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# **Deceptive Equality**

**Deconstructing  
the  
Equal Opportunity Commission**

**Rakesh Sinha**



**India Policy Foundation**

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Publisher : **INDIA POLICY FOUNDATION**  
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Edition : First, 2009  
© India Policy Foundation  
Price : Rs. 50/-00 (Rupees Fifty)  
Printer : Graphic World, New Delhi- 110 002

## Preface

**Deceptive Equality: Deconstructing the Equal Opportunity Commission** by Prof. Rakesh Sinha promises to be first in the series of intellectual interventions aimed at providing policy alternatives. I compliment Prof. Sinha for producing such a meaningful document within a short span of time.

Shorn of any pre-conceived notions and free from bias it is an objective intellectual exercise based on facts. More such productions are in pipeline, being developed by scholars attached to the Foundation. INDIA POLICY FOUNDATION believes that solution to India's problem is best which works well in Indian environment. Framing and implementation of public must take place with public knowledge and consensus. Think-Tanks and research foundations must act as conscience keepers of the society by enlightening and mobilizing public opinion.

This objective of the study is to stimulate a healthy debate amongst legislators, policy advisors, social scientists and intellectuals. The subject has hitherto received less than fair attention in the intelligentsia. I believe the work will be able to generate healthy debate on the Equal Opportunity Commission. The author rightly suggest that the National Human Rights Commission should be fortified to deal with all such questions which include alleged discriminations with Indian citizens by private or public institutions. It is also rightly pointed out that the question of discrimination on the basis of caste, religion or birthplace etc is a subset of the concept of Human Rights. Thus

there is a need towards integrating institutions not duplicating them.

Many people helped in translation, editing and other intellectual and manual jobs related to the publication of the monograph. Special thanks to 'Prabhat Prakashan' for accepting the job to get it printed at a critically short notice. My also thanks to Prof. (Retd.) Madan Lal Sharma, Shri Anand Bharti (a senior journalist), Priyadarsi Dutta, Niraj Kumar and Santosh Kumar for their invaluable contributions.

August 05, 2009

**- Dr. Bajrang Lal Gupta**  
Chairman, India Policy Foundation

## Introduction

The right to equality of opportunities is a crucial index of development in any society. Equality of opportunity implies ensuring complete non-discrimination on grounds of caste, religion, language and gender in all spheres ensuring from education to employment, art & culture and politics etc. Its positive aspect is that the socio-economic-culturally marginalized sections of the society are so empowered that the deprived, backward and depressed sections are able to utilize the opportunities equally. To achieve this end political and social initiatives are imperative.

The Constitution of India ensures freedom and equality to the citizens through the Fundamental Rights. Article 15 of the Constitution says that the State shall not discriminate against any one based on religion, race, caste, gender or place of birth etc. Article 16 mandates equality of all citizens relating to employment or appointment to any office under the State irrespective of the aforesaid differences. Article 14 speaks of 'equality before law' and 'equal protection of the law' for all persons. The Fundamental Rights are protected by the judiciary. Moreover, an independent judiciary has made these rights substantive. The Directive Principles of State Policy in the Constitution of India sets guidelines for the state to initiate further action on equality. Article 46 is particularly remarkable in this regard. It speaks of promoting, with special care, educational and economic interests of society and protects them from social injustice and all forms of exploitation.

It is in this context that special efforts are being made for the emancipation of the Scheduled Castes and Scheduled Tribes since

the time of independence. Giving reservations to them is a part of this "Positive Discrimination". This is a valid and necessary step.

The problem of color, race and religion is largely absent from the public life of India. The Indian National Congress had supported the international campaign against racism, during the freedom movement. The menace of communalism was there since the colonial period but failed to overpower the tradition of religious harmony. The colonial administration tried to exploit the communal divide in order to consolidate the empire and weaken the Indian nationalism. It began soon after the first war of independence in 1857 and culminated in the partition of India in 1947. In 1871, the British Indian government entrusted William Wilson Hunter to study the economic condition of the Muslims of Bengal. Hunter tried to establish that the Muslim backwardness in Bengal was due to the discriminations perpetrated by the colonial State and the Hindus. However, it admitted that Hindus has benefited by availing English education while the Muslims kept away from it due to religious reasons<sup>1</sup>.

As the Pakistan movement progressed in the 1940s, the Hunter Committee report proved useful in communal polarization. The Muslim League started seeing the secular issues like bread and butter, employment and development through the blinkers of communalism. When the Congress formed the government in majority of the provinces after the 1937 elections, the Muslims League instituted the Pirpur Committee which charged the Congress with sharply discriminating towards the Muslims. The report concluded that-"Muslims are not getting their due share in the department such as medical and engineering...the government prevents Muslims from getting legitimate share in appointments<sup>2</sup>"

Consequent upon publication of the report the Congress government examined these allegations and found them baseless and fabricated. Interestingly, when the then Congress President, Dr. Rajendra Prasad recommended an enquiry led by the Chief Justice of India, Sir Morris Gwyer, the Muslim League President, Mohammad Ali Jinnah rejected it.

These instances of the colonial period have been referred to here because after almost sixty years of independence, in 2005, the UPA government ordered the formation of a high powered committee led by Justice Rajinder Sachar that like the Hunter Committee and the Pirpur Committee reports attempted to prove

not only that the Muslims are backwards but also tried to attribute their backwardness 'institutional discrimination' at social, political and economic levels. There was widespread disagreement about the methodology and conclusion of Sachar Committee. Abhay Kumar Dubey observed, "Sachar Committee has indulged in a statistical manipulation that needs to be understood. The approach it adopted to bring to light social and political truths were muddled"<sup>3</sup>.

In the guise of assumed discrimination against Muslims and their backwardness, the Sachar Committee called for the establishment of an 'Equal Opportunity Commission'. This was based on the perception that the instances of discriminations against Muslims by the state is on the rise.

Dr. N.R. Madhava Menon-led expert committee instituted by the Ministry for Minority Affairs has termed this as 'historical burden'. The bitter truth is that the Sachar Committee failed to adduce any fact or figure to establish the alleged discrimination against Muslims. Even the supporters of the Committee acknowledge this fact<sup>4</sup>.

But unfortunately the Sachar Committee Report, in its second chapter, legitimized the canards, communally motivated allegations, and fabricated stories of exceptional discriminations.

The Committee itself was not assured on this. The Committee claimed in the very beginning of the Chapter 2- "The committee is aware that not all perception is correct but they are also not built in vacuum."<sup>5</sup> The Committee also fell short of justifying the need for setting up an Equal Opportunity Commission. The Urdu daily *Hamara Samaj* observed that the Sachar Committee has failed to explain how this commission is going to be different from National Commission for the Minorities<sup>6</sup>.

After all who could begrudge the idea of equal opportunity or a commission devoted for that purpose. But its character is against its secular appellation. The title 'Equal Opportunity Commission' is a charade. It is based on communal identity. It is not uncommon to have isolated cases of discrimination in any society and system. But they cannot be generalized and should not be used as an object of propaganda as instances of institutional discrimination. However, the E.O.C. being modeled in such a way that it will crystallization on the basis of religion as no particular citizen who finds



himself/herself at the receiving end of discrimination could approach this commission. He/ She could approach the Commission only if his/her 'group' is identified as being institutionally discriminated against. The mother of this commission is the committee constituted for welfare of Muslims, and the commission would be under the control of Ministry of Minority Affairs. Those socio-economic groups for which there is already constitutional provisions viz. SC/ST and women are also indicated to fall outside the ambit of this committee.

