the impact that this is having on minority wellbeing. We conclude with a set of recommendations.

## **Who are India's Minorities?**

To answer that question, one must follow the developing policy agenda for minorities.

The term 'minorities' occurs only occasionally in the Constitution and is not defined: in Articles 29 and 30, which are grouped as the educational and cultural rights of 'linguistic, religious and cultural minorities' and are included under part IV of the Constitution as fundamental rights; and Article 350B, which relates specifically to linguistic minorities. These provisions guarantee certain rights to minorities.

- Article 29 protects the interests of minorities, defined as any section of citizens having a distinct language, script or culture of its own, and their right to conserve the same. It also mandates that there should be no discrimination on the grounds of religion, race, caste, or language in admissions to schools maintained by the state.
- Article 30 mandates that (i) all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. It also mandates that (ii) there shall be no discrimination by the state in granting aid to educational institutions on the grounds that it is under the management of a minority, whether based on religion or language.
- Article 350B provides for the appointment of a special officer for linguistic minorities by the president.

In 1992, faced with demands to better provide for minorities, and in the context of the UN Minority Declaration (December 1992), which required member states to take active measures to protect and promote the rights of minorities, the Government of India enacted the National Commission for Minorities Act (1992) and set up the National Commission for Minorities. In 1993, as part of the measures, the government conferred minority status to Muslims, Christians, Sikhs, Buddhists and Zoroastrians/Parsis – all religious minorities. This was applicable at the national level. Jains were added to the list in 2014. The Supreme Court of India, in *TMA Pai Foundation & Ors. v State of Karnataka & Ors.* (2002), held that ‘minority’, particularly in relation to Article 30 of the Constitution, is determinable at the state level, not nationally.

This lack of clear definition has led to multiple interpretations and has created confusion. Not all minority religious groups are officially recognised as such. Jewish people, numbering about 4,000 in all nationally, have minority status at the state level in Maharashtra, but are not nationally recognised as minorities.<sup>3</sup> On the other hand, a Public Interest Litigation in the Supreme Court is seeking recognition of Hindus as a religious minority in eight states of India where they are in the numerical minority.<sup>4</sup> This matter has been referred by the court to the National Commission for Minorities (NCM) for examination. Separately, The NCM chairman has been reported in the press as having favoured Kashmiri Pandits, a religious minority in Jammu & Kashmir, by giving them minority status.<sup>5</sup>

At the same time, groups that are traditionally sects of Hindu religion have also been demanding and obtaining separate minority status. Jains gained recognition as a separate minority group at the national level in 2014. Recently, Lingayats in Karnataka state have been making similar

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3. ‘For India’s Jewish Community, Wait for Minority Status Continues’. The Wire. 28 July 2017 <https://thewire.in/162251/for-jewish-community-in-india-wait-for-minority-status-continues/>

4. ‘SC declines plea to declare Hindus as minority in eight states’. Time of India. 10 November 2017 <https://timesofindia.indiatimes.com/india/sc-declines-plea-to-declare-hindus-as-minority-in-eight-states/articleshow/61589757.cms>

5. ‘Kashmiri Pandits should get Minority community Status, says NCM Chairman, Gairul Hasan Rizvi.’ First Post. 13 June 2017. <http://www.firstpost.com/india/kashmiri-pandits-should-get-minority-community-status-says-ncm-chairman-gairul-hasan-rizvi-3594687.html>

demands, claiming that if Buddhists, Sikhs and Jains can be recognised as separate communities, Lingayats should be too.<sup>6</sup>

Notably, India's Constitution also does not define the term Hindu, the majority religious grouping, but it does allude to a definition. Article 25 on freedom of conscience et al (Explanation II, sub clause (b) of clause (2) regards throwing open Hindu religious institutions to all classes and sections of Hindus<sup>7</sup>) deems that 'reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion...'.<sup>8</sup> The Constitution also defines to whom 'Hindu Law' applies. For example, the Hindu Marriage Act of 1955, in Section 2, stipulates that the act applies to:

- (a) any person who is a Hindu by religion in any of its forms and developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj;
- (b) any person who is a Buddhist, Jain or Sikh by religion; and
- (c) any other person domiciled in the territories to which this act extends who is not a Muslim, Christian, Parsi or Jew by religion.<sup>9</sup>

There are other groups in India which are not recognised as minorities under Indian law, but qualify as such based on international jurisprudence, as defined by both the UN Minorities Declaration (1992) and the UN Indigenous Peoples Declaration (2007). These are the groups known under Indian law as Scheduled Castes (also known as Dalits, meaning 'the broken

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- 6. '30 seers demand minority religion status for Lingayat community'. The Hindu, 11 August 2017. [www.thehindu.com/news/national/karnataka/30-seers-demand-minority-religion-status-for-lingayat-community/article19467734.ece](http://www.thehindu.com/news/national/karnataka/30-seers-demand-minority-religion-status-for-lingayat-community/article19467734.ece)
  - 7. This Constitutional provision is remarkable, as it connotes that even as a multi-faith state, India seems to be concerned about the social welfare of only one religion (Hinduism) and its religious institutions.
  - 8. This provision, in a similar way to other 'Hindu law', including the Hindu Succession Act (1956), Hindu Marriage Act (1955), Hindu Adoptions and Maintenance Act (1956), and Hindu Minority and Guardianship Act (1956), by its grouping of Buddhism, Sikhism and Jainism with Hinduism is viewed as forcing legal assimilation of these minority religions into Hinduism, and thus as discriminatory.
  - 9. This last also implies that Hindu is the residual category – anyone not Muslim, Christian, Parsi or Jew, is Hindu.
  - 10. These categories find mention in the Constitution in Article 15, providing for reservation in educational institutions for socially and educationally backward classes; Article 16, providing for reservation in government jobs for any backward class not adequately represented and for weaker sections (Article 46, mandating the promotion of educational and economic interests, and protection from social injustice and exploitation).

people’); Scheduled Tribes (Adivasis, the ‘original inhabitants’) and Backward Classes.<sup>10</sup> Scheduled Castes, Scheduled Tribes and Backward Classes are not minorities within the meaning of Articles 29 or 30.

The focus of our report is religious minorities, which together make up over 19% of India’s population (2011 census). These, officially recognised nationally, are Muslims, Christians, Buddhist, Sikhs, Parsis and Jains. We take a special interest in intersectionality, whereby some religious minorities are also linguistic minorities, ethnic minorities, or from indigenous or Dalit communities. Women and girls among these minorities bear a large burden of the disadvantages experienced on the whole (see Table 1). We have a special interest in the condition of these minorities within religious minorities – caste and gender, particularly.

**Table 1. India’s religious minorities**

	Muslim	Christian	Sikh	Buddhist	Jain	Zoara- strian
Population	172,245,158	27,819,588	20,833,116	8,442,972	4,451,753	
% of all-India	14.23	2.30	1.72	0.70	0.37	n/a

Source: 2011 Census.

## How do minorities perform on socio-economic rights?

While assessing how socio-economic rights have been provided, we will first look at outcomes for religious minorities in terms of key indicators of development and/or lack thereof: poverty, employment, health and nutrition, and education, among others. This will help us understand how equality works for minorities at the impact level.

### The Data Challenge

The first barrier to this pursuit is statistical – standardised data, disaggregated by religious group for the range of socio-economic indicators, is not available in India. The government usually does not share census data (headcount) for religion in a transparent manner.<sup>11</sup> For example, the

11. ‘Why governments are afraid of statistical data’. Live Mint. Himanshu. 22 July 2015. <https://www.livemint.com/Opinion/LqJvVX3Q94H3b6Gapkv1e1/Why-governments-are-afraid-of-statistical-data.html>

2011 data on religion was released only in late 2015, and did not include cross-tabulated data correlating religion and socio-economic indicators.<sup>12</sup>

In the place of standardised disaggregated data, we have survey reports, mostly on outcome indicators. These are the National Sample Survey Organisation (NSSO) 61st round consumer expenditure data (2004–05); the NSSO 68th round data (2011–12) examining employment and unemployment; and the National Family Health Survey (NFHS). These datasets will be the basis of much of our discussions and our argument. We also use socio-economic surveys of Minority Concentrated Districts (MCDs) by the Indian Council of Social Science Research (ICSSR) (2008). Besides these, some states have commissioned specific minority-focused studies, a good example being the survey report on the socio-economic status of Muslims in Bihar, commissioned by the Bihar Minorities Commission (2002). We make use of studies such as these, where helpful.

Data on efforts by the government varies. There is some public policy data, mostly at an all-India level, documenting efforts mostly by the national government, such as the Kundu Committee report (Government of India 2014), although the Sachar Committee report (Government of India 2006) provided many state-level breakdowns too, as well as case studies and research reports. Most of these reports, as well as the data they use, are also not up to date. Data on efforts at providing for minorities, especially policies and programmes, and financials – budget allocation, releases and spending – are fragmented and out of date. These are very scarce at state level, where much of the welfare provisioning takes place. This was a clear challenge for this report.

## **Poverty**

Poverty indices for different religious groups (what percentage of the population of the group lives below the official poverty line) show variations for rural and urban areas.

Table 2 shows that, overall, poverty incidence was 28.29 in rural areas and 25.62 in urban. Poverty incidence among specific religious groups shows much variation. In rural areas, it was highest amongst Buddhists. It was also high among Zoroastrians and Muslims. In urban areas, it was the

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12. 'The dumbing down of data'. Kumar, Vikas. The Hoot. 16 September 2015. <http://www.thehoot.org/research/media-monitoring/the-dumbing-down-of-data-8917>

**Table 2. Poverty incidences across religious communities**

Religious groups	Rural	Urban
Buddhist	40.59	28.62
Christian	16.21	12.47
Hindu	28.90	23.35
Jain	2.59	2.57
Muslim	29.26	41.38
Other	36.02	22.91
Sikh	5.00	6.08
Zoroastrian	35.42	10.74
All groups	28.29	25.62

Source: Thorat (2013: 16) based on NSSO Consumer Expenditure (2004-05).

highest among Muslims by a wide margin, compared to the next group – Buddhists. Overall, Hindus, the dominant group in the country, do much better than many of the minorities on poverty incidences.<sup>13</sup>

Another way to look at the poverty trend is to see the share of religion in the overall population of poor people (Table 3). All minority groups did poorly on this count, being in higher number among the poor than their population would warrant. However, the figure that stands out is the disproportionately high share of Muslims among the poor in urban areas. This marginalisation of Muslims overall, and specifically in urban areas, is a running theme in our study of poverty trends in the country.<sup>14</sup>

13. According to the Sachar Committee report, poverty among Muslims in 2004–05 stood at 31%, just under that for SCs/STs (at 35%). This was more pronounced in urban areas, where nearly half of all Muslims (44%) counted amongst the poorest, compared to the national average of 29%. In rural areas too, Muslims lagged behind the national average poverty ratio – 33%, against 28% overall. The significantly high urban poverty among Muslims is reported also by the India Human Development Report (HDR), using NSS 2007–08 data, at 23%, compared to 13% for Hindus as a whole. (Government of India 2011: 4).

14. Other indicators of poverty show similar trends. Mean per capita consumption expenditure (MPCE), another measure of economic well-being, was low for Muslims and Buddhists. Buddhists had the lowest MPCE in rural areas at Rs 506.26 (against the national average of Rs 558.71) with Muslims not far above; in urban areas, Muslims did significantly worse than other groups at Rs 776.50 (against the national average of Rs 1,052.36) (Thorat 2013: 19).

**Table 3. Share of the poor (in all-India poor)**

Religious groups	Rural		Urban	
	Population (2001 Census)	The Poor (NSSO, 2004-05)	Population (2001 census)	The Poor (NSSO, 2004-05)
Buddhist	0.77	0.89	0.66	1.07
Christian	1.14	2.81	2.14	2.86
Hindu	85.52	79.99	82.33	75.60
Jain	0.01	1.10	0.14	1.12
Muslim	11.78	12.93	11.96	17.26
Other	0.43	0.09	0.81	0.22
Sikh	0.34	2.12	1.90	1.79
Zoroastrian	0.01	0.07	NA	NA

Source: Thorat (2013: 16).

Research can tell us that much of the problem stems from poor access for minorities such as Muslims and Buddhists to productive livelihood opportunities. The relative deprivation of Muslims and Buddhists was evident in their ownership of assets as well – the access index of asset ownership across social groups was the lowest for SCs and across religious communities for Muslims in 2002–03 (Government of India 2011: 6)

The picture that emerges is of minority groups doing worse than the majority community, as well as vast differences between minority groups as well, with Muslims and (neo) Buddhists (officially categorised mostly as SCs) worse off than others. The Sachar Committee, tasked with examining deprivation among the country’s Muslims, found that Muslims in Uttar Pradesh, Bihar, Assam and West Bengal constituted the poorest sections of India’s population, along with SCs and STs. These were also the states where the most Muslims lived. Their report also found that poverty among Muslims in 2004-05 stood at 31%, just under that of SCs/STs (at 35%). This was more pronounced in urban areas, where nearly half of all Muslims (44%) were counted amongst the poorest, compared to the national average poverty ratio of 29%, meaning the percentage of the national urban population that are below the poverty line. Muslims also lagged behind the national average poverty ratio in rural areas: 33% of Muslims in rural areas were below poverty line compared to only 28 % of the national population in rural areas. Other reports like the India Human Development Report show similar trends (Government of India 2011: 4): the India-HDR, using

**Table 4. Poverty levels of Dalits among religious groups**

	Rural	Urban
Buddhists	45.9	28.9
Christians	30.1	32.3
Hindus	37.7	40.9
Muslims	39.6	46.8
Sikhs	7.6	24.8
All Dalits	36.8	39.8

Source: Deshpande (2008: 28, 29), based on NSSO (2004-05).

NSS 2007-08 data, found significantly high urban poverty among Muslims – 23%, compared to 13% for Hindus.

Notably, it is Dalits who make up the bulk of the poor within each religious group. Table 4 confirms that poverty trends for religious groups as a whole are reflected in poverty trends for the Dalits among them. This applies as much to Muslims and Christians as it does to Hindus, Sikhs and Buddhists. Even so, communities within Muslim and Christian religious groups with origins similar to Hindu Dalits – the poorest of the poor – are not categorised as Scheduled Caste: Article 341 (3) of the Constitution prevents non-Hindus (interpreted in Indian jurisprudence as those following ‘non-indigenous’ faiths – Islam, Christianity, Judaism) from being conferred Scheduled Caste status, thus depriving them of a range of affirmative action policies and priority coverage under anti-poverty schemes. This failure of the state is one of the clearest examples of discrimination in law against sections of religious minorities.

## Employment

The workforce participation rate (WPR) measures the population that are participating in the national workforce across the different categories. Among the major religious groups, WPR in 2004–05 (based on Employment/Unemployment Survey, NSSO 61st round, 2004-05) was the highest among Zoroastrians in urban areas and among Buddhists in rural areas. The WPR of Hindus, Christians and Sikhs was comparable, ranging from 34 to 37% in urban areas, but was lower for Muslims, at close to 32% in both urban and rural areas (Thorat 2013: 24). As Arjun Sengupta’s report on workers in the unorganised sector shows, most Muslims in the workforce are in the unorganised sector (Government of India 2007a). Organised sector participation, again based on NSSO 61st round survey (both in the

public and private sectors) was lowest for Muslims, out of all religious groups.

In the public sector, according to data collected by the Sachar Committee (Government of India 2006), Muslims represent only 4.9% of all employees (in central and state governments). Their representation in state public sector undertakings (PSU) was 10.8%, only slightly better than in central PSUs – 3.3% (Government of India 2006: 165). Overall public sector employment data showed better representation of Muslims at the lower rungs than at higher managerial levels; in university jobs, especially non-teaching; and in clerical positions at the postal department and the railways.

## **Health and Nutrition**

We turn now to look at the health and nutritional status of marginalised sections, particularly children and women, across religious groups. When it comes to children's health, we take two measures as evidence – nutritional status and level of immunisation. The health of pregnant women is measured by the place of delivery. Data confirms that while it is true that overall health indicators (outcome – IMR, U5MR, MMR) are improving, and that over time these indicators for marginalised groups like SCs/STs and Muslims are converging with the national average (Government of India 2011: 8); process indicators such as the immunisation rate, institutional deliveries and contraception prevalence rates are less robust, especially when it comes to excluded groups. When it comes to input indicators (public investment in health, as well as availability of health facilities and human resources, access to sanitation, safe drinking water and the like), according to NHFS III data (2005-06), Muslims and other marginalised groups face the most problems. STs and Muslims had the highest total fertility rate (TFR); only one-third of Muslim and SC women had institutional deliveries; only around 50% of Muslim, SC and ST women received three or more antenatal care (ANC) visits (Government of India 2011: 10).

Table 5 provides a snapshot of child immunisation status across religious groups. It is clear that access for Muslims to essential services that potentially impact health well-being is limited, with particularly poor rates for *Bacillus Calmette–Guérin* (BCG), which targets tuberculosis, and the combined diphtheria, pertussis (whooping cough), and tetanus vaccine (DPT).

Similarly, the percent distribution of live births by place of delivery and percentage delivered in a health facility (Table 6) is a good measure of ac-

**Table 5. Child immunization across religions**

Religious Groups	BCG	DPT			Measles	All basic vaccinations	No vaccinations	% with a vaccination card seen
		1	2	3				
Hindu	79.6	77.5	67.9	56.4	60.0	44.4	4.4	37.4
Muslim	69.7	66.9	58.3	47.8	49.6	36.3	7.3	36.4
Christian	82.1	81.6	76.3	65.1	68.0	56.3	9.4	44.0
Sikh	90.4	88.6	86.2	76.9	80.2	67.3	6.6	46.0
Buddhist	98.5	94.1	75.6	58.0	96.0	50.9	0.7	39.1
Others	69.3	75.3	53.8	42.3	41.4	27.2	7.9	25.8

Source: Thorat (2013:39), based on NFHS – III.

cess (and awareness) among communities to health facilities and good health practices. Here too, the statistics were bad for Muslims, with only 33% live births in a health facility as compared to 39% for Hindus and much higher figures for other groups. (NFHS III, 2005-06, data)

Finally, malnutrition is an indicator of chronic hunger, which is critically linked to people's health status. As we know, India fares badly on this count. The incidences of children suffering from anaemia and stunting, and female malnutrition were above the national average among Muslims, particularly in Uttar Pradesh, Bihar, and other states with a high concentration of Muslims. While female malnutrition has been reducing over time at the national level, it is increasing for Muslims (data between 1998-99 and 2005-06) (Government of India 2011: 8). Table 8 shows the status of child malnutrition across religious groups, providing data on the percentage of children under five years old classified as malnourished according to two anthropometric indices of nutritional status: height-for-age and weight-for-age. Minority groups, particularly Muslims and Buddhists, do particularly poorly across the two measures.

## **Education**

Poverty and education have a well-established correlation. To find out the relative performance of religious groups on this count we take three measures – literacy rate, school attendance and education level. As is clear (Table 8, based on 2001 census), there were wide variations across religious groups on these counts. Jains and Christians had the highest literacy rates, much higher than Hindus as a whole. Again, Muslims ended up at the bottom.

The variances in school attendance were similar (Table 9) with just over 42% Muslim boys and 37.52% Muslim girls between 6 and 14 years old attending school, according to the NSSO survey (2004-05). Jains and Christians were in the lead here too, ahead of the majority Hindus.

According to Census 2001, Muslims were the least literate among all religious communities. An NSSO survey (2007-08) further confirmed that a high proportion of Muslims are illiterate. This proportion was on par with that of SCs/STs and higher than that of OBCs. Muslim women were amongst the most illiterate sections of society (47.3% illiterate), comparable to SC/ST women (53.2%). A substantial proportion of Muslims – 18% male and 15.4% female – had attained only primary education. Meanwhile

**Table 6. Place of delivery**

	Public sector	NGO	Private	Own home	Parents	Other	In a health facility
Hindus	18.4	0.5	20.3	50.9	9.3	0.4	39.1
Muslims	15.4	0.3	17.3	56.7	9.6	0.5	33.0
Christians	23.6	0.9	28.9	42.0	3.8	0.7	53.4
Sikhs	15.1	1.2	42.0	32.3	9.2	0.1	58.3
Buddhists	37.2	0.2	21.3	23.4	17.2	0.6	58.8
Jains	30.9	2.6	59.6	4.1	2.8	0	93.1

Source: Thorat (2013: 33), based on NFHS –III.

**Table 7. Child nutrition levels across religions**

Religious group	Height-for-age-status		Weight-for-age-status	
	Chronically malnourished	Severely malnourished	Chronically malnourished	Severely malnourished
Hindus	23.4	48.0	16.1	43.2
Muslims	26.2	50.3	15.6	41.8
Christians	17.9	39.0	8.7	29.7
Sikhs	13.4	29.8	7.8	22.0
Buddhists	23.2	56.1	14.7	39.2
Jains	5.9	31.2	6.6	24.0
Others	34.0	58.5	35.4	62.7

Source: Thorat, (2013: 41), based on NFHS –III (2005-06).

**Table 8. Literacy rates**

Religious groups	Person	Male	Female
Hindus	54.92	64.22	44.92
Muslims	48.05	54.99	40.63
Christians	69.45	72.76	66.17
Sikhs	60.56	65.03	55.56
Buddhists	62.16	71.05	52.83
Jains	84.09	86.67	81.35
Others	38.57	49.78	27.27
All Religions	54.51	63.24	45.15

Source: Thorat, (2013: 3–4), based on Census of India 2001

at the higher levels — upper primary and above — the proportion of Muslim children was significantly lower than children from other groups, including SCs. Most seriously, the incidence of ‘out-of-school’ children was the highest among Muslims, out of all social groups (Fazal 2013a: 6).

The main concern with regard to education for Muslims remains low retention rates, which lead to dropouts and poor transition as children progress through the school system. A government fact-finding report, using data from 2011–12, found that Muslim children constituted 16.6% of the total national enrolment in Grade I, but that this declined to 8.4% at Grade VIII (Government of India 2013: 11), leading the report to conclude, ‘...transition to upper primary stage is one of the major bottlenecks in the education of Muslim children.’ (ibid: 14). Table 11 confirms this. The other concern is girls’ education, with only a minuscule proportion of Muslim girls having completed secondary and graduate education (ibid: 5).

The data shows a varied picture of education among India’s religious minorities. While some are doing better than the national average, Muslims especially are lagging behind on almost all fronts. Apart from low literacy and access to higher education, only 0.44% have technical or non-technical diplomas, only 4.44% were educated to the higher secondary level and 6.33% to the matriculation level. The highest number of literate people in the Muslim community are educated to the primary level (16.08%), followed by 14.32% at below primary level and 9.73% at the middle school level (Times of India, 2016). These numbers are comparable to educational figures for Scheduled Castes and Scheduled Tribes.

Estimates by the United Nations suggest that 17.8 million children — including 34% of children with disabilities — do not attend school. Dalit, Adivasi and Muslim children, and children from female-headed households are particularly vulnerable to educational exclusion (United Nations 2017). In 2008, the UN Committee on Economic Social Cultural Rights (CESCR) expressed concern that the wide disparity in enrolment and drop-out rates in primary schools continued to persist, particularly affecting girls and children from Muslim, SC and ST communities. CESCR urged India to take further initiatives to eliminate child marriage and child labour, especially among school-aged children, and to target disadvantaged and marginalized groups in particular (ibid).

According to the HDR (Government of India 2011), number of out-of-school children is related to poverty. The report found that financial con-

**Table 9. School attendance (6–14 years old)**

Religious group	Male	Female
Jain	54.68	57.20
Christian	52.22	47.14
Buddhist	49.82	46.43
Sikh	47.83	44.34
Hindu	46.76	39.74
Other	43.10	39.30
Muslim	42.27	37.52
Zoroastrian	41.55	34.31

Source: Thorat, (2013: 7–8) based on NSSO, 61st round, 2004–05.

**Table 10. : Education levels (Males, 7 years old and above)**

	Illiterate	Literate without formal edu.	Literate but below primary	Primary	Middle	Secondary and above	Graduate & above
Hindus	26.66	36.75	18.91	9.23	4.81	0.52	3.12
Muslims	30.12	43.19	16.34	6.13	2.49	0.24	1.49
Christians	15.26	36.26	25.08	11.85	5.72	2.28	3.54
Sikhs	27.10	35.43	14.48	13.54	6.19	0.74	2.51
Jains	11.63	25.72	20.58	24.07	8.53	0.34	9.13
Buddhists	16.60	38.07	24.19	11.73	6.33	0.25	2.82
Zoroastrians	17.28	27.57	0	27.57	0	0	27.57

Source: Thorat, (2013: 13), based on NSSO (2004-05).

**The situation seems to have endured (Table 11).**

**Table 11. : Education levels (Males, 7 years old and above)**

	Illiterate	Graduates
Hindus	36.4	5.98
Muslims	42.72	2.75
Christians	25.66	8.84
Sikhs	32.49	6.39
Jains	14.00	25.65
Buddhists	28.17	6.17
Parsis	–	–
National	–	8.15

Source: *The Hindu* (2016), based on Census 2011.

straints are the main barrier to continuation of education, forcing children into child labour. In 2007-8 this was higher among Muslims (3%) than the national average (2.4%). Involvement of Muslims in traditional occupations (weaving carpets and working with glass, locks and brassware, among other things), which attract child labour due to the old technology they use, has been a factor here. Overall, the literacy problem among Muslims is the worst in Uttar Pradesh, Bihar and West Bengal (Government of India 2011: 229).