The Minister for Majority Affairs Salman Khurshid stated that Muslims had the ability to work but they are denied the opportunity. Hence, arises the need for Equal Opportunity Commission<sup>7</sup>.

This will only be appliances to impose undeclared religion-based reservation on public and private enterprises. Khurshid has said in the context that they are trying to get reservations for all Muslims under backward communities. The corporate sector should be persuaded to give minorities reservation in return of tax rebates<sup>8</sup>.

The Commission is likely to proclaim a "Fair Practices Code"<sup>9</sup>, whose purpose would be to create a 'numerical balance' between the religious communities at the cost of qualification and suitability. Or, in other words it would recommend reservation in proportion to population share.

In this manner the Police, administrative services, armed forces and public sector will be repeatedly made to clarify that any particular applicant was not rejected due to his/her religious identity but due to professional reasons. The now dissolved Commission for Racial Equality (CRC) had also created such problem for institutions in Britain.

There is another question to which persons associated with present establishment has no answer. There are already institutions like National Human Rights Commission, National Commission for Minorities and National Commission for Women. How then, the sphere of activity of Equal Opportunity Commission is going to be different from them? Khurshid's answer to this is rather interesting. "Whoever gets it first takes it and others stay off"<sup>10</sup>.

In this context Prof. Zoya Hasan, former member, National Commission for Minorities, feels that the Commission would have no teeth without quasi legal status.

“In country with a plethora of commissions, it’s bound to overlap with the functioning of the existing ones such as the National Commission for Scheduled Castes, the National Commission for Scheduled Tribes or National Commission for Minorities. What is the use of a new commission if it is not given a quasi legal status”? <sup>11</sup> It may be noted that even the National Commission for Minorities has consistently demanded for an expansion of its authority. All such efforts are bound to promote fragmentation and shrinkage of the secular space for discourse rather than expanding its horizons.

The Commission for Racial Equality of Britain has been touted as the model for constituting the Equal Opportunity Commission. It was formed in 1976. Subsequently an intense debate raged for its abolition. It was concluded that such bodies institutionalize discrimination, and make harmony a pipe dream. Hence, it was abolished in 2007 in favor of an integrated Equality and Human Rights Commission.

It is not merely in Britain but also in the USA, New Zealand, Canada and Australia that the solution is being sought through integrated commissions instead of numerous independent commissions. The expert committee set up by the Ministry for Minority Affairs has worked in contravention to this global trend. Instead of strengthening the National Human Rights Commission and expanding its sphere of activity, it followed the divisive example of erstwhile Commission for Racial Equality in Britain to recommend the formation of another commission.

Kay Hampton, the last Chairman of erstwhile of Racial Equality Commission was invited to India to instruct five workshops at Mumbai, Delhi, Bangalore, Hyderabad and Lucknow<sup>12</sup>. Hampton’s views were found obstructive to the growth of a harmonic society in Britain. In all such public campaigns it has propagated that institutional discrimination exists in India<sup>13</sup>. This is not only baseless but also militates against the well researched works of thoughtful Muslims. It may be pertinent to quote Humayun Kabir, poet, scholar and Union education minister.

“We have all heard and read in the papers about discrimination in services, that recruitment is not always fair even though it is laid down in the constitution that there shall be equality and fairness. Now what is the reason? When jobs are few and applicants are many, the person who makes the appointment has a choice... it may be on the basis of family relationship or it may be on the basis of language or it may be on the basis of caste or religion....this patronage often is and still more often appears to be improper to those who are affected his decision...these are primarily due to the fact that the opportunities are far fewer than the demand for openings for men and women of different communities...a Hindu will complain about another Hindu, a Muslims will complain about another Muslim and of course a Hindu will complain still more about a Muslim and a Muslim about a Hindu. There are basically result of inadequacy of resources.”<sup>14</sup>

There is no place for enlightened Muslims like Humayun Kabir or Moin Shakir in the bibliography of the Sachar Committee or the Expert Committee formed by the Ministry of Minority Affairs. Otherwise the Committee would not have reached such conclusions.

Hence it is imperative to understand the mentality and far reaching agenda behind such commissions. In the name of ‘Equality’ this will help to clear the path for religion-based reservations. Abhay Kumar Dubey has appositely written in this context.

“In general there are various kinds of minorities. But in India it commonly denotes religious minority. The demand for reservations on religious ground is already in the air. Since such religion-based reservations could not be granted under secular dispensation, it is suspected that the same is not being accomplished through Equal Opportunity Commission. It might be remembered the elements demanding communal reservations were most activated soon as the Sachar Committee report was presented”<sup>15</sup>.

Moreover, it is fallacious to consider the backwardness of Indian Muslims as a ‘historical burden’. This is only true in the context of SC/ST’s. The Muslims were treated fairly by the Indian state and the society even after the partition. The following quote portrays the nature of Indian state and society post-partition-

"Altogether 10,427 Muslim officers and other ranks opted for India whereas only 2,987 non-Muslims officers and other ranks opted for Pakistan. It is interesting to note that most of the non-Muslims who had opted for Pakistan have since returned to India, leaving only about 200 non-Muslim in Pakistan, most of them Christians and Anglo-Indian. Indeed, a goodly number of Muslims who had opted for Pakistan have also come back to India.

The number of Muslims in all categories of Government service, excluding those in the Army, the Navy and the Air force and the Railway, who opted for service in Pakistan "provisionally" and have now "finally" opted for service in India and have already come back to India, is approximately 1,590. Altogether 18,000 Muslim railway men, who had provisionally opted for Pakistan, finally changed their decision and elected to serve in the Indian Dominion.

The Government of India have taken back and reemployed Muslim officials who changed their provisional option for Pakistan into "India Final".<sup>16</sup>

It is evident that the Indian society and State rejected outright the theory and practice of 'Melting Pot'. The concept of Equal Opportunity Commission not only negates this historical backdrop but also raises a big question mark on secular governance and society.

Human Rights and equality are two sides of the same coin. To discriminate on grounds of caste, gender or place of origin is a violation of human rights. Thus there is a need to strengthen the National Commission for Human Rights that secular ethos and quest for egalitarianism do not clash. But this aspect has been willingly ignored by the Ministry of Minority Affairs.

# Theory and Practice of the E.O.C.

## Equality and the Indian Constitution

Justice is a name to which every knee will bow. Equality is word which many fear and detest.’<sup>1</sup>

The Indian Constitution is a democratic treatise on the notion of equality. It enshrines the cherished democratic values of equality, justice and freedom. Its basic thrust is to do away with any kind of discrimination prevalent in the society because it believes that freedom can only be realized in a non-discriminatory social setting.

The strength of the Indian Constitution lies in the fact that it reconciles the conflict between individual & group rights. Both these rights are equally upheld in the Fundamental Rights of the Constitution. One has individual rights in the form of individual freedom along with the group rights for religious minorities as well as several other rights for SCs/STs and OBCs. Thus, the Constitution judiciously balances individual’s value with the place value of the community to which he/she belongs. The contemporary liberal philosophy is still grappling with the groups and cultural thoughts and is in the process of theorization for application in the multi-cultural and multi-racial society of the West. It is the ingenuity of the framers of the Indian Constitution that they resolved this problem several decades ago with the attainment of India’s independence.

The Fundamental Rights and the Directive Principles of State Policy (DPSP) of the Indian Constitution together, decisively empower the citizens to enjoy opportunities. Article 16(1) and

16(2) of the Constitution guarantees equality of opportunities to all its citizens irrespective of their cast, race, gender and religion. Moreover, the Constitution gives philosophical direction to the state to achieve egalitarianism through active intervention in the socio-economic sector. The Constitution not only makes provisions for equal treatment of all irrespective of caste, creed, religion, language and region but also ensures their implementations. To achieve its objective the Constitution makes the welfare of the citizens, one of its core values. Moreover, in order to realize these values, the Constitution provides space for affirmative action which can act as a level playing field for all its citizens. The Constitutional design and subsequent judicial pronouncements on SCs, STs and OBCs are cases in point which seek to provide equal opportunities to all and help in realizing the egalitarian social order.

Though 'equal opportunity' is a term which has varied interpretations,<sup>2</sup> however, there is a consensus that absence of discrimination both at policy and implementation levels is a precondition to accomplish the goal of equal opportunity for all citizens. Some argue that this absence of discrimination should account for 'both direct and indirect discrimination'. The Indian Constitution, while exhibiting zero tolerance against direct discrimination, has also taken into consideration the factors which can lead to indirect discrimination. However, indirect discrimination cannot be absolutely abolished. Casteism, nepotism, corruption and regionalism are some of the factors which sometimes influence the decision-making process. But these aberrations in the administration and governance cannot be described as institutional discriminations. They are confined to individual cases and cannot be said to be an organized menace. It is of course a duty of the State to check such immoral and undemocratic behavior of its agencies. In democracy, they can be checked by using various modes, which include constitutional as well as extra constitutional tools, like pro-active judiciary, People's Interest Litigation (PIL), free press and the Right to Information Act etc.

The Indian constitution is committed to achieve an egalitarian society and empowers the government to explore diverse strategies to minimize inequalities. The most popular of them to emerge has been the practice of positive discrimination. Positive discrimination may be defined as preferential treatment of

socially and economically disadvantaged groups in education and employment.

The philosophy behind the positive discrimination was to overcome the inequality of vulnerable sections of the society at the initial stage. The basic thrust was to remove the hurdles in the way of their accessibility to education, employment and health.

Such provisions were discussed in the Constituent Assembly and the Scheduled Tribes and certain backward castes have been judiciously brought under the orbit of the positive discrimination.

### **Negation of wisdom**

The Constituent Assembly was firm that the application of such a principle which is reflected in the form of reservations should be confined to those people who were burdened by the socio-cultural backwardness and have a history of consistent discriminatory treatment for hundreds of years. Thus, in the light of the colonial policies of extend positive discrimination to the so-called religious minorities and its ominous consequences, during the deliberations on minority rights in the Assembly, a broad consensus emerged that there should not be any reservation on the basis of religion. The makers of the Indian Constitution firmly viewed that the term and concept 'minority' was a colonial invention to divide the Indian society and thereby weaken the anti colonial struggle. This was against the social history, reality and spirit of India. It is based on the fact that the tools and theories applied as remedies of the ills of the Western society and culture cannot be appropriated for the Indian problems. That's why the Constituent Assembly rejected the colonial thesis and practice of dividing the society on religious categories of majority and minorities. The Constituent Assembly resolved the rejection of reservation based on religion. It extended cultural and social rights by inserting Articles 29 and 30.<sup>3</sup> However, these rights were not granted exclusively to 'religious' minorities.

Furthermore, the features of the Indian Constitution, namely, Fundamental Rights, Cultural Rights, Federalism and Secularism, give enough scope for the redressed of equality and freedom related discrimination for various social and cultural groups. Only the SCs, STs and OBCs have been provided with special mechanisms to deal with their socio-economic backwardness.

The tone and tenor of the Constituent Assembly debate was strongly against religion-based reservation. The following interventions make it abundantly clear. The intervention of Tajamul Hussain and Dr. H.C. Mukherjee's in the Constituent Assembly debate on minority rights was noteworthy. They contested the colonial ideological framework. Hussain warned against the institutionalization of the term 'minority' for Muslims or any other religious community. He said,

We Muslims do not want any concession, we do not want safeguards, and we are not weak. This concession would do more harm than good to the Muslims...I appeal to all the minorities to join the majority in creating a secular state. In the new state of thing, I want that every citizen in India should be able to rise to the fullest stature and that is why I say that reservation would be suicidal to the 'minority'<sup>4</sup>. Dr. Mukherjee, Vice president of the Constituent Assembly, who happened to be a Christian, emphatically cautioned the nation that 'If our idea is to have a secular state it follows inevitably that we cannot afford to recognize minorities based upon religion'<sup>5</sup>

However, the term and concept of 'religious minority' has been reinforced by the political establishment and a section of academic despite the judiciary's off-repeated pronouncement stressed upon the fact that all efforts should be made to end the division between 'minority' and 'majority'. Thus the religious minority gradually became the center of social philosophy of the political establishment and the political discourse of the Indian State. The colonial administration and majority politics in the pre-independent days together propagated those equal opportunities for minorities in Hindu majority state was a myth. The Hunter Committee Report (1871) of the colonial administration that was establishment to look into the conditions of Muslims of Bengal, and the Pirpur Report<sup>6</sup> (1939) of the All India Muslim League had common arguments that Muslims were deliberately marginalized and the Hindus had eaten their shares. Unfortunately in post-independent India the minority-centric discourse and policy formulations borrowed the letters and spirit of the colonial discourse, ignoring the fact that the adoption of universal adult franchise empowers every citizen irrespective of his or her religion.



The convergence of the colonial discourse and the post-independent views on religious minorities set the stage ready for the development of the politics of minoritism. The Indian Constitution protects the minorities from any threat of discrimination. However, it should be noted that the term 'minority' has not been used there in the context of religion. Ambiguities gave them the advantage to take the shelter of the constitutional provisions. Articles 25-30 make provisions for religious freedom. Further, any discrimination on religious ground was absolutely prohibited (Articles 14-18). However, selective practice of secularism was applied by the ruling elites to appease the Muslims, the second largest religious community in the country. Its finest example is that the successive political regimes in India overlooked the provision of the Constitution which recommends formulation of Uniform Civil Code (Article 44) the first principle for secularization of personal laws. So, when the progressive Hindu Code Bill was passed, the Muslim population was spared on the strange reasoning that they had not attained the state of accepting mature reforms. These double standards incensed those who smelt pre-colonial mindset behind such politics and their reactions found collective expression in Shyama Prasad Mookherji's stinging indictment of Nehruvian pseudo-secularism:

"They dare not touch the Muslim minority. There will be so much opposition coming from throughout India that government will not dare to proceed with it. But of course you can proceed with the Hindu community in any way you like and whatever the consequences may be."<sup>7</sup>

### **Congenital Twins**

The politics and policy of Muslim appeasement by the so-called secularist regime gradually took the institutional shape and became the focus of the social philosophy of the United Progressive Alliance government in the center. It ignored the substantive secularism and followed procedural secularism. The former enlarges the secular space to all dimensions of life including economic, political, social, cultural and attempts to end the division between majority and minority; the latter de-secularizes them and strengthens the division between majority and minority. The Indian judiciary in its landmark judgments reinforced the substantive secularism. However, by appointing a High Level

Committee (HLC) in March 2005 to study the socio—religious conditions of Muslims, the UPA government de-secularized not only policy formulation and its implementation, but also the economic terrain. The Committee which is popularly known as the Sachar` Committee (henceforth SCR), borrowed the logic, philosophy and conclusions of the Hunter and Pirpur committees instead of those of the Constituent Assembly. The committee applied the philosophy of segregation on religious lines in all aspects of life and most importantly in the economic life. It stated,

“Deprivation, poverty and discrimination may exist among all SRCs<sup>8</sup> although in different proportions. But the fact of belonging to minority community has, it cannot be denied, an inbuilt sensitivity to discrimination”.