## **Why is the Outcome for Minorities Poor – Especially for Muslims?**

Muslims, the largest minority in India, who make up 14.2 % of India's 1.25 billion population (2011 census), come out pretty much at the bottom of most socio-economic indices, even a decade after the high-level government probe (Prime Minister's High Level Committee on Social, Economic and Educational status of Muslim Community in India, known popularly as the Sachar committee – Government of India, 2006) into their historical disadvantages led to a clutch of policy actions. The condition seems to endure.<sup>15</sup>

The Sachar report, exploring the situation of Muslims, concluded that structural factors – such as economic circumstances of households, educational status of parents, and local levels of development – play a major role in inhibiting parents' willingness to educate their children (Government of India 2006: 58). Regarding poor representation in public sector employment, the Sachar report noted the general perception among Muslims that discrimination against them – in procedures (such as unhelpful eligibility criteria), practices (unrepresentative selection boards), and a general sense of discrimination in selection processes – is a result of an absence of Muslims in positions of authority to raise their voice for them. This, the report noted, hints at a lack of any concerted focus by governments for Muslim development, as well as prejudice against them, leading to the denial of Muslims' rightful share of services, even in grade IV positions. These are positions where high qualifications are not required (ibid: 20-21).

Access for Muslims to public services and development programmes, especially the many beneficiary-oriented schemes, and those that offer

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15. 'Untouched by economic growth: One in 4 beggars in India a Muslim, reveals census', Zia Haq. 30 July 2016. <https://www.hindustantimes.com/india-news/untouched-by-economic-growth-destitution-illiteracy-hurt-india-s-muslims/story-Lz5HhyiffkPxZ4pu5gT85N.html>

Box 1: Religious groups and socio-economic deprivation

Group	
<b>Buddhist</b>	<p>The poverty level in this community is the highest among the four notified minority communities (NMCs) (30%). Almost 72% of Buddhists do not possess any operational landholdings. There is large migration to urban areas in the casual labour market. The rate of urbanisation among the community is comparatively high (38%). Further, the work participation rate is highest among Buddhist women (41%). Since most of them are entering into the casual labour market, their situation remains vulnerable. The educational level of this community is the poorest. Only 6% of Buddhists are graduates. Poor educational levels prevent them from accessing regular employment.</p> <p>87% of the 8.4 million Buddhists in India are converts — mostly they are Dalits. These converts have better literacy rates than their Hindu Dalit counterparts. Furthermore, female literacy among Buddhists, at 74.04%, is higher than the national average of female literacy 64.63%.<sup>16</sup></p>
<b>Christian</b>	<p>Christians are the largest NMC other than Muslims. 33.1% of the total Christian population is made up of general population (upper caste), 32.8% Scheduled Tribes, and 25.5% people from Other Backward Classes. Only 8.3% of Christians are from Scheduled Caste groups. Poverty level among Christians is relatively low (11%), and landless population is 55%, which is low compared to other communities.</p> <p>The rate of urbanisation among Christians is 34%. Christian literacy and educational levels are relatively higher than in other communities (except for Parsis). The male-female gap in literacy is also lower. This enables them to enter into regular employment in higher proportions. Even the rate of self-employment among Christians is high. The rate of casual employment among Christians is 23%, which is lower than the national average but higher than that of Sikhs.</p>
<b>Sikh</b>	<p>Sikhs record a relatively low poverty level (5%). The community is constituted by 46.4% general population, 31.1% people from Scheduled Castes, and 21.8% people from Other Backward Classes. It has the largest proportion of self-employed workers (63.65%).</p> <p>The educational level among Sikh women is higher than among the men. Nearly 16% of Sikh women are graduates, which is the highest among all the communities.</p>
<b>Parsi</b>	<p>Parsi community is predominantly urban-based, with only a very small proportion residing in rural areas. The community has achieved universal literacy and higher education is also pursued extensively by both men and women. Work participation rates are also generally higher in urban areas, not only for men but for Parsi women too (33% for Parsis overall). Given the higher educational qualifications, it is to be expected that the urban regular workforce among the community is the highest (59%) of all the four NMCs.</p>

Source: Rustago et al (2008).

16. 'Conversion To Buddhism Has Brought Literacy, Gender Equality And Well-Being To Dalits', 1 July 2017. <http://archive.indiaspend.com/cover-story/conversion-to-buddhism-has-brought-literacy-gender-equality-and-well-being-to-dalits-18224>.

direct and sizeable benefits to the poor, was reported as being poor (ibid: 178). These include housing, livelihood and employment programmes, in rural as well as urban areas; health and nutrition schemes; social security schemes, such as pensions; maternity and other benefits etc. The case of access to civic amenities and infrastructure is similar. Muslims are being increasingly ghettoised and forced into slums, where the provision of services is extremely poor – missing health centres, Anganwadis, and schools; ill-kept roads; lack of piped water and sanitation; poor electricity coverage; poor availability of banks for credit provision. Staff shortages in these places, or at least staff absence, combined with negative attitudes among staff posted there, result in the overall poor working of those services for the inhabitants of the slums. There is also little effort to track and measure the quality of services, resulting in poor outcomes.

The perception among Muslims about poor access and uptake is that poor awareness about these programmes is to blame, as well as widespread discrimination in the provision of services; such as when Muslims are hindered, rather than facilitated, in getting their caste certificates to avail scheme benefits (Government of India 2006: 23-24). People also attributed the poor reach of the services for Muslims to the low participation of Muslims in the political process, especially at the local level, in panchayats and block samitis (ibid: 188).

Discrimination emerges in many of these accounts as the principal explanatory factor. According to Amitabh Kundu, an academic who has studied minority development efforts in India closely, these failures point to discrimination. Another minority rights observer, Rowena Robinson, notes, ‘these facts regarding education, health, physical and financial infrastructure and health facilities indicate a distinct and disturbing bias in public service provisioning in Muslim concentration areas’ (Robinson 2008).

This conclusion is also confirmed by poll data. A Gallup survey in 2010-2011<sup>17</sup> revealed that a third (32%) of the country’s Muslims were ‘suffering’, compared to 23% of Hindus and 15% of the rest of the religious sects<sup>18</sup>

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17. Based on nationally representative studies (relying on face to face interviews) conducted in 2010 and 2011 with a total of 9,518 Indians, including 1,197 Muslim Indians.

18. Gallup classifies respondents as ‘thriving’, ‘struggling’, or ‘suffering’ according to how they rate their current and future lives on a ladder scale with steps numbered from 0 to 10, based on the Cantril Self-Anchoring Striving Scale. See: <https://news.gallup.com/poll/157079/muslims-india-confident-democracy-despite-economic-educational-challenges.aspx>

(Gallup, 2012). The survey revealed that this was down to their poor economic and educational conditions. Muslims were found to be less likely (51%) than Hindus (63%) and others (66%) to be satisfied with their standard of living. It is revealing that although Muslims were as likely as other groups to show confidence in tenets of democracy, freedoms and equality, they expressed less confidence in some of the key national institutions, particularly, the government (only 49% of Muslims said they were confident, to 60% of Hindus) and — notably — the judiciary (68%, to 75% for Hindus and 91% the rest), validating the perceived discrimination theory.

The Sachar report used the framework of identity, security and equity, to explain the multidimensional nature of Muslim exclusion. In essence, it showed that problems faced by Muslims related to a combination of identity, security and equity related concerns — and that these three overlap and feed into each other in myriad ways, to create the lived experiences of exclusion faced by Muslim communities (Government of India 2006: 11). To take an example, the Muslim *identity* of Muslim youth makes it increasingly difficult for them to find a room to rent in mixed habitation settlements or to land a job in a private company. Frequent and periodic targeted violence against Muslims and discriminatory actions by the police contribute to poor *security*, which places the youth, in this case, in a constant state of siege, resulting in poor mobility and a lack of ability to access education opportunities, especially by girls (ibid: 14). Exclusion, of course, most directly impacts what are called *equity* concerns. In the case of education, for example, school infrastructure is poor in Muslim centred areas, and the quality of education is poor too, including insensitive text books, low perceived benefits from education, and poverty preventing children from fully utilising available opportunities (ibid: 15).

## **Providing for Minorities: Question of *Commitment***

In the following section, we explore India's commitment to providing for its minorities. This is gleaned from provisions in the Constitution, case laws and judgements, and ratification of international treaties. First, we look at overall equality and anti-discrimination provisions in the Constitution, and how courts have interpreted them. This is followed by specific commitments on individual thematic areas.

## **Constitutional Guarantees**

Socio-economic rights in the Indian Constitution are mostly incorporated as directive principles of state policy. These are not directly enforceable, unlike civil and political rights, but are intended merely to serve as guidance for government policy. However, over time the Indian Supreme Court has incrementally made many of these directive principles justiciable by reading them into the right to life and personal liberty under Article 21 of the Constitution. Specifically, it has helped to protect certain economic and social rights, including the right to adequate nutrition, clothing and shelter, the right to medical facilities, the right to earn a livelihood, and environmental rights.

There is an impressive array of socio-economic rights written into law in India. These include:

- The National Food Security Act, 2013, which provides subsidised food grains to almost two thirds of India's 1.2 billion population. The act includes flagship programmes such as the Public Distribution System (PDS), for provision of subsidised food grain to the poor; the Mid-Day Meal programme (MDM), for free school meals; Integrated Child Development Services (ICDS), a package of interventions for health and nutrition support to mothers and infants; and pensions programmes for the elderly and infirm. Each one of these programmes serves the largest numbers of beneficiaries in its category, anywhere in the world;
- The Right to Education Act, 2009, which guarantees free and compulsory education for children between 6 and 14 years old;
- The Unorganised Workers' Social Security Act, 2008, which provides for the social security and welfare of unorganised workers (meaning home-based workers, self-employed workers or daily-wage workers);
- The Maintenance and Welfare of Parents and Senior Citizens Act, 2007;
- The National Rural Employment Guarantee Act, 2005, a labour law and social security measure that aims to guarantee the 'right to work'. It aims to enhance livelihood security in rural areas by providing at least 100 days of wage employment in a financial year to every household whose adult members volunteer to do unskilled manual work;
- The Child and Adolescent Labour (Prohibition and Regulation) Act of 1986 (2016), which prohibits the employment of a child (below 14 years) in any employment, including as domestic help, and of adolescents (below 18 years) in hazardous occupations and processes;

- The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; and
- The Minimum Wages Act 1948, which sets the minimum wages that must be paid to skilled and unskilled labourers.

These laws are expected to apply universally to all citizens, including minorities, although there may be specific eligibility qualifications under specific laws. Since data on the uptake of these laws and their impact is not disaggregated by religion, however, it is difficult to know how these laws have worked in practice for minorities. Most such laws and related programmes do report uptake and impact by caste category and gender, but none by religious affiliation.

The Indian Constitution also has strong provisions against discrimination and to eliminate inequality. These include provisions for equality (Article 14, and Article 16 (1) [2]) and non-discrimination (Article 15[1] [2]). The Constitution also makes it the state's duty to eliminate inequalities (Article 38 [2]) and promote the educational and economic interests of weaker sections (Article 46). More concretely, the law authorises the state to make special provisions for the economic advancement of socially and educationally backward classes (Article 15 [4]) and to make reservations in appointments for backward sections (Article 16 [4]).

## **International Obligations**

India has adopted the United Nations Minority Declaration, 1992. This includes, on the specific subject of socio-economic rights, the following provisions:

“Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, *without any discrimination*” – Article 3(1);

“*No disadvantage* shall result for any person belonging to a minority....” – Article 3(2); and

“States should consider appropriate measures so that persons belonging to minorities *may participate fully* in the economic progress and development in their country” – Article 4(5).

Additionally, India is signatory to most international human rights treaties (Box 2). Equality and non-discrimination provisions are at the core of each of these international instruments.

Even so, equality provisions in the Constitution as well as India's having ratified international treaties have failed to prevent the socio-economic marginalisation of sections of minorities. As we saw in the catalogue of outcome indicators, not all groups fare equally. Muslims in particular do very poorly. Rural Buddhists and sections of Sikhs (both predominantly SCs), Christians (many STs), and Muslims, particularly urban based, form the bulk of these marginalised minority groups.

## **India's Lack of Non-discrimination Law**

Part of the problem lies in how Constitutional guarantees have been operationalised into domestic law. The subject of non-discrimination is a good example of the gap between Constitutional guarantees and extant law, especially as it impacts minorities and other vulnerable groups. Articles 15 (1) and 16 (2) promise non-discrimination in employment, but this has not resulted in legislative action; furthermore, the guarantee is not extended to private and non-state spheres. Atrocities against SCs and STs are the exception.<sup>19</sup> Article 17 prohibits 'untouchability'. Article 46 enjoins upon the state *to protect SCs and STs (and other vulnerable sections of society) from social injustice and exploitation*. The Protection of Civil Rights Act 1955, operationalises the untouchability prohibition into law, creating offences. The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989, the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Rules 1995, and the Act's amendment in 2015 take this forward, and are the bulwark of the anti-discrimination regime, aimed at safeguarding the rights of SCs and STs. Unfortunately, they do not cover religious minorities, particularly Muslims and Christians, as we will see below.

The UN Commission on Economic Social and Cultural Rights (CESCR), in a recent hearing on India, was deeply concerned that, despite the Constitutional guarantee of non-discrimination as well as the criminal law provisions punishing acts of discrimination, 'widespread and, often, socially accepted discrimination, harassment and/or violence persisted against members of certain disadvantaged and marginalized groups, including women, scheduled castes and tribes, indigenous peoples, the urban poor,

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19. Given the presence of instruments such as the SC ST (Prevention of Atrocities) Act, 2015.

**Box 2: International human rights based treaties ratified by India**

Treaty	Year
Universal Declaration of Human rights, 1948	1948
International Covenant on Economic, Social and Cultural Rights - ICESCR (1966) (especially Article 2(2) on non-discrimination)	1979
International Convention on Elimination of All Forms of Racial Discrimination (ICERD), 1965	1968
Convention on Elimination of All Forms of Discrimination against Women (CEDW), 1979	1993
Convention on the Rights of the Child (CRC), 1989	1992 (acceded)
Optional protocol to CRC, on involvement of children in armed conflicts, 2000	2005
Optional protocol to the CRC on the sale of children, child prostitution and pornography, 2000	2005
Convention on the Rights of Persons with Disabilities (CRPD), 2006	2007
Forced Labour Convention, 1930	1954
Abolition of Forced Labour Convention, 1957 (# 105)	2000
Equal Remuneration Convention, 1951 (# 100)	1958
ILO 111 Discrimination (Employment and Occupation) Convention, 1958	1960
ILO 169 Convention concerning Indigenous and Tribal Peoples 1989	–

Source: NHRC: *A Handbook on International Human Rights Conventions*.

informal sector workers, internally displaced persons, *religious minorities such as the Muslim population*, persons with disabilities and persons living with HIV/AIDS'. (United Nations 2017a)

While noting the significant role played by the Supreme Court of India in interpreting the Constitution with a view to achieving justiciability of economic, social and cultural rights, CESCR recommended that India take the necessary legal measures to give full effect to the International Covenant on Economic Social and Cultural (ICESCR) in domestic law.

CESCR also recommended that India strengthen enforcement of existing legal prohibitions on discrimination and consider enacting comprehensive anti-discrimination legislation, specifically prohibiting discrimination in employment, social security, housing, health care and education. CESCR also urged India to step up efforts to remove obstacles faced by victims of discrimination when seeking redress through the courts (United Nations: 2017).

## **The Negative Discrimination within Positive Discrimination**

Another problem is that religious minorities – particularly Muslims and Christians, deemed ‘non-indigenous faiths’ – have not been extended the benefit of affirmative action contained in policy for ‘reservations’ in jobs and educational institutions, and in access to services and social security benefits. Indeed, discrimination against Muslims and Christians is written in the law, with Dalits within these religious groups denied inclusion under the SC category. A review of the regime of affirmative action, called ‘reservations’ in India, will be instructive.

The Constitutional provision for affirmative action is contained in Article 46, which mandates the state to promote the educational and economic interests of weaker sections of society, in particular SC and STs, and protect them from social injustice and exploitation. Articles 341 and 342 include the list of castes and tribes entitled to such provisions. These are the Scheduled Castes and Scheduled Tribes. As a consequence of this provision, a policy of compensatory discrimination via reserved positions has been implemented both at the national and state levels in the allocation of educational institution places and public service appointments. This accounts for 23 % of all such places. Constitutional (SC) Order, 1950 restricts SC status only to Hindu groups.<sup>21</sup> Muslims and Christians of similar origin have been excluded from the benefit.<sup>22</sup> The 1950 order is widely felt to be inconsistent with Articles 14, 15, 16 and 25 of the Constitution, which guarantee equality of opportunity and freedom of conscience and protect citizens from discrimination by the state on the grounds of religion, caste or creed (Government of India 2006). There is no such restriction to inclusion in the ST list. However, Muslim representation in the ST list is minuscule (according to 1991 Census, 0.25% of total ST population). On the other hand, Christians are widely represented.

The Constitution also defined another group, ‘socially and educationally backward classes’, as worthy of affirmative action, as mentioned in Article 15 (4) and Article 16 (4) of the Constitution, as well as Article 340 (1); the latter empowers the state to appoint a commission to investigate the

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21. Based on the 1936 Imperial (SC) Order that rejected SC status to Christians and Buddhists of similar origin. The 1950 order has been amended twice, in 1956 and 1990, to include Sikhs and neo Buddhists, respectively, within the category.

22. Under the claim, against empirical evidence, that the caste system exists only among Hindus (and other ‘indigenous’ religions – Sikhism, Buddhism and Jainism).

**Box 3: Anti-discrimination and Equality Bill, 2016**

Rohith Vemula's tragic suicide<sup>23</sup> has put the need for anti-discrimination legislation back on the map. India is among the few regimes with a Constitutional commitment to a liberal democracy that nevertheless lack a comprehensive, multi-ground, antidiscrimination legislation. The Bhopal Declaration issued in 2002, seeking to chart a new course for Dalits, welcomed 'winds of change the world over' towards inclusion and diversity and against discrimination. A conversation on the need and shape of an anti-discrimination law began after the Sachar Committee recommended it in 2006. While the UPA government did briefly consider setting up an Equal Opportunity Commission, the idea was quietly buried. Anti-discrimination law remains a key demand of groups representing women; gay, lesbian, and transgender people; and persons living with disability. The policy debate on an anti-discrimination law has been going on for about a decade. It is hoped that the existence of a draft bill will give concrete shape to this conversation and draw attention to details. The Anti-discrimination and Equality Bill, 2016 is one such effort. It is based on extensive conversations with various activists and academics over a period of two years, including at a workshop organised by the Alternative Law Forum in Bangalore in 2014. An earlier version of the draft was discussed at a workshop organised by the Centre for Policy Research, Delhi, in December 2015. It was given its current form by the researchers in the office of Dr. Shashi Tharoor MP.

**Highlights of this bill:**

- The bill creates civil liability for acts of discrimination;
- Discrimination includes direct discrimination, indirect discrimination, harassment, victimisation and aggravated discrimination;
- Aggravated discrimination includes boycott, segregation and discriminatory violence;
- In addition to these general concepts, the Central Equality Commission has the power to issue sector-wise and group-specific guidelines to characterise certain types of acts as one or another form of discrimination;
- The duty to refrain from discrimination applies not only to public authorities and private persons performing a public function but also to public and private employers, landlords, traders and service providers;
- The duty on these persons includes the duty to institute an internal complaints mechanism;
- Everyone has a duty to refrain from aggravated discrimination;
- The protection against discrimination is generally equally available to dominant as well as disadvantaged groups and to majorities as well as minorities: to men as well as women, Hindus as well as Muslims, Brahmins as well as Dalits;
- This equal protection does not affect the validity of affirmative action and diversification measures to benefit disadvantaged groups;
- Public authorities and private persons performing public functions have a diversification duty to progressively increase the participation of substantially excluded disadvantaged groups;
- Public authorities have a duty to give due regard to the need to eliminate discrimination;
- If the internal complaints mechanism fails to deliver, State Equality Commissions have the main responsibility for civil enforcement;
- A permanent and independent Central Equality Commission, acting along with State Equality Commissions, has the responsibility to promote the objectives of the Bill and aid its implementation; and
- Protection orders against aggravated discrimination may be obtained from the Magistrate's court.

Source: Tarunabh Khaitan, Personal communication. (Also the anti-discrimination bill project at <https://sites.google.com/site/tarunabh/Home/discrimination-law>).

23. Rohit Vemula was a Dalit student leader in Hyderabad University, who for his radical politics was hounded by university authorities and right-wing Hindu groups, resulting in his committing suicide on 17 January 2016.

condition of socially and educationally backward classes. A report by the Mandal Commission, which was set up under this provision, was adopted in 1991, seeing the launch of reservations for Other Backward Classes (OBC). The report identified 3743 separate OBC communities, comprising 54.4% of the country's population, and recommended quotas for them in public sector jobs and educational institutions, totalling 27 % of all such positions. Minority religious groups are included in this list – 82 Muslim groups, identified using a mix of caste/occupation and poverty criteria. These include the 'untouchable' *Arzal*<sup>24</sup> along with middle occupation *Ajlaf* groups.<sup>25</sup> The former, akin to Hindu SCs but excluded by law from the SC list, must compete with more advanced OBC groups, and remain the principal losers of the affirmative action regime of the country.

Provinces have an older history of their own affirmative action instruments for backward classes, compared to the centre. There is also great variance in how minority groups have benefited from them. Kerala and Karnataka have – based on their historically more nuanced system of affirmative action – covered all Muslim and Christians within their state OBC lists, as a separate group. Andhra Pradesh and Manipur have carved out separate quotas for Muslims within their OBC quota. In Tamil Nadu, 95 % of Muslims are included within the OBC category. Bihar has created separate OBC and Most Backward Class (MBC) lists, and the majority of Muslim groups have been included in the MBC category. These measures have facilitated the inclusion of most Muslims within the OBC category in these states. Notable exceptions are West Bengal and Assam, where only a minuscule population of Muslims is included, with the overwhelming majority falling in the general category, thus depriving deserving members of the benefits of reservation (Government of India 2006).

Consequent to the Constitutional (SC) Order, 1950, successive governments and courts have refused to extend the affirmative action provisions of the Constitution to religious minorities. A UN report noted, 'Dalit Muslims and Christians from the Scheduled Caste category – suffering equal levels of social and economic exclusion – have been excluded, thus depriving them of the extensive and elaborate regime of compensation' (United Nations:

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24. Constituting groups such as *halalkhors*, *helas*, *lalbegis* or *bhangis* (scavengers), *dhobis* (washermen), *nais* or *hajjams* (barbers), *chiks* (butchers), *faqirs* (beggars) etc, being converts from untouchable/'unclean' occupational castes, akin to Hindu SCs.

25. Constituting *momins* or *julahas* (weavers), *darzi* or *idiris* (tailors), and *rayeens* or *kunjars* (vegetable sellers), being converts from 'clean' occupational castes, and whose Hindu counterparts are included in OBC list.

### **Profile of a vulnerable minority: Stateless in Assam**

Monowara Bewa is a widowed mother of two, who used to work as a cook for a school in Kokrajhar district in lower Assam. She moved to her father's ancestral village in the same district after her husband's demise. Born and raised in Kokrajhar district, India, she has school records up to Class IV with her parents' names. Her father's name is recorded in consecutive voter lists and the 1951 National Register of Citizens (NRC) and consecutive Electoral Registers. Despite all this, Monowara is languishing in a Detention Centre in Kokrajhar, Assam, arrested on the claim that she is an illegal migrant. The lives of her two children stand destroyed, with her own stuck in limbo.

The home of another school cook has seen a similar story.<sup>1</sup> In Assam's Dhুবri district, Jaibun Khatun's life came to a standstill on 30 July 2018 when her son Haidar Ali Khan was not included in the draft National Register of Citizens. On Indian Independence Day, 2017, Haidar swam in what was neck deep water for him to stand beside the Indian flag, his right hand raised in salute. The image of Haidar, his friend Jiarul, and two teachers, went viral on social media; but the mark of deference and patriotism, along with his linkage and legacy data, were not enough to qualify Haidar as an Indian. The rest of his family, including his brother and sister, found their names in the draft.

### **Background to the National Register of Citizens (NRC)**

These are two of the four million people whose names have been excluded from the National Register of Citizens – a government of Assam undertaking. Assam is a state in India's Northeast that lies along the Brahmaputra river valley, to the south of Eastern Himalayas. It shares an international border with Bhutan and Bangladesh. Politically, the state has a tumultuous history of identity-based politics and ethno-nationalism. A part of this was focussed on those considered illegal migrants or infiltrators, along Assam's international borders. The Assam Accord, signed in 1985, which ended a six year long agitation, mandated that foreigners who entered the state post 24 March 1971 would be identified and deported.<sup>2</sup> This date was selected to signal a wave of refugee migration from Bangladesh during its war with Pakistan.<sup>3</sup>

1. 'Assam Boy, In Viral Video Saluting Flag, Not In Citizens' List: Teacher', 16 August 2018. <https://www.ndtv.com/cities/boy-who-saluted-national-flag-in-flood-water-not-in-assam-citizens-list-1901078>
2. 'THE SPECTRE OF CITIZENSHIP: HISTORY & POLITICS OF NRC IN ASSAM' 23 January 2018. <http://raiot.in/the-spectre-of-citizenship-history-politics-of-nrc-in-assam/>
3. 'The citizenry test: Assam NRC explained' 31 July 2018. <https://www.thehindu.com/news/national/other-states/the-citizenry-test-assam-nrc-explained/article24560028.ece>

*Contd...*

2017). This includes protection from hate crime and violence, and discrimination (under the SC ST Prevention of Atrocities Act, 2015); inclusion in reservation schemes in educational institutions and public sector employment; and preferential treatment in access to universal services and social security benefits. As evidence demonstrates (Table 4 above), Dalit (SC) Muslim and Christians are as deprived as Dalit Hindus, Sikhs and Buddhists, and excluding them from accessing benefits designed for uplifting Dalit people is clearly discriminatory.