Thus it legitimized the divisive discourse and demands and policy formulation on communal lines. Throwing all cautions to the wind it paved the way for the demand for reservation on religious lines.<sup>9</sup> The committee pushed the entire political system to the dock by presuming that minorities face the danger of denial in education and job opportunities. It was this presumption of the Committee which led it to recommend the formation of Equal Opportunities Commission (EOC).<sup>10</sup> The committee could not provide even occasional and exceptional instances of alleged denial of opportunities to Muslims. It borrowed the historical circumstances of the Western civilization which had a history of aggression of minorities (ethnic, linguistic or religious) by the majority. J S Mill’s apprehension ‘Tyranny of Majority’ was based on historical experiences of the Western world. The SCR stated,

“It is well accepted maxim in law that not only justice be done but it must appear to be done. It is in that context the committee recommends that an Equal Opportunity Commission should be constituted by the government to look into the grievances of the deprived groups<sup>11</sup> “The Committee took the shelter of the Western model which itself was contested and ultimately rejected by the West. It’s says, ‘An example of such a policy tool is the UK Race Relations Act, 1976.’<sup>12</sup> This is a deep-penetrated irony that the Committee applies Western notions to evaluate the Indian situation. Implicitly, it does not show confidence in the well-established Indian democratic tradition to assess the inter-community relation. The irony is that the Committee remained unaware of two things: one, the case of India

was altogether different from the British realities and the second, the UK Race relations Act and its product Commission for racial Equality (RCE) were considered detrimental to national integration. Its existence was questioned. There was a vigorous debate on it in the British politics. The British government experienced the totalizing impact of racial discourse on the country's democratic process. Therefore, they promptly decided, before it could inflict damage to the practice of democracy and national integration, to abolish the Racial Commission. It is unfortunate that the Sachar Committee has taken the help of an already discarded Racial Commission to deal with a sensitive issue of dealing with the Muslim community in India. Finally the RCE was abolished.<sup>13</sup>

Efforts should be made to bring all groups who are not being effectively brought under the ambit of democratic governance through constitutionally demarcated routes. This will save the system from creating further apprehensions in other groups in the society which might create schism in the political system. The Indian State has taken steps to ensure the applicability of the fundamental right, Article 16, which empowers the citizens with equal opportunities. The Indian State has developed multi-pronged strategies to tackle discrimination in society and economy. There are agencies, especially like the National Human Rights Commission (NHRC), to deal with any such problem. Thus, creating a parallel institution like EOC accounts to casting aspersions on its own institutional well-being. Currently, there are separate organizations which tackle the very same issues which the proposed EOC plans to redress, and consequently this has given rise to suspicions over some hidden agenda masked by the progressive and secular nomenclature. The clandestine agenda clearly surfaces in the Equal Opportunity Commission report when it confirms that, "The proposed EOC is intended to deal with inequalities of opportunity as such, not with any particular group of already identified (or to be identified) victims of discrimination."<sup>14</sup>

In other words the EOC has no plans to deal with cases of already identified discriminated social groups i.e. Scheduled Castes, Scheduled Tribes, other Backward Castes and Most Backward Castes. It also recognizes that separate organizations are actively engaged in protecting the rights of these communities and does not

wish to encroach upon their territory. Obviously it is an indication to the SC/ST commission, women commission at national and state levels, commission for physically challenged etc. Instead, the EOC aims to identify a new group which has hitherto not figured extensively in the scheme of affirmative action. Identifying new groups can be done in a secular-democratic polity. But it should not be done through a new identity maker. This identification can be done through socio-economic indices. The Constituent Assembly Debate completed the process of putting the identity indices in place in the form of SCs, STs and OBCs. However, the Sachar Committee and its child, the EOC, together used this new identity maker to identify a new group for favor from the Indian State and this new group is exclusively and undoubtedly the Muslim community<sup>15</sup>. The only agenda behind the formation of the EOC is to create proportional representation of 'minorities' in education and services. It is a revival of the colonial mode to surreptitiously push the unconstitutional and illegal communal reservation through the backdoor.

## **II Sachar Committee's implications**

The Sachar Committee identifies the Muslim community in India to be socially, educationally and economically laggard with respect to some of the other SRCs like Hindu General and certain Hindu OBCs. It also discovers social deprivations to be rampant amidst Muslims. However, the SCR is not able to come to a conclusion on the exclusive nature of the Indian Muslim's deprivation as opposed to the non-Muslim Indians.

The Hunter Committee has harped on the virtual absence of Muslim representation in the British Indian administration. Naturally, some try to draw a parallel with the SCR.<sup>16</sup> The Committee did not explicitly blame the British government for the plight of the Indian Muslims. Instead it argued that modern education system introduced by the British Raj was not compatible with religious demands and aspirations of the Muslims. It thus recommended treating the Muslims favorably. This was the first ideological application of divide and rule theory.

But there was another report published in 1938 under the chairmanship of Raja Syed Muhammad Mehdi at the behest of the All India Muslim League which leveled outrageous allegations

against the Congress ministries which were formed in several provinces in 1937, deliberately denying jobs to the qualified and imposing 'Hindu agenda' in education. The differentiating feature of the Pirpur Report and other three reports issued by the League was that it exclusively blamed Congress (Hindu) leadership for Muslim under-representation in government jobs and educational institutions. It objected to Vande Mataram and use of Hindi as medium of instruction.<sup>17</sup>

	<b>Pirpur Committee Report, 1938</b>	<b>Sachar Committee Report, 2006</b>
	Perception of Marginalized,	
Muslim community	Discriminated, victims of police and administration, religion and culture under threat from the Hindu raj.	Marginalized, discriminated by the state and society, deep-rooted prejudices, suspicious attitude of police and administration etc.
Overall sense of discrimination	Yes Hindu masses,	Yes 'Hindu dominated state'
Responsible for discrimination	The congress	
Linguistic discrimination	Neglect of Urdu, preference for Hindi	Neglect of Urdu, preference for Sanskrit
Educational discrimination	Under-representation in educational institutions	Under-representation in educational institutions
Administrative discrimination	Under-representation in services	Under-representation in

		services
Solution	Disproportionate reservation	Reservation for Muslims

It would suggest that either Syed Mohammad Mehdi had anticipated the findings of the Sachar Committee, or perhaps Justice Sachar had whole-heartedly appropriated the message and ideology of the former. The only difference was that the former report was commissioned by the Muslim League, a virulently communal entity and the latter was commissioned by the UPA government led by the Congress which ironically was at the receiving end in 1938 of the vicious but highly effective Muslim League propaganda. It had raised the specter of a 'Hindu Fascism'.