Various UN mechanisms have highlighted this anomaly:

- The UN Committee on the Elimination of Racial Discrimination (CERD) recommended restoring the eligibility for affirmative action benefits of all members of SC and ST that have converted to another religion;
- The UN Special Rapporteur on Freedom of Religion or Belief recommended in 2009 that SC status be delinked from the individual's religious affiliation (United Nations 2017a);
- The UN Special Rapporteur on Executions noted with concern that the SC ST (Prevention of Atrocities) Act of 1989 had not incorporated Dalit Muslims and Christians into the definition of SC and ST and recommended that the legislation be reviewed to extend the definition; and
- The UN Special Rapporteur on Minority Issues highlighted in 2016 this exclusion of Dalits who had converted or were born and raised within non-Hindu religious communities, such as the Dalit Muslim and Christian communities (United Nations 2017a).

Efforts by Christian and Muslim groups and civil society to correct the anomaly have only seen successive governments drag their feet, providing lame justifications for keeping Muslims and Christians out of the category. A 2004 PIL in the Supreme Court on the subject has yet to result in any judicial outcome. A central minister recently revealed the hostility with which the current Hindu-majoritarian BJP ruled government considers the idea, when he announced that the government was opposed to granting SC category to minority communities (i.e. Muslims and Christians), as that would encourage conversion (from Hinduism to these faiths).<sup>26</sup> It is to be noted that the Indian Constitution guarantees to every citizen freedom of religion, to 'profess, practice and propagate religion' of one's choice (Article 25).

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26. 'SC status to Dalit Muslims, Christians will encourage conversion', Deccan Herald. 15 February 2016. <http://www.deccanherald.com/content/529072/sc-status-dalit-muslims-christians.html>

*... Profile of a vulnerable minority continued ...*

The issue, however, continued to remain contentious and, after prolonged litigations, the Supreme Court ordered an update of the NRC in the state, last updated in 1951. This update would strike off anyone unable to prove their residence in Assam before the March 1971 cut-off date. In parallel, since 1997, the Election Commission had started marking people as D-voters, or 'doubtful' voters. By 31st December 2017, about 244,144 persons had been declared as such.<sup>4</sup> These individuals were then tried by the police.<sup>5</sup> D-Voters and Reference Cases are referred to Foreigners Tribunals (FT), established under the Foreigners (Tribunal) Order, 1964. FT has so far declared 90,206 persons as foreigners. In the case of the rest, proceedings are still underway. 'Declared foreigners' have no voting rights and are denied access to welfare schemes.

Six detention centres in Assam house the declared foreigners. They hold 961 detainees – detained like convicted prisoners, but without any rights, including parole. All detainees suffer indefinite incarceration – no foreign governments accept them. Manowara is in one such detention camp, run in a makeshift fashion inside jail premises.

### **Proving citizenship**

The draft NRC, published on 30 July 2018, deems 4,070,707 persons as ineligible, rendering them potentially stateless if they are unable to prove citizenship during the second chance they have to furnish papers, as part of the claims and objection process –, currently underway. According to a Supreme Court monitored process, definitive proof of citizenship is through providing one of the 15 legacy documents (evidence of the citizenship of a person the applicant claims as her legacy person) and a 'link document', that provides linkage between the applicant and the legacy person.

These documents, however, are difficult to present for migrants and women, among others. Even if they are available, small errors in spellings of names or villages render them useless. In Monowara's case, for example, while she does have the requisite documents, her father's name has been spelt differently in the different documents she possesses – something not uncommon for non-English names transcribed in English. These documents are Monowara's only link with her paternal village and her only way to prove her descent, and so she languishes, separated from her family, due to

4. 'Declared Illegal Citizens, Uncertain Future Lies Ahead For 'D-Voters' in Assam' 31 July 2018. <https://www.news18.com/news/india/declared-illegal-citizens-uncertain-future-lies-ahead-for-d-voters-in-assam-1829169.html>

5. Assam Legislative Assembly Debates, Unstarred Question no. 734. Date: 26-03-2018

*Contd...*

The irony of the government itself undermining the Constitution clearly did not dawn on the minister.

Notably, India has not ratified some operative international instruments for redress of grievances, foreclosing the option for individuals and groups affected by discriminatory laws and practices to access international forums of adjudication. At the same time, national mechanisms for grievance redressal, such as could be provided through the National Commission for Minorities,<sup>27</sup> for example, but also others, have not delivered, especially on issues of socio-economic rights of minorities.

## **Backing Words with Action? The Poor *effort* on Minority Rights**

In this section, we examine ‘efforts’ by the state to deliver on commitments, in order to understand how commitments made are followed through with actions, and how states provide for minorities’ socio-economic development. Here we look at, among other things, policies, programmes, budgets, and structures put in place, to try to understand if they square up, and what weaknesses there might be for delivering on minority commitments, as well as the wider policy space in the country for minority welfare.

### **Programme Performance and Minorities**

We begin with a 2015 study by Misaal on the working of flagship anti-poverty programmes for Muslims, based on a survey of 10,724 families (collected by the National Confederation of Dalit Organisations (NACDOR) as part of a micro-level study) in three poor districts in the northern part of the state of Uttar Pradesh—Badayun, Sharawasti and Mirzapur. The study demonstrated the extremely poor working of many of the flagship anti-poverty programmes for Muslims, at least in the three focus districts. The report concluded:

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27. Established with the following remit: (i) Evaluate the progress of the development of minorities under the Union and States; (ii) Monitor the working of the safeguards provided for minorities in the Constitution, and national and state law; (iii) Make recommendations for the effective implementation of safeguards for the protection of the interests of minorities; (iv) Look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities (v) Also carry out studies and research on discrimination against minorities, and for socio-economic and educational development of minorities; and recommend measures to central and state governments.

*... Profile of a vulnerable minority continued ...*

typographical errors. For Haidar, his mother claims to have submitted the Legacy document, but though his siblings were adjudged Indians, Haidar has been left out, for reasons unknown to the family.

Married women – especially those with limited or no schooling and those married early – have been especially vulnerable to the process, as they do not have documents linking them to their paternal house. In their husband's villages they do not have identification documents such as marriage certificates or voter IDs, with many marriages not being registered. Many of them submitted Gram Panchayat certificates as proof of residence. The Supreme Court in a judgement on this asked for rigorous verification of these certificates for 'original inhabitants' of Assam. This has led to complaints from amongst Bengali-speaking applicants that they are being discriminated against. Widows like Monowara who return to their paternal village also continue facing problems with their citizenship claims rejected.

Many stories of those left out of the draft show confusion, pain and suffering. Bir Bahadur Thapa, a Kargil war veteran, has not made the list. Babul Das, a teacher conducting verifications for NRC found his name excluded from the draft. Moinal Mollah was declared a foreigner and sent to a detention camp until the Supreme Court intervened, ordering a fresh trial, which found him to be an Indian. He has not found his name included in the draft NRC either.<sup>6</sup>

The final NRC, to be published at an unspecified date, will have the names of all verified as Indians. What will eventually happen to those left out of the final NRC is not clear. Presumably they will be referred to the Foreigners' Tribunals, for determining their citizenship. However, it is anybody's guess what the outcome of that process will be. The entire process seems to have become geared towards declaring as many Bengali-speakers foreigners as possible – especially Muslims. So far 33 persons excluded from the draft NRC have been reported to have committed suicide out of desperation.<sup>7</sup>

Assam's tryst with immigrants, especially Bengali-speaking Muslims, saw the tragedy of the Nellie massacre of 1983, where over 2000 persons, all Bengali Muslims, were murdered in a single day. The community continues to remain vulnerable – easy targets for the 'foreigner' label. Many Bengali-origin Muslims in Assam reside in the *chars* – the riverine islands of Brahmaputra and its tributaries. Frequent floods lead to annual cycle of displacement, resulting in many migrating to newer locations, where they are looked at suspiciously. Frequent displacement also means they lack adequate

5. 'Left Out Of Assam's List, Soldier, Teacher, Farmer Demand Answers', August 22 2018. <https://www.ndtv.com/india-news/left-out-from-assams-list-soldier-teacher-farmer-demand-answers-1904143>

6. '33rd Suicide Victim of D Voter in Assam: NRC', 16 November 2018.

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**Box 4: International human rights treaties not ratified by India**

International convention on the protection of the rights of all migrants and families, 1990
Optional Protocol to the ICESCR, 2008 – recognises the competence of CESCR to receive and consider complaints from individuals or groups within its jurisdiction.
Optional protocol to the CEDAW, 1999 – recognises the competence of CEDAW to receive and consider complaints from individuals or groups within its jurisdiction.
Optional protocol to CRPD, 2006 – recognises the competence of CRPD to receive and consider complaints from individuals or groups within its jurisdiction.
<b>Core ILO Conventions not ratified by India</b>
Freedom of Association and Freedom of the Right to Organise Convention, 1948 (# 87)
Right to Organise and Collective Bargaining Convention, 1949 (# 98)
Minimum Age Convention, 1973 (# 138)
Worst Forms of Child Labour Convention, 1999 (# 182)

Source: NHRC: *a Handbook on International Human Rights Conventions*

- i. While we already know that Muslims are poorly serviced, what is somewhat new is the realisation, from this survey data, that anti-poverty programmes work so badly for Muslims, much more so than they do for other excluded groups – Hindu Dalits, in this case (Misaal 2015: 46);
- ii. Education: Muslim children’s access to education is problematic. Almost a quarter of children had not been enrolled in schools; the quality of Mid-day Meal (MDM) provided was poor and unpredictable. Books and uniforms bypass many; scholarships seemed to have almost entirely failed; and support services – safe drinking water and clean toilets – are not provided;
- iii. National Rural Employment Guarantee Scheme (NREGS): there were various problems with the working of NREGS: awareness about the scheme was poor; half of all respondents had not been allocated work, despite having applied; and more than half had not received payments within the stipulated time period. Malpractices abounded, eg entries in job cards, were, as a matter of practice, not made;
- iv. Water and sanitation services work poorly for Muslims, with a majority claiming they had no access to safe drinking water; handpumps take much longer than stipulated to be repaired; and sanitation staff are mostly not available;
- v. The Public Distribution System (PDS) does work for Muslims, with only 9% of respondents claiming they receive rations regularly. An overwhelming section of pensioner respondents claim they receive payments very late. 82% of respondents said their children had not been registered within the stipulated 21 days; and

*... Profile of a vulnerable minority continued ...*

documents, important for proving their nationality.<sup>8</sup> Already attacked as 'illegal immigrants', many continue to languish in detention camps, in indefinite incarceration.

### **Instilling discrimination in citizenship**

The Bharatiya Janata Party government ruling in the Centre is attempting to pass the Citizenship (Amendment) Bill 2016. This amendment to the Citizenship Act 1955 would allow Hindus, Sikhs, Buddhists, Jains, Parsis, Christians from India's neighbourhood, especially from Bangladesh, Afghanistan and Pakistan, to apply for Indian citizenship.<sup>9</sup> The Amendment relaxes the residence condition for naturalisation for these minorities from Muslim majority countries from the current 11 years to 6 years. In 2015 and 2016, exemptions were made to the Foreigners Act 1946 and Passport (Entry into India) Act 1920 to allow persons from these backgrounds indefinite residence in India if they arrived before 31 December 2014. Making laws that differentiate between faiths, these legislations and rules run the risk of being discriminatory in a purportedly secular country. The proposed amendment to the Citizenship Act 1955 has implications for the NRC process. It is signalling to Hindus excluded from the NRC that they might still have a chance for naturalisation – something that Muslims would be denied.

8. 'How Assam's Supreme Court-mandated NRC project is targeting and detaining Bengali Muslims, breaking families' 2 July 2018. <http://www.caravanmagazine.in/politics/assam-supreme-court-nrc-muslim-families-breaking-detention>

9. 'Advertising Simply Put: Why Citizenship Bill disturbs Assam', 19 May 2018. <https://indianexpress.com/article/explained/simply-put-why-citizenship-bill-disturbs-assam-5176741/>

- vi. Integrated Child Development Services (ICDS): dismal working in Muslim pockets. This takes various forms and is driven by multiple factors – many Anganwadis (child care centres) do not open at all; there is poor awareness about core services; the health component in particular is problematic, with large exclusions from TT, Hepatitis B and Vitamin A dosage, and from immunisation.

What causes such poor outcomes for Muslims? Evidence shows that programmes for the poor work poorly in India, especially in Uttar Pradesh and other northern states. This is also the case for Muslims. But for multiple programmes to work so poorly for a section of the poor, there must be factors that go beyond the general, and we must also look at specific causes affecting the reach of these schemes for the specific group – Muslims, in

this case. We contend that such complete failure can only be the outcome of failures of the state, both to ensure programmes reach minorities equally (ie measures to prevent discrimination in provisioning), as well as the failure to target the poorest Muslim groups proactively, through affirmative action. None of the schemes covered – all flagship programmes of the central government, with elaborate reach, budgets and structures – has given a thought institutionally to their reach to the poorest Muslims. There is no data collected, disaggregated by religious groups, that would help capture the poor delivery for the group. There is little planning to improve scheme performance among social groups defined by religious identity, and little targeting of implementation keeping these in mind.

This is so because the weaknesses at the policy level for religious minorities in India – the absence of robust anti-discrimination measures and weak promotional/affirmative action efforts – are carried through at the programmatic level too. All that exists for ‘targeting’ religious minorities are a handful of schemes implemented by the central Ministry of Minority Affairs, including scholarships and schemes for the modernisation of madrasas; the Multi-sectoral Development Programme (MSDP), aimed at enhancing infrastructure investment in minority concentrated areas; and the Prime Minister’s new 15 point programme, which claims to ensure adequate spending on minority groups under flagship programmes. Unlike efforts for SCs, STs, women, and in some cases people with disabilities, who see more robust targeting measures, targeting of religious minorities is shallow – mere window dressing.

## **Minorities and the Narrow Policy Space**

The Sachar Committee report broke new ground in public discourse on the deprivation of the Muslim community in the country. By collating and analysing considerable empirical evidence, perhaps for the first time in independent India, and by using official data sources, the report shifted the public debate on the conditions of Muslims from one based on perceptions and rhetoric (that denied the deprivation faced by the poorest Muslims) to one that was evidence-based, thus establishing Muslims as a legitimate subject of public policy (Government of India 2006: 2). The Sachar Committee report led to the government declaring a package of measures for, surprisingly, all religious minorities, not just Muslims, containing affirmative action measures; special development initiatives; enhanced access to credit and education opportunities; social inclusion measures; and efforts for better sensitisation of government functionaries on minority issues (Government

of India 2009). Though modest by comparison with the size of the problem, the policy interventions seemed like a good start.

Four years after the Sachar Committee report an assessment of the working of these 'minority' schemes, especially for Muslims, based on qualitative research in three districts with large Muslim populations, revealed serious drawbacks in their working – principally the Multi-Sectoral Development Programme (MsDP), the 15 Point Programme and the Scholarship Schemes. These were traced to a combination of factors: poor design of so-called flagships programmes for minority development; the poor resourcing of the programmes, resulting in them being little more than symbolic gestures; and a weak institutional environment that prevents robust implementation – the last including weak structures and processes, and poor capacities of implementing agencies, combined with a pervasive inability on the part of those agencies to connect purposefully with Muslim groups and communities (Centre for Equity Studies 2011: 40). The CES report, pointing to the tentative nature of these interventions, noted how '... diffidence at policy level to clearly focus on Muslims and their deprivations translates into active reluctance by implementing agencies on the ground, to target Muslims and the drivers of their deprivations...' (ibid: 41).

A more recent analysis confirms this assessment. The first official evaluation of the working of programmes set up on the recommendation of the Sachar report (Post-Sachar Evaluation Committee, 2014, popularly called Kundu Committee) concluded that not a great deal had changed since these measures were introduced in 2006. The findings of the Kundu report include:

- (i) Schemes under the PM's 15-point programme and MsDP were area development schemes, with little targeted focus on minority communities. Barring the odd exception, such as scholarship schemes, there was little attempt to specifically target minority communities through clear operational plans and beneficiary lists;
- (ii) Connected to this is the problem of sound data. Except a very rapid baseline survey of the minority concentrated districts (MCDs), 'there has not been any systematic assessment of the development deficits in MCDs and determination of the target under different schemes.' There seemed to be no clear plan or roadmap, with targets and allocations fluctuating year on year. Furthermore, the lack of availability in several of the schemes of local data disaggregated by religious group constrained the assessment of the effectiveness of the schemes for different communities;

- (iii) There was a lack of institutional mechanisms and implementation staff at the state, district and block levels. Further, among the existing staff, in many of the states a large proportion lacked motivation. There was also no effective evaluation of any programme; and
- (iv) Plans and financial allocations were modest in relation to the deprivation of the minorities, especially Muslims, and for some of the schemes this meagre amount had not been fully utilised, showing a lack of zeal and coordination among officials and agencies (Government of India 2014: 152–153).

## **Minority Provisioning on the Cheap: The Question of Resources**

Recent data on the working of minority schemes, including at the state level, provides further evidence of poor effort, particularly since the current Hindu right wing Bharatiya Janata Party (BJP) government took power. A report published by the Centre for Social Justice (2017) examined the 2017–18 central budget and its minority-specific schemes (implemented at the centre principally by Ministry of Minority Affairs (MoMA); Ministry of Human Resource development (MoHRD); and Ministry of Civil Aviation (MoCA)) on multiple counts, specifically (i) allocation of resources and their adequacy; (ii) distribution of resources across different sectors; and (iii) fund utilisation. We first look at schemes implemented by central government departments.

The report revealed direct allocation of only 0.21% of the union budget for minorities (Table 12). Minorities make up 19.32% of the national population. Clearly, minority welfare is not high on the government's agenda. The volume of support is too limited to be of much help to minorities, faced with such serious problems. Overall, the offering is very modest. Almost half of the investment was devoted to education, particularly scholarship schemes (pre- and post-matric, and merit-cum-means); Maulana Azad fellowship; and free coaching and allied schemes. Because the allocation was based on 2001 data, the report concluded, it was too low with respect to the need. The 2017–18 budget failed to increase the allocation accordingly (ibid: 14). The Parliament's Standing Committee on Social Justice and Empowerment (2015–16) had recommended the need for a demand-led model of allocating resources for scholarship schemes, rather than an allocation-based model. This was rejected by the government (ibid: 14). Data on targets and achievements (Table 13) reveals that whilst the level of allocation for scholarship schemes has remained consistent over the years, achievement has dropped drastically, forcing one to conclude that there is

**Good practice case study:**  
**Extra-judicial Execution Victim Families’  
 Association Manipur (EEVFAM)**

On 11 July 2009 a group of widows and mothers of those killed in extra judicial killings in the state of Manipur came together with some civil society activists and lawyers to talk about their pain and loss. The meeting was a culmination of over a decade of work, and eventually led to the birth of EEV-FAM – Extra-judicial Execution Victim Families’ Association Manipur. The acronym sounds like the local word for bloodstain – capturing the trauma and suffering of the grieving families and their struggle for elusive justice.

**Manipur – A ‘disturbed region’**

Manipur is a state in India’s Northeast, with a long history of trade and migration with Southeast Asia and China, and a shared international border with Myanmar. The state has three main ethnic groups: Meitei, Naga and Zo (also known as Kuki, Chin, or Mizo) (Ngaihte 2013). 2011 census figures show that the state’s Scheduled Caste population is 3.8% and the Scheduled Tribe population 35.1%. The state has seen its share of insurgency, leading to it being declared a ‘disturbed area’ and to the imposition of the Armed Forces (Special Powers Act) in 1980.<sup>1</sup> The act gives armed forces extraordinary powers, including immunity from legal action, and the licence to shoot to kill and arrest people without obtaining warrants. The Act has long being criticised for violating human rights, though it continues to be applicable in states like Assam, Nagaland, Jammu & Kashmir, and parts of Arunachal Pradesh.<sup>2</sup> In 2014, it was withdrawn from 7 assembly constituencies in Manipur’s capital, Imphal, but it continues in the rest of the state.

A committee set up by the Prime Minister in 2004, called the Jeevan Reddy Committee, unambiguously recommended repealing the law, calling it ‘too sketchy, too bald and quite inadequate in several particulars’. The committee further observed that the act ‘has become a symbol of oppression, an object of hate and an instrument of discrimination and high-handedness’.<sup>3</sup> The act as an instrument of discrimination was further highlighted by the UN’s Committee on Elimination of Racial Discrimination categorically urging the Government of India to repeal the law in 2007 (Loitongbam 2009). Neither

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1. ‘The AFSPA and Manipur: 10 key points’, 9 August 2016. <https://timesofindia.indiatimes.com/the-afspa-and-manipur-10-key-points/listshow/53613784.cms>
  2. ‘What is AFSPA, and where is it in force?’ 23 April 2018. <https://www.thehindu.com/news/national/what-is-afspa-and-where-is-it-in-force/article23648102.ece>
  3. ‘Repeal Armed Forces Act: official panel’, 8 October 2006. <https://www.thehindu.com/todays-paper/repeal-armed-forces-act-official-panel/article18485943.ece>

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**Table 12. Allocations for minority schemes (Rs crores)**

Year	MoMA	MoCA	MHRD	Total
2017-18	4195	200	120	4515
2016-17	3827	450	120	4397

Source: Centre for Social Justice (2017: 12).

**Table 13. Allocations for minority schemes (Rs crores)**

		2014–15	2015–16	2016–17
Pre-matric scholarship	Financial target	1130.00	1040.10	931.00
	Financial achievement	1128.81	906.22	584.90
Post-matric scholarship	Financial target	598.50	580.10	550.00
	Financial achievement	501.11	385.72	275.76
Merit-cum-means based scholarship	Financial target	335.00	335.00	395.00
	Financial achievement	381.27	357.98	218.60

Source: <http://www.minorityaffairs.gov.in/sites/default/files/Schemes.pdf>.

something of a tacit rule in the implementation, to starve these schemes of resources.

The other education schemes for minorities are implemented by the Ministry of Human Resources Development (MoHRD), viz. Scheme for Providing Quality Education in Madrasas (SPQEM) and Scheme for Infrastructure Development in Minority Institutions (IDMI). The budget for both schemes was slashed in half in the last budget (2016–17), and this has not been undone for the 2017–18 budget.<sup>28</sup>

What of access of minorities to universal programmes? Budgetary analysis of the 15 Point Programme – by far the major policy response to poor minority wellbeing – is a good indicator of progress in the central government’s efforts on the subject. The 15 Point Programme was envisaged as an exercise in minority budgeting, to ensure a certain percentage of allocation on universal programmes was earmarked for minorities. This requirement for minority budgeting, however, is largely notional, without there being

28. The other minority scheme is MsDP, aimed at improving infrastructure in minority concentrated districts – those with more than 25% of their population belonging to religious minorities. The main concern here is poor physical progress – so even while 80% of the 12th plan budget under MsDP is reported to have been spent, actual physical progress on the ground was a problem (Centre for Social Justice 2017: 15).

*... Good practice case study continued ...*

recommendation has been accepted by successive Indian governments to date. The leaders of Manipur's struggle against extra judicial killings and the AFSPA include long-standing human rights defenders Babloo Loitongbam, Irom Sharmila, Renu Takhellambam, and the victims' families challenging state impunity and demanding justice.

### **EEVFAM – the initial years**

The movement took its roots in 2000, with an independent people's commission set up to look into the long-term human rights impact of prolonged imposition of AFSPA in the region. Former Bombay High Court judge Justice H. Suresh highlighted that sanction to kill can never be Constitutional. A group called FIDAM was formed – Families of Involuntarily Disappeared Association Manipur – looking for a solution to the ever-growing problem of disappearances. FIDAM, with its acronym meaning 'ideal' in Manipuri, started filing habeas corpus petitions in the court on behalf of families of disappeared persons. This ensured that individual families could escape reprisal, while also demanding accountability and seeking justice. Resultantly, the phenomenon of disappearances reduced.

However, encounters remained largely unchallenged. A week after the inquiry commission completed its report, security forces killed 10 civilians, in what came to be known as the Malom massacre, November 2000. This was the catalyst prompting Irom Sharmila to begin her 16-year-long hunger strike, demanding AFSPA be repealed.