Some members within the Committee themselves suspected a dubious scheme at work. Dr. Rakesh Basant, a member of the Committee in his e-mail correspondence to the chairman of the Committee, Justice Sachar, protested the discriminatory approach in the lopsided allocation of the work since.

Here, questions arise that whether the Muslims were being discriminated institutionally by the State and are the Indian State and the Hindus prejudiced against them.

Interestingly, Sachar Committee failed to discover any such institutionalized discriminations by the State. Moreover, it has not diagnosed the social-religious factors for the Muslim backwardness and has not compared it with the socio-religious conditions of Christians, Sikhs, Parsis who have made their presence felt in all walks of life and tag of minority could not hamper them in acquiring spaces in education, politics, economic spectrum and employment. Here, it is noteworthy that without any empirical evidences the committee assumes that there are institutionalized discriminations when it says: 'there are hardly any empirical studies that establish discrimination {of Muslim}. Research in this area needs to be encouraged...'<sup>19</sup>. 'Muslim victimization by the Indian State' as a case of 'institutionalized racism' is an alarming axiom internalized by the authors of the report; however, lack of any empirical evidence compels them to call for indefinitely more research on this aspect.

To compensate for the empirical and evidential vacuum, the Sachar Committee devotes a full chapter on supposed public perception of Muslims. Some of them include: Muslims need to prove on a daily basis that they are not 'anti-national' and 'terrorists.'<sup>20</sup> Muslims complained that they are constantly looked upon with a great degree of suspicion. Markers of Muslim identity- the burqa, the purdah, the beard and the topi- while adding to the distinctiveness of Indian Muslims have been a cause of concern for them in the public realm. This one takes the cake: 'every bearded man is considered on ISI agent. 'Moreover, public perception cannot be dealt with in the case of policy formulation. If such perceptions of all exist, the civil society and its agencies should be entrusted to correct such perceptions. Here, the role of the political parties is equally significant to ensure the progressive unfolding of secular polity and society. Interdependence of people of various castes and communities in trade, commerce and fulfilling of their diverse needs from health to education remains undocumented. The irony is that, despite knowing fully that most of them are myths deliberately constructed<sup>21</sup>, the Committee has accepted those myths as facts and on their basis it has recommended stat actions for their redressed. For instance, the Committee rules out any discrimination in selection and interview in UPSC exams, but recommends representation of Muslim experts in interview boards like that of SC & ST<sup>22</sup>. The SCR expects the government to conscientiously address very imaginary case of Muslim discrimination, not because they are real in a qualitative or quantitative sense but on the circular reasoning that these are common Muslim perceptions. The SCR's writ is fantastically antithetical to the stand of the founding fathers of the Constitution, who realized the anti-national bent of such practices. The Muslim member Z.H. Lari in the Constituent Assembly clarified that,

"I am not one of those who believe that all the supposed or imagined grievances of a minority must be met. They must be reasonable. Their interests can be looked after so long as they are consistent with the national interest. The moment there is antagonism or conflict between the interest and the interest of the nation, the minority must go to the wall<sup>23</sup>". The Muslim scholar Mohd Wahiduddin placidly observed that, 'The major part of discrimination and atrocities that Muslims are facing in this country, are in actual fact, the consequences of their own backwardness which they misguidedly wish to blame on others'<sup>24</sup>

What needs to be addressed is the socio-religious perspective of Indian Muslims and the factors which hamper its integration with the mainstream. Instead, the overwhelmingly sectarian mindset of SCR deliberately ignored the socio-religious resistances within the community which prevents the Muslims from integrating with the mainstream and like the Hunter Committee, it too mischievously applied communal Machiavellianism to deflect the cause of Muslim backwardness on the Hindus. Alfred Tennyson, the English poet, had said, "That a lie which is half a truth is ever the blackest of lies, that a lie which is all a lie may be met and fought with outright, but a lie which is part a truth is a harder matter to fight".<sup>25</sup> The Sachar report similarly abounds in statistical data which has been meticulously manipulated, quoted out of context and rhetorically interplayed to arrive at a scenario which reduces Muslims to the status of the most deprived sections of SC/STs and other MBCs; all this is in the great cause of rendering Muslims fraudulently eligible for benefits for affirmative action and reservation. The Committee took recourse to a peculiar methodology of selectively picking and choosing for consideration only those representations which suited its politico-communal agenda.<sup>26</sup> Such suspicions were further accentuated by the complaint of Dr. Rakesh Basant, that "a large number of data analysis that is being done is of data that many members have never analyzed before and do not have any idea what is and what is not possible"<sup>27</sup>

A discriminated religious community should naturally exhibit certain symptoms with regards to health (IMR, lifespan, growth rate), education (literacy, mean years of schooling, female literacy), general living conditions (absence of overcrowding, access to potable water, toilet facilities) and economic status (participation in work force, per capita income). Most of these human development indicators are favourable for Muslims as compared to Hindus, and in certain instances they are even better than the Hindu General (UC).<sup>28</sup>

It is a common knowledge that Muslim population is growing much faster than other communities. In the past 40 years, the total population of India has grown by 134 per cent while that of the Muslims has grown by 194 per cent. The gap in the growth rate of Muslims and total populations is almost 10 percent. According to the reputed demographer, Prof. Ashish Bose's admission, the



reason for the exponential Muslim growth is that they have been much less willing to adopt family planning practices as compared by to the other communities.<sup>29</sup> Such resistant attitudes are maintained by the Ulema who issue fatwas against the use of contraception. The Total Fertility Rate (TFR) for Muslims is higher than the Indian average by 0.7 to 1 points according to different data sources. The Infant Mortality Rate for Muslims is 59, as compared to 77 for Hindus. Even by conservative estimates, the Muslim Population in India will no stabilize before it touches the 350 million mark! Moreover, according to the National Family Health Survey Report, Muslim infant mortality and under five morality are the lowest amongst all other communities and they have experienced the largest decline in these rates since the 1990s.<sup>30</sup> The SCR does not express satisfaction in these findings.

There is not much of difference between average literacy among the Hindus at 65 percent and the Muslims at 59.1 percent. The SCR says that primary education<sup>31</sup> is the major hurdle for school education. It reports that as many as 25 percent of Muslim children in the 6-14 year age group have either never attended school or have dropped out (but may have attended madarsa/maktab). What the SCR does not cite is the data on the SC/ST/OBC/MBC and some economically backward UCs, who do not have access to any source of education. Moreover, only 10 percent of the students in rural India, enrolled for primary education, eventually go on complete their basic education<sup>32</sup>.