When the brother of a young electronic engineer shot by security forces became exasperated at the lack of remedies and state response to these wanton murders, the meeting of 11 July came about, less as a solution and more as a cathartic exercise. These fortnightly meetings became a place for these grieving families, most of them young widows, to build a support structure around them, and find a sense of community. The group brought validation that what happened to them was not right, and that their husbands or sons were not criminals. Pertinent issues such as their right to inheritance and their children's right to education were discussed. Towards economic independence and sustenance, Self Help Groups (SHG) were formed, beginning with a small loan of Rs. 5000, for these women to engage in trading, fishery, weaving, or anything else towards income generation. The first round of the SHG saw a 100% return. These women were then given Rs. 10,000. The early 50 beneficiaries became the nucleus of this successful model. The money is used by the beneficiary as per her choice and convenience to improve their lives; such as running grocery shops, weaving, farming, running clothes businesses or making washing detergent, according to Neena Ningombam,

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any specific targeting of minority beneficiaries. The absence of effort to collect data disaggregated by religious group comes in the way of any attempts at specific targeting (ibid: 10). In contrast, central ministries and state governments routinely plan specific spending on women and SC and STs – referred to as the Gender Budget, SC Sub-plan and ST Sub-plan – and append reports on this spending to their budget proposals and reports. And whilst there are various problems with allocation and implementation for all deprived groups (women, SC and ST), planning and reporting spending by group provides policy-based data and creates an opportunity for constructive debate on how programmes work for specific deprived groups. In the absence of data, and indeed effort, nothing like this exists for religious minorities.

The 15 Point Programme was introduced to improve the education, employment skill development, living conditions and security of minorities by bringing them under an overarching programme, to enable greater programmatic focus on minorities. Clearly that objective was never operationalised. The Centre for Social Justice report reveals there are various flaws with the working of the programme. Firstly, there is very poor knowledge about the 15 Point Programme among minority groups. Of greater concern, the report found that awareness among duty bearers – the providers and functionaries – was also low (ibid: 30). Many field staff in key departments showed little awareness. With the duty bearers unaware and unable to take action, the chances of the programme being promoted and implemented well are very poor. This is all ten years after the 15 point programme was introduced – more than enough time for teething problems to have been resolved.

A more fundamental flaw, the study revealed, was institutional. There was a lack of effective detailing of the budget and breaking down of targets, so as to reach the neediest minorities. There were no instructions or guidance issued by sponsoring ministries and therefore no monitoring of the implementation of these by the departments. Adding to the problem was, of course, the absence of data disaggregated by religion (ibid: 33). The report concludes on a sombre note:

‘poor performance (in minority welfare) visible in the official statistics is an outcome of poor awareness among target groups and no clear instructions to the duty bearers, structural issues in the implementation mechanism of the schemes, and the near absent monitoring system’ (ibid: 28).

*... Good practice case study continued ...*

founding member and widow of an extra judicial killing victim.<sup>4</sup> Economic independence gave these women the strength and voice to live with dignity within their communities and avoid further deprivation and abuse, as well as to be able to stand up and fight for justice.

### **Bringing the issue to the centre stage**

In March 2012 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions visited India. The group led 70 mothers and widows of those killed in extrajudicial executions or ‘encounters’ in Manipur to meet him. Not wanting to let this opportunity pass, a group of 16 civil society organisations sat together, sharing notes and information, preparing a memorandum listing 1528 cases of extrajudicial killings in the state from 1979 to 2012. The Special Rapporteur’s report mentioned ‘evidence gathered confirmed the use of so-called ‘fake encounters’ in certain parts of the country... Moreover, in the North Eastern States, and Jammu and Kashmir the armed forces have wide powers to employ lethal force.’ The Special Rapporteur further stressed ‘The main difficulty in my view has been these high levels of impunity’.<sup>5</sup>

Bolstered by the Special Rapporteur’s acknowledgment of the problem, and the high number shown by the memorandum that had been published as a report, the group decided to file a Public Interest Litigation (PIL) in the Supreme Court of India. To avoid reprisal for the families, EEVFAM was created to be the first petitioner in the case, with Human Rights Alert being the co-petitioner. There were obstacles even while registering the group; the registrar asked that they change the name as it was antinational. The group was eventually registered as a trust.

The Supreme Court appointed a commission to look into the veracity of six randomly selected cases of the 1528 mentioned in the PIL. The commission found that none of the six were genuine encounters, with all killed being innocent civilians with no criminal history.<sup>6</sup> Following this report, the court in 2016 has asked the petitioner EEVFAM to verify all 1528 cases and see if the families are willing to pursue justice.

### **A long road still ahead**

Preparing for the long haul, the group set up a temporary office at the Manipur Bar Association, taking depositions and affidavits pursuant to the

4. See: <https://www.countercurrents.org/ningombam300912.htm>

5. ‘India: Concern expressed about extrajudicial executions’ 30 March 2012. <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12031&LangID=E>

6. See: <http://www.hrln.org/hrln/criminal-justice/reports/1501-santosh-hegde-commission-submits-report-on-manipur-extra-judicial-killings.html>

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Over the past years, under the current BJP rule, the very modest minority provisions are also being rolled back. One example of this is the public reporting of outcome data of minority programmes. The Centre for Social Justice study reported that data on outcomes on the Ministry of Minority Affairs website is not updated regularly. Data on the ICDS, schools, and other aspects as not been updated in a year. Data on recruitment in government employment and on communal violence has not been updated since 2015. Data on the rehabilitation of victims of communal violence, the report notes, has never been reported (ibid: 26).

## **States of Denial: Minority Provisioning at Sub-national Level**

Having examined efforts at the central level, it will now be useful to delve into the states of India. The Centre for Social Justice study analysed 2017–18 budgets for minority welfare in seven states – Gujarat, Jharkhand, Karnataka, Madhya Pradesh, Odisha, Telangana, and West Bengal. The questions explored were the same as with the central government, viz. adequacy, distribution and utilisation. The findings are noteworthy.

Table 14 demonstrates that the lowest allocation of budgetary resources to minority specific schemes, as well as the lowest percentage of total state budget allocated, was in Gujarat (Rs. 51 crores and 0.029%, respectively) and the highest was in West Bengal (Rs. 3470 crores and 1.9%). West Bengal, Telangana and Karnataka stand out as the states most committed to minority welfare. With Karnataka's very high rate of utilisation of budgetary allocations, it stands as the leader in backing its minority welfare commitment with resources and actions (ibid: 23). These are exceptional stories of the commitment to providing for minorities, in a sea of neglect. Overall, the policy space for minority welfare in India is very limited. States like Gujarat and Madhya Pradesh, both Hindu right-wing BJP ruled for many years, were revealed as hostile even to minority concerns. As the report notes:

‘Their economic development model (preferred by BJP ruled states) is presented as universal and not vulnerability specific. And majoritarian compulsions drive much of their agenda, and this compulsion does not allow them to be seen as being too accommodating to minority needs.’ (Centre for Social Justice 2017: 64)

These are states that have gone to great lengths to uphold their non-minority stance. All provinces are required by law to have minority com-

*... Good practice case study continued ...*

court's directive. Around 900 families responded, with 655 of these being part of the original PIL. The cases were divided into 7 categories, ranging from those found to be fake encounters by the Government of Manipur's Commission of Enquiry, to those in which the families had no witnesses or written complaint but were quite certain an encounter had taken place. In July 2017 the court took the first three categories, including 87 victims, and handed them over for enquiry to the Central Board of Investigation. This investigation is still ongoing, with the sluggish investigation called into question by the group.<sup>7</sup>

For both the group and the victims' families, the road to justice continues, with decades gone by. Both have seen respites and reprisals. Keeping morale high has been a continuous effort. For the families, some of whom have decided not to perform last rites till justice is served, everyday life needs to continue along with their battle to know the truth of what happened to a loved one. Babloo Loitongbam recalls that during the Supreme Court appointed Justice Hegde Commission, a mother of one of the victims said she was so relieved to know that her son was killed by the first bullet of the AK47 that hit him and did not live to suffer the other 14 bullets.

This truth coming out is the first step of the transitional justice EEVFAM is working towards. They are hoping the process will now move to identifying the kingpins – those giving the orders – and bring them to account. Though the lives lost can never be repaid, the state owes it to the victims' families to provide them with restitution. Genuine closure can only be achieved with an apology by the state and a guarantee that this will never be repeated. Security itself needs to be reformed to be security for the citizens – for their protection. Finally, the Armed Forces Special Powers Act must be repealed to lift the veil of immunity.

EEVFAM is continuously charting a course of challenging the Indian state through its Constitutional and democratic processes. Their experience is unique and exemplary for attempting to carve a road for similar civil society efforts demanding justice and equal treatment for all, including minorities. Babloo Loitongbam emphasises that state institutions are much more sophisticated and there is a lot of scope for availing support from international human rights diplomacy and advocacy.

Key challenges have been sustaining morale as justice takes its long road; political pressure rendering their advocacy efforts in vain; and every successive government's false promises. Finances also took a hit, with partnering

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7. 'Protest against sluggish CBI probe' 18 July 2018. <https://www.telegraphindia.com/states/north-east/protest-against-sluggish-cbi-probe-245679>

*Contd...*

**Table 14. Allocation of resources for minority welfare in states (2017–18)**

State	% share of minority specific allocation in state budget	Share of minority population in state population	Utilisation as % of allocation
Gujarat	0.029	11.30	23
MP	0.039	08.15	43
Odissa	0.057	05.04	18
Jharkhand	0.150	18.27	60
West Bengal	1.900	28.18	60
Telangana	0.830	12.68	20
Karnataka	1.170	15.72	120
Central Govt.	0.195	19.32	100

Source: Centre for Social Justice (2017: 19).

missions. According to the MoMA, however, many BJP ruled states have not set these up yet.<sup>29</sup> Many states have not established minority welfare departments either. These include Gujarat and Haryana, which have established elaborate structures and systems – ministries, departments, autonomous commissions and police task forces, all with large budgets – for the protection of cows (considered holy by a section of Hindus), but see no reason to follow the law in establishing minority commissions as institutions to protect and promote the rights of their minority citizens. As mentioned above, Gujarat’s was also one of the lowest allocations of resources for minority specific programmes. Furthermore, throughout the three years in which the report examined budgets, the allocation decreased sharply, year on year, demonstrating a hardening stance.<sup>30</sup>

## Minority Protection in an Age of Majoritarian Upsurge

Traditionally, the BJP has played down the need for targeted public policy to uplift Muslims. It has consistently rejected the Sachar Committee and Ranganath Mishra Committee reports and their policy recommendations, both of which suggested increased investment in social and economic capital to overcome barriers that persist for Muslims and minorities. As soon

29. See: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=155028>

30. ‘Gujarat’s allocation for minorities is ten times lower than Karnataka; it is 0.029% of state budget: Rehnuma report.’ Counterview. 4 December 2017. <https://www.counterview.net/2017/12/gujarats-allocation-for-minorities-is.html>

... Good practice case study continued ...

NGOs having their FCRA<sup>8</sup> permissions revoked, and even the group's efforts branded a foreign conspiracy. Families grew fatigued with the system and not all have come forward for the depositions. There is also a recent Public Interest Litigation filed by 350 army personnel, which the Supreme Court has admitted, challenging the registration of FIRs against them for operations in areas where AFSPA is enforced.<sup>9</sup> For EEVFAM these are the rough edges of democracy, which need the efforts of civil society and citizens to be smoothed; the ebb and flow of successes and challenges. It becomes key to strengthen voices socially and economically, so they are able to stand up and demand justice.

Sustaining any grassroots process takes time and energy. EEVFAM sees justice as a cyclical process, understanding setbacks to be a part of the process and awaiting opportunities to move forward. Most of their energy is spent on supporting the victims, acknowledging their spirit with empathy and understanding. If the grassroots processes of justice are sustained, eventually institutions will respond. The group now awaits results of their long-drawn struggle, aware that the road does not end there.

8. Foreign Contribution Regulation Act 1976, for non-government organisations receiving foreign funding. See: <http://www.fcra.co.in/>

9. 'SC to hear plea of 300 army personnel, Manipur Police commandos challenging FIR against them in AFSPA enforced areas' 14 August 2018. <https://www.firstpost.com/india/sc-to-hear-plea-of-300-army-personnel-manipur-police-commandos-challenging-fir-against-them-in-afspa-enforced-areas-4961711.html>

as the BJP took power in the centre in 2014, the union minister in charge of MoMA, Najma Heptullah, went on record saying that Muslims were not minorities 'by any stretch of the imagination'. Indeed, as reported by the press, 'on her first day in office, Heptullah appeared determined to reorient the ministry by playing down its role in welfare of Muslims....'.<sup>31</sup> Vishwa Hindu Parishad, a denominational group close to the BJP, has been demanding the scrapping of the central Ministry of Minority Affairs and the National Commission for Minorities (NCM), in response to NCM's opening a helpline for Muslims targeted by recent rise in hate crime, claiming the helpline encouraged separatism.<sup>32</sup> This was despite the new look NCM has

31. 'Muslims are not minorities, Parsis are: Najma Heptullah' Times of India. 28 May 2014. <https://timesofindia.indiatimes.com/india/Muslims-are-not-minorities-Parsis-are-Najma-Heptullah/articleshow/35651799.cms>

32. 'VHP demands scrapping of Ministry of Minority Affairs; says Muslim helpline will create separatism'. Firstpost, 27 June 2017. <http://www.firstpost.com/india/vhp-demands-scrapping-of-ministry-of-minority-affairs-says-muslim-helpline-will-create-separatism-3747825.html>

acquired, and what many believe is partisan character, with its chairman a former General Secretary of the BJP Minority Cell and two of its members active BJP members.<sup>33</sup>

Alongside all this, the modest gains of recent years in strengthening minority rights protection and promotion regimes are being rolled back. On the recommendations of the Expert Group on Equal Opportunities Commission (EOC, 2008), the union cabinet had in 2014 approved the proposal to set up EOC through an act of Parliament. The new government has since sent the proposal down for consultation, and no decision has been taken since. The fate of the Diversity Index, which was recommended by a separate Expert Group set up by the previous Congress government for the purpose – has been similar. A third, related decision, regarding setting up the national data bank, has also floundered. Newspapers reported recently that a lack of staff meant the national data bank could not take off.<sup>34</sup> Finally, the Assessment and Monitoring Authority, created under the Planning Commission as a home for developing and tracking data on marginalisation, has also been wound up, in light of objections by its successor Niti Ayog to being saddled with the agency.

The case of Uttar Pradesh – India’s largest state, with a 19% Muslim population share – is instructive. The BJP took power in Uttar Pradesh in March 2017. In state elections that were run on an Islamophobic campaign, the BJP did not field a single Muslim candidate among the 403 seats it contested to the state assembly.<sup>35</sup> On assuming charge, the government – led by Yogi Adityanath, a Hindu cleric accused in multiple cases of inciting and leading hate violence against Muslims and other minorities – abolished the previous state government’s policy of prioritising minorities in 20% of beneficiaries of (universal) social welfare schemes. This policy had applied

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33. ‘New minority panel chief, 2 of 4 members belong to BJP’. The Indian Express. 25 May 2017. <http://indianexpress.com/article/india/new-minority-panel-chief-2-of-4-members-belong-to-bjp-4672554/>

34. ‘Min of Finance urged to create posts under IT category to make minority data bank fully functional’ 12 Dec 2016 - [http://www.business-standard.com/article/pti-stories/create-posts-to-make-minority-data-bank-fully-functional-116121200657\\_1.html](http://www.business-standard.com/article/pti-stories/create-posts-to-make-minority-data-bank-fully-functional-116121200657_1.html)

35. ‘Why We Should Worry That The BJP Doesn’t Have A Single Muslim Candidate In UP’. Sanjay Jha, 14 February 2017. [http://www.huffingtonpost.in/sanjay-jha-/why-we-should-worry-that-the-bjp-doesnt-have-a-single-muslim-ca\\_a\\_21713576/](http://www.huffingtonpost.in/sanjay-jha-/why-we-should-worry-that-the-bjp-doesnt-have-a-single-muslim-ca_a_21713576/)

to some 86 schemes of the Social Welfare and Rural Development departments of the state government.<sup>36</sup>

A series of policy actions in the state – particularly the arbitrary shutting down of meat shops, thus affecting the meat supply chain business that employs a very large section of Muslims – have had the effect of adversely affecting the livelihoods of large sections of Muslims.<sup>37</sup> Soon after Adityanath took office, UP state administration came down heavily on meat shops all over the state, sealing those that did not have all the licenses. Whilst this was a noble effort, the vehemence with which the action was enforced – in a sector that has hitherto largely been unregulated – and Adityanath’s reputation of being hardline Hindutva, gave the lie to the government’s claim of just regulating the retail meat sector and introducing health and hygiene measures. No due process was followed, outlets were neither given time to set their house in order nor given notice before summary closure actions. According to a representative of the Jamiatul Qureish, the body representing meat retailers, ‘our business are being destroyed and we are being hanged without a court hearing’.<sup>38</sup> A similar crackdown against the largely Muslim-dominated meat supply chain has been taken by BJP governments in the states of Haryana and Maharashtra. At the same time, cow-related lynchings in these same states, and the largescale vigilante anti-Muslim mobilisation surrounding them, have affected transport and trade in cattle, and hence the large labour force dependent on the supply chain and retail – all Muslim dominated.<sup>39</sup>

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36. ‘Yogi Adityanath to end minority reservation in Govt. schemes.’ *India Matters*, 23 May 2017. <http://mattersindia.com/2017/05/yogi-adityanath-to-end-minority-reservation-in-govt-schemes/>

37. ‘Meat traders, butchers in UP say “livelihoods have been affected”’. *Indian Express*. 13 September 2017. <http://indianexpress.com/article/india/meat-traders-butchers-in-uttar-pradesh-say-livelihood-has-been-affected-4840947/>. ‘Beef Ban and the deprivation of livelihoods’. *India Resists*, 31 April, 2016.

38. ‘BJP punishing Muslims’, 27 March 2017. [http://www.business-standard.com/article/current-affairs/bjp-punishing-muslims-up-s-crackdown-has-meat-industry-panicked-scared-117032700180\\_1.html](http://www.business-standard.com/article/current-affairs/bjp-punishing-muslims-up-s-crackdown-has-meat-industry-panicked-scared-117032700180_1.html)

39. “Emboldened by Modi’s ascent, India’s cow vigilantes deny Muslims their livelihoods”. *Reuters*. 6 November 2017. <https://www.reuters.com/investigates/special-report/india-politics-religion-cows/>

## **Conclusion: Mobilising Anti-minority Violence, Reinforcing Deprivation**

Hasan et al. point to the paradox of the Sachar committee having firmly succeeded in reconstructing the Muslim community as “developmental subjects of the state, rather than as a religious and cultural community”, but this not having undone “the continuing failure (of the state) to enlarge the scope of state intervention and budgetary allocation to reverse (Muslim) deprivation” (2013: 242-243). This, then, is the central failure of policy making for minorities in India – the inability to see Muslims and other deprived minorities as a legitimate subject of development and, by extension, of affirmative action policies.

There have been many attempts by policy bodies to get the government to sharpen the Muslim focus of its ‘minority’ programmes, including under political dispensations of the past, which are not considered to have been hostile, as is the case now. However, these have not yielded any results, showing how entrenched the opposition is. In 2012 the National Advisory Council to the Prime Minister, in its memorandum on Muslim rights, asked for the government to sharpen its Muslim focus. The standing committee of the central government’s Ministry of Social Justice and Empowerment severely criticised the performance of the government on minority welfare, making the point that the Ministry of Minority Affairs was not addressing the roots of the problem highlighted in the Sachar report (ibid: 247). Nevertheless, moves proposing the establishment of a Diversity Commission and Equal Opportunities Commission, made by the government’s own Expert Group on Diversity Index to equalise opportunities, turned out to be non-starters for want of adequate political support; and proposals for a minority sub-plan, along the lines of the Tribal Sub-plan and SC Special Plan, were shot down by the Planning Commission, who argued that this would communalise the planning process, again citing Constitutional hurdles (op. cit.).

The reluctance of policy makers to concede safeguards for Muslim and other deprived minorities continues. This is despite clear evidence now that Muslims, at least the poorer among them, are falling behind the rest of the population on all counts of development and need support. While SCs and STs face very weak implementation of social policies regarding safeguards and affirmative action, in the case of Muslims, effective policies and safeguards for improvement are lacking in themselves. There is ample evidence emerging that points to safeguards and affirmative action policies for SCs and STs re-

sulting in improved outcomes for the groups, whereas the absence of similar safeguards for Muslims means equally marginalised sections among the latter are either catching up very slowly or not at all (Gayer et al 2013: 3, 316.)

A closer look at our material reveals a more sinister design, beyond the old story of poor effort for minorities. The evident limited policy commitment for religious minorities has clear implications for the access of the poorest minorities, specifically Muslims, to entitlements and services on the ground. Evidence points to discrimination in public provision of services to Muslims, as well as market discrimination (in relation to employment), with both formal and informal structures perpetuating the exclusion (Hasan et al 2013: 9). There is a rich body of evidence pointing to the discrimination against Muslims in job market, even more than against Dalits; in the private sector, and particularly in the public sector (Attewell et al 2007; Jeffrey 2010; Basant 2012).

Trivedi's recent case study on Muslim development experiences at multiple sites across the country (2013) makes the same argument, but also advances the argument to report that communal polarisation in Barabanki district (Uttar Pradesh), combined with poor hold of Muslims over political/bureaucratic power there, enables discrimination by frontline state agents (eg school teachers and panchayat workers) against poor Muslims, forcing most Muslims to withdraw their wards from government schools and join madrasas, which are not particularly effective centres of learning. The study demonstrates that, on the other hand, the absence of communal polarisation along with the presence of Muslim Anganwadi workers and ASHA (village level health) workers in Murshidabad (West Bengal) and Katiyar (Bihar) districts enables the Muslim community in those locations to access services better, while keeping the services relatively approachable to Muslims (Trivedi 2013: 233). The author concludes, 'it is this communal character that induces discrimination in the form of social welfare schemes not reaching the Muslims' (ibid: 235). The dominant power structures (in Barabanki, in this case) use the communal card to monopolise bureaucratic and political power (panchayat elections) and that impacts the provision of services to poor Muslims.

Other observers confirm this thesis of communal polarisation being a prime factor in discrimination by the state and its actors against Muslims, impacting the ability of Muslims to access rights and services equitably. Looking at the condition of Muslims across multiple cities, Gayer & Jaffrolet (2012) found that it was the absence (or presence) of communal

violence (keeping other factors constant) that determined much of the resilience of Muslim communities (cosmopolitanism) in the peaceful cases (in Khozhikode and Bangalore, as opposed to Ahmedabad and Lucknow) – in the latter case they argue that the resulting ghettoisation of Muslims was a consequence of organised violence, ‘and only secondly of economic marginalisation or discrimination in the housing market’ (ibid: 325). These conclusions echo those of the Sachar report on differences in service quality for Muslims in a violence-prone Lucknow, compared to peaceful southern cities.

Poor outcomes for Muslims and other minorities are not just about poor resource allocation, programme design and implementation, but they are crucially about how service providers weigh their options based on local context and take decisions, either facilitating or inhibiting provisioning for citizens. In areas with heightened communal mobilisation and recurring violence, ie where society is polarised along religious lines, programmes work very poorly for Muslims, due to discriminatory choices that service providers make at the frontline. As the evidence cited above shows, this heightened polarisation is an anomaly, with only specific areas in the country having a history of communal polarisation. As society continues to become increasingly polarised, pockets hostile to Muslims have expanded. These are areas where Muslims suffer more direct forms of discrimination in accessing public services, benefits and opportunities.

Today, with the Hindu nationalist BJP gaining ground everywhere, using a model of growth that favours polarising society along religious lines – indeed often using violence strategically and instrumentally to divide the electorate and consolidate Hindu support behind it – Muslims face the real prospect of suffering not only violence at the hands of majoritarian mobs, but also increased discrimination at the hands of duty bearers, potentially resulting in complete exclusion from basic services, jobs and opportunities, and hence more concentrated forms of deprivation. The prospects of Muslims becoming India’s ‘second-class citizens’ are increasingly real.

## Recommendations

### For state parties

#### *Commitments*

- Enact anti-discrimination legislation

- Establish equality commission
- Enact hate crime legislation
- Include Muslim and Christian Dalits within the definition of SCs for affirmative action policies, and under the purview of the SC ST Prevention of Atrocities Act, 2005.

### ***Efforts***

- Crack down on communal mobilisation
- Ensure greater allocation to minority programmes, with more directed to key needs; and better utilisation, implementation and monitoring;
- Recognise 15 Point Programme as a useful vehicle for improving access to universal programmes. Bring further programmes/schemes under its purview and improve implementation;
- Create minority sub-plan/minority budgeting, and provide breakdowns
- Collect programme management data, disaggregated by religious groups
- Increase allocation for scholarships, not fixing any targets, demand determining quantum; or fix allocation on 2011 census figures (rather than older one currently)
- Ensure transparency in implementation of minority schemes – 15 Point Programme and others.

### ***International community***

- Encourage India to deliver on its promises to minorities;
- Encourage India to confirm all UN human rights conventions;
- Encourage India to make use of UN resources on human/minority rights protection and promotion, including lesson learnings;
- Call India to account on specific violations of minority rights; and
- Ensure greater visibility of India and current key minority concerns in India at the UN and other public events and discussions.

### ***Civil society***

- Create awareness among the public of programmes and opportunities for minorities; and for all, where minorities could also partake;
- Ensure better documentation and tracking of programme performance and discrimination, as well as of hate violence

- Encourage better engagement with the policy community, through better advocacy; and
- Ensure greater engagement with parliament and state assemblies.

### **Minority groups**

- There is a need for greater mobilisation on rights, entitlements and opportunities;
- A need for platforms and alliances on core issues, and linkages to platforms of other groups/campaigns that could help; and
- A need for better capacity of activists, and state and national level formations, to make use of opportunities, deliver projects, report violations and mobilise and advocate for rights.

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