Surprisingly, while admitting the Muslim reluctance to get their women educated beyond primary education, the blame is not pinned on the Muslim mindset, the patriarchal nature of the Muslim religion or the medieval Ulema despite awareness of the existence of 'a common belief that Muslim parents feel that education is not important for girls and that it may instill a wrong set of values.'<sup>33</sup> Instead, the lame excuse of fear for their women's safety amidst male teachers is cited which is irrational considering the veil has not saved the Muslim woman in her own streets.<sup>34</sup> What the SCR expects of the administration is diverting all female teachers towards the education of Muslim women, only in order to allay the inhibitions of the ultra-conservative Muslim psyche. They believe

“a collegiate girl becomes extremely free, purdahless, immodest and shameless. A girl who loses modesty loses everything. She will entice men into corruption. It is not permissible for her to stir out without a veil for looking at a woman cause evil thoughts”<sup>35</sup> A contemporary instance are neo Muslim fundamentalist groups like Tablighi Jamat and Wahabism which are fostering a new religiosity and threatening the Muslim community to become even more inward looking, in the process completely isolating it from the mainstream. Schools run by them encourage segregation of girls, the wearing of hijabs and severely limit the participation of girls in life outside the community. Sameera Khan wrote that Muslim women’s ‘movements and behavior are more closely policed by their families and their community.’ Moreover, many middle-class families did not allow Muslim girls to have an access to higher education and work outside the mohalla and they closely monitored subjects studied or jobs pursued. Sameera Khan quoted a Muslim father, Nagapaada, stating, ‘We cannot allow to do something which is not appropriate from the point of view of our family and community’s “izzat”’ She further wrote that a higher and more menacing level of policing is being encouraged by the neo fundamentalist forces who are gradually entrenching themselves more firmly in Muslim ghettos. The activities of the Tablighi Jamaat and the influences of the Wahabism are fostering a new religiosity and threatens to make community more inward looking, thus isolating it further from the mainstream...at least two of the four Islamic English Speaking schools in Mumbai are run by the Tablighis and one is funded by the Wahabis.

The Other method adopted by fundamentalist groups to police women’s bodies is by handing out fatwas to regulate women’s movements. In recent times fatwas have been routinely issued on just about anything from banning women from wearing lipstick and putting flowers on their hairs to blocking cable TV access and music at weddings- by just about anyone in the religious hierarchy- from the darool Uloom Deoband seminary to any local masjid or maulans.”<sup>36</sup>

The other major reason for educational backwardness of Muslim women is conjectured by the SCR to be the lack of female hostels when there is no recorded demand for them by Muslim women, obviously because of their dismal presence in modern

professional jobs. Did the SCR create this need for communal hostels and did it believe it was fair to ignore the largely unmet needs for hotels amongst the growing non-Muslim studying/working women population who have frequently lamented their inadequate availability?<sup>37</sup> The SCR shies away from accepting the Islamic hostility to female education and the perversely patriarchal nature of Muslim society which deserves to be contested. If other communities can educate their girls through male teachers, then why cannot the Muslim community be more liberal and accommodation? What we need is a change in mindset, whereas the Sachar Committee seeks to further reinforce it!

The general living conditions of the Muslims is also not too disconcerting. The SCR reports that as far as living conditions are concerned, Muslims seem to be at par with SCs/STs and OBCs with respect to house structure (pucca or not) and slightly better placed regarding toilet facilities as compared to general population. The SCR, while conceding that there is no strong indication that Muslim concentration in villages has less infrastructural facilities, arrives at a specious conclusion:

“However, the provisioning of infrastructure in states with substantial Muslim concentration like Uttar Pradesh, Bihar, Assam and Jharkhand is a matter of concern. The concentration of Muslims in states lacking infrastructural facilities implies that a large proportion of the Community is without access to basic services”.<sup>38</sup>

The Preposterous contention of the SCR is a classic reduction ad absurdum arguments; it claims that Muslims do not find access to basic services, yet admits that there is no evidence for less infrastructural facilities. This conclusion is achieved by a biased statistical interpretation, since statistics don't lie, people do! The SCR sophistically attempts to universalize the lack of Muslim access to facilities in the BIMARU states where access to basic facilities for all communities is significantly lesser than the national average.

The economic divide is not as grim as painted by the SCR. While it is true that the per capita income of the Muslims is lower than that of the Hindus, it should not be seen in isolation of the fact, that a Muslim household is of larger size than a comparative Hindu household and secondly, the bonded status of the Muslim woman who is yet to be emancipated of medieval scriptural restrictions causes the Muslim family to lose a potentially valuable wage

earner. While noting that 'the concentration of Muslim women in home based work raises issues about spatial mobility and other work related constraints that women face even today', and the recognition that 'traditional barriers, in many cases, still prevent women from going out of their homes to work', it, however, attempts a characteristic balancing act to minimize criticism of Muslim practices with a politically correct statement which claims "This is particularly true of Muslim women but is also true for Hindu higher caste women"<sup>39</sup>. Nothing could be further from the truth. Upper caste Hindu women work with distinction in professional and education fields. SCR seems to have transplanted the plight of the high caste Hindu woman from Pandita Ramabai's 19<sup>th</sup> century book.

The percentage of population living in urban areas is one of the highest among the Muslim community. Usually, urbanization is associated with better Human Development Indicators. The SCR repeatedly points at the anomaly in case of Muslim urban population which was lagging behind all Socio-Religious Community (SRC) except the SC/STs. It highlights that the incidence of poverty among Muslims in the urban areas is the highest with a head Count Ratio of 38.4 percent. While glossing over the favourable finding which confirms as also the Muslim as compared to other SRCs except H- General in rural areas<sup>40</sup>, the SCR repeatedly stresses the modest fall in poverty for urban Muslims as also the Muslim urban literacy levels being lower than all SRCs except SCs/STs among both genders. The SCR observed that: 'While there is a significant rural-urban differential, it was observed that the gap between Muslims and the other SRCs is generally higher in urban areas than in rural areas'<sup>41</sup>. These findings however are not inconsistent, when we consider that Muslims in urban areas predominantly live in old cities (out of historical reasons), ghettos and slums (rural migrants). Access to health and educational services for all communities living at such places is, in general, limited and does not point towards any distinct backwardness of the Muslim community.

The SCR laments the under-representation of Muslim graduates in professional fields, as also in Union and state Public Service Commissions, police and other elements of the public sector, in spite of its self-admission "The low aggregate work participation ratios from Muslims are essentially due to much

lower participation in economic activity by women in the community'.<sup>42</sup> Moreover, is not Justice Sachar being queerly querulous when he explicitly claims to be not bothered if the Muslim population became the largest group, since in his words: '... how does it matter which population is the largest?'<sup>43</sup>, becomes by the same yardstick: how does it matter which religious group dominates the public sector.

The anguish shown by Justice Sachar on the issue of Muslim population is nothing but a rhetorical attempt to overemphasize his secular credential. How could he de-contextualize the issue for rapidly growing population of the community/communities when he is seeking reservation/clearly marked quota for the Muslims solely on the basis of religion? The history of India and the role played by the Muslim League in connivance with the British imperialism in the partition of the country and frequent communal clashes, naturally lead to the issue of comparative community demography. MOre empty workds can do harm than good to the nation.

Why does Justice Sachar wish communalizing the issue? Similarly, the under-representation of Muslims in the police or judiciary in the absence of any discrimination against Muslim complainants is immaterial; any implicit insinuation of religious bias is defamatory, based on hearsay and lacks any critically documented evidence.

### **Secular problem, Communal solutions!**

There are numerous instances where the Committee has been overly magnanimous in recommending state action for Muslims. Because of the precise nature of our study, we shall examine only some of those clauses which have any bearing on Muslim education and employment since the proposed EOC intends to simultaneously promote equal opportunities in education/employment and prevent discrimination which causes denial of the same<sup>44</sup>.

<b>S.N.</b>	<b>Findings of the committee</b>	<b>Recommendations</b>
1	The participation of Muslims in the political sphere is low and can not influence events	To be provided with 'mechanisms' to engage them in the democratic process and

	in their developmental process. The Committee gives a superficial observation and remarks on this issue.	they should 'be given the required collective agency.' It indirectly supports the demand for the proportional representation!
2	Perception of discrimination in selection in UPSC/ state commission/railway boards/ professional courses	Constitution of EOC to look into the complaints and allay the apprehensions through 'A more transparent recruitment system' while Muslim experts should also sit in the interview board like the experts of SC and ST while interviewing/examining Muslim candidates.
3	Very few Muslim girls and boys in technical and Higher Education.	UGC should encourage colleges and universities to have diversity in student population & an alternative administrative criterion is to be evolved. Lower the educational qualification for Muslims and allow madarsa educated to join in ITIs. madarsas are to be linked with Higher Secondary School board so that students can shift from madarsa to regular schools and degrees of madrsas are to be considered equally eligible for competitive exams like civil services, banks and defense services.
4	Army: no statistics available on the basis of the community	Assumes Muslim under-representation; blames the State, army establishment. Prefers communal representation in army.

5	Many seats have been reserved for SCs where Muslims outnumber SCs.	Rationalization of delimitation schemes in sizable Muslim areas.
6	Although there is no discrimination of Muslims but for betterment.	'A more transparent recruitment system' and Muslim experts should also sit in the interview board like the experts of SCs and STs.
7	Flow of Bank credit to Muslim is low. The government programmers have not benefited the Muslims	Promotion and enhancement of priority sector advances to the Muslims, opening of more branches in Muslim concentration areas, policy to enhance the participation of minorities in the micro credit schemes for 'minorities with an equitable provision for Muslims'
8	Large sections of Muslims are employed in self employment.	Financial assistance to the occupations where there is large Muslim concentration
9	Few Muslim civil society organizations are there.	Muslims should be encouraged and 'trusts set up by the community, such as Wakf institutions and mosque committees should be facilitated.'
10	Wakf properties are in a state of neglect	Encroachers to be evicted and public utilities should be built in those places.

1. The SCR has found that there is a very low participation of Muslims in the political sphere and cannot influence events in their developmental process. It recommends for the introduction of 'mechanisms' to engage them in the democratic process. Why did Muslims refuse to join mainstream politics and contribute in the

democratic process as citizens? The SCR does not take pains to answer this question. Instead it blames the political system for marginalizing the Muslims. The Committee's Muslim members with the consent of the chairman played a subversive role by communally interpreting the electoral process and citizenry. They revived the pre-colonial Muslim League's agenda of creating Muslim constituencies.

The regressive political solution which the committee trumpets is de-reserving SC constituencies where Muslim population is greater through a process of 'rational delimitation' since according to the Sachar committee, the reserved status of all these constituencies which has proved detrimental to minority interest needs to be withdrawn before the next Lok Sabha elections so that justice is restored to the Muslims across the country.<sup>45</sup>

This recommendation reminds us of the Morley-Minto reforms which introduced the poisonous ideology of communal electorates and permanently strained the fissile Hindu-Muslim relations which led to partition. By delimiting constituencies with significant Muslim population, it is expected that Muslim voters polarize themselves into voting for a Muslim candidate or at most, one who will be compelled to exclusively pander to Muslim interests. Also, this suggestion of the Committee clearly makes a tacit communally charged insinuation that any Hindu leader would be against Muslim development, exactly the same malicious accusations which the Muslim League leveled against the Congress Party and its leaders, including Mahatma Gandhi, during the British rule. It is to be observed that the members of the Constituent Assembly were dead opposed to any communal reservation which is amply testified in Mahavir Tyagi's words.

"There is no place here for those who claim separate electorates. Separate representation when it was introduced in this unfortunate country, was introduced not by the demand of those who claim to have made those demands, but a command performance that has fulfilled its task and we have all enjoyed the fruits of it... There must be set-backs for them as long as the rest of India does not feel one with them. They will have to justify their behavior that they deserve retaining the seats they have now. It will take time. In the achievement of this objective, even if the Parliament goes temporarily without any representation of Muslims, I would not be sorry for it because after the next one or



two elections, elections will be fought on the basis of merits and services and not of community"<sup>46</sup> 2. One of those concerns was raised over a presumed bias against Muslim candidates appearing in civil services examinations. The SCR in a bizarre manner suspected some institutional discrimination while previously it has itself highlighted the proportion of Muslim graduates, especially female to be lowest among all SRGs. The question is, in the absence of basic graduation, the number of Muslim graduates eligible to appear in the UPSC/ professional exams was bound to be disproportionately lower as compared to other SRGs which consequently accounted for their under-representation in the central and state commission services. It is incredible indeed that Justice Sachar ignored Similar rationalization of the Muslim situation by one of his foremost inspirations on Omar Khalidi who believed

"When the base of education-primary through higher education is weak, it is understandable why Muslim students do not successfully complete in examination leading to admission into professional colleges. Little wonder that Muslims are not proportionate to their numbers in engineering, medical and dental colleges" The tabulated chart below rejects the charge of bias leveled against selection committees.

***Recommended candidates through the UPSC 200-4***

Category	Total	Muslim Candidates	Percentages of Muslim Candidates
Appeared for UPSC mains	11537	283	4.9
Selected for interviews	2342	56	4.8
Recommended candidates	835	20	4.8
Recommended candidates as % of appeared for written	7.2	7.1	-

examination			
Recommended candidates as % of selected for interview	35.7	35.7	

Why was the SCR not ashamed of raising this baloney over discrimination, when there have been two Muslims who actually became chairmen of the UPSCR-A.R Kidwai (1973-79) and J.M. Quraishi (1998-2001) while there have been more than a dozen Muslims who became members of the Commission. They have uniformly rejected the theory of discrimination in promotion directed only against Muslims. The Muslim members of the UPSC largely supported they theory of Muslim education lag.<sup>48</sup> Muslims hold visible and top positions in the Railways such as Muhammad Shafi of Railway recruitment board.<sup>49</sup>

Instead, the SCR reveling in its dangerous delusions unconnectedly accepted the institutional discriminations against Muslims as some unverifiable axiom. This makes them suggest the desirability of Muslim experts in the interview board on the plea that their presence will increase the participation of Muslims in the government employment programmes, and the formation of the EOC as a permanent body under Ministry of Minority Affairs.

3. The problem of under-representation in technical and scientific education is raised by the SCR but instead of checking its root cause, it prefers escapism. It seems that the Committee presented half truth while deliberating Muslim backwardness. Till 1971, Muslims qualified in technical education conveniently got visas for Pakistan. Why did the Committee not even mention this fact while analyzing the very question of under representation of Muslims in technical field? The reform in madarsa has been opposed as an intervention in the internal affairs of the community.

The other major concern is the outdated, unscientific, restrictive and sometimes frankly bigoted madarsa education which among pious Muslims is not only preferred but jealously guarded against the 'corrupting influences' of modern secular education. As Arun Shourie argues

'For the Ulema, religious education must take priority over modern, technical education. Only that knowledge is to be imparted which strengthens one's faith - in practical terms, only those subjects should be studied which are mentioned in the Quran and the hadis. It is the ulema which is responsible for maktabas and madrasas'.

One of the popular fatwas warns to this effect --

"The education of schools and colleges is contrary and antagonistic to Islamic deeds Islamic Characteristics and Islamic culture. If the Muslim child remain deprived of and weak in Islamic education they will certainly be affected by the noxious education of schools and colleges and antagonistic atmosphere and society with the result that they will become averse to Islamic belief and characteristics'<sup>50</sup>.

4. The most debased and immoral trend in the Sachar Committee is reflected in its demand for Muslim head count in the Indian army. General J.J. Singh was contacted by Justice Sachar but the army flatly refused to oblige the Committee. Undeterred, Justice Sachar wrote to the defense ministry demanding a statistical answer to his query. Joint Head of the Defense Ministry rebutted Sachar's move and reiterated that

'Selection in the army is based on ability and is open to all citizens which includes the Muslim community. We do not discriminate on the basis of caste, religion or region. Therefore, the army cannot provide any separate statistic for Muslim composition'.<sup>51</sup> the deep anguish and hurt experienced by the army found reflection in the words of a soldier

"What every soldier finds most objectionable in the exercise is Sachar's nation of equating the armed forces with any other department of the central government. Could Mr. Sachar Please tell us in which other organization is dying for the country part of the 'job'?"<sup>52</sup> The Committee was successful in creating communal discourse on Army in media. That the Committee had the gall to say that the army made 'unnecessary fuss about this on grounds of regimental spirit and cohesion.'

Thus a myth was created through using statistics in selective manner and that too undermining or ignoring the socio-cultural and religious factors behind the Community's perspective

to education, employment and modern banking system. It led the community to recommend the formation of the EOC.

### **Rationale behind the EOC**

The Sachar Committee recommended the constitution of the EOC, although its terms of reference do not warrant constitution of any body for multiple deprived groups, as this report was exclusively restricted to the condition of the India Muslims. As a corollary, the EOC was also expected to be committed exclusively towards Muslim interests.

Not surprisingly, the Ministry for Minority Affairs issued the notification for constitution of an expert group to examine and determine the structure and functions of an EOC. Assistance for convening meetings of the expert group was also to be provided by the Ministry of Minority Affairs.

The Expert Group that was formed under the chairmanship of Prof. (Dr.) N.R. Madhav Menon 'to examine and determine the structure and function of an Equal Opportunity Commission' among other things, suggests that the Minister for Minority Affairs (MMA) will be a part of the Committee which would select/appoint the members of the EOC<sup>53</sup> ignoring the SC/ST/OBC/Disabled/women committees who comprise more than 70 percent of the population.<sup>54</sup> In a calculated move, the Ministry of Social Justice and Empowerment was excluded from appointing members of the EOC.

To maintain the hegemony of the MMA over the EOC, the Expert Group recommended formation of regional EOCs (REOCs) instead of state EOCs (SEOCs). The reason lay precisely in the fact that the Expert Group has given the responsibility of appointment of REOCs to the same body that is to appoint the EOC.<sup>55</sup> Thus the MMA has a say in all the appointment model of the National Human Rights Commission would have been followed, where the members of the State Human Right Commission is appointed by a committee of the Chief Ministers and the Home Ministers of the respective states<sup>56</sup> among others.

The Equal opportunity Commission justifies its constitution on the premise that the idea of equality is one of the foundational values of our Republic. It understands substantive equality to be very much a part of the 'basic structure of the constitution' It relies on the maxim 'Equality postulates not merely legal equality but

also real equality'. The continued presence of stark inequalities which cover the entire spectrum of material life, from basic survival needs like food, water and shelter, it finds most disturbing.<sup>57</sup> While it finds the existence of poverty and deprivation in an absolute sense as bad enough, its unequal incidence across social groups and communities it considers much worse, because it is no longer a shared burden as it existed at the time of independence.<sup>58</sup> The EOC expects to restrict its objectives in the domains of education and employment. It also believes in existing modalities for dealing with problems of unequal opportunity, disproportionate deprivation and various forms of discrimination are in urgent need of rethinking.<sup>59</sup> It is somewhat apprehensive on its own scope of activity as it negates the right of an individual to approach it and agrees to entertain only those complaints with a group equality dimension. Similarly, there is a misplaced optimism in its belief that despite areas of overlap with existing commissions, the EOC will take further the work of each of these commissions, and it will help in the better realization of their objectives ignoring the global warnings that relations and allocation of functions between separate human and equality commissions have to be clearly delineated, if they are to be maintained in a dichotomous state.<sup>60</sup>

It is noteworthy that if we stretch the logic of community too much, then it would very likely impede the realization of democratic values. The structural logic of community and tradition has worked many a time against the democratic practices of the society; it shows rigidity in its adherence to its regressive community rights at the cost of democratic rights. Secondly, the arbitrary manner of the constitution of the Expert Group and the exclusive domain of the Minister of Minority Affairs in its functioning both at the central and regional levels greatly undermine the already existing democratic institutions which are too meant to protect the precious rights of SCs and STs, women and minorities. If the proper co-ordination and consultation with these institutions are put on hold, the functioning of EOC under the guidance of the Ministry of Minority Affairs would certainly lead to centralization and discontent.

### **Hidden agenda**

Equal opportunities and human rights are considered inalienable throughout the democratic world. For a Commission

whose scope and ambit is so vast, we find incongruous recommendation for its creation by an extremely myopic and parochial Sachar Committee Report limited to the interests of the Muslim community of India. Muslim activists have been the only community which has vociferously supported the proposal by the SCR for the establishment of an EOC. There are separate organizations (NCSC/ST, NCW) looking after the concerns of the Scheduled Castes and Scheduled Tribes, National Women commission for women, hence, and the EOC remains wary of overlapping jurisdictions. We have previously discussed how the EOC has proposed exclusion of already identified discriminated groups (2.5) and that its sole purpose to redress Muslim grievances has been further confirmed by Minority Affairs minister, Abdul Rahman Antulay who explained that the formation of the EOC was part of the UPA government's exercise to look into cases of Muslim discrimination<sup>61</sup>, for which the SCR, we discovered, had laboriously hunted in vain.

What is conspicuous is the obfuscatory tactics of the EG which rarely used the word 'Muslim' in its report when its fundamental objective is to advance Muslim interests, even at the cost of more impoverished and deprived groups which exposes the hypocrisy of the EG. How can the Government of India misguide the citizens by claiming the proposed Equal Opportunity Commission will be modeled on the National Human Rights Commission and will not act like the National Minority Commission or the National Commission for Women. In other words it won't be a Commission for any particular section, group or community when actually it is meant to be totally controlled by the MMA and the ideology of the Sachar Committee Report.

The desperation of the EOC to preemptively clear the decks for identification of deprived group equivalent to Muslims can be ascertained from the character of the deprivation index (formula to identify deprived groups) which would employ apart from regular legal socio-economic indicators of backwardness even others found relevant by the Commission!<sup>62</sup>

Only in order to win public credulity it claims to deal the with unequal equality, disproportionate deprivation and various forms of discrimination- all which are shared characteristics and not the misfortune of any exclusive and homogenous socio-religious group. It is an effort to implement communally proportional

representation through the backdoor. When the record of the State is dismal in ensuring pressing entitlements in the people, it raises the boggy of cultural injustice to certain communities in order to conceal its failure in ensuring genuine entitlements to the people.

The basic premise built round the State caused many aberrations in the history of independent India. One can pick the realm of development to illustrate one's point. The inherent aspect of development is to bring about a desired change in the existing condition of the people and the nation. It enhances human condition, but the irony of the situation is that it is used to carve a niche of strong political support for the holders of State power. Its inherent logic is defied at will, and the notion of development is seen through the prism of caste and communal divide. The politics of India since the decades of 90s is a witness to this fact. The secular domain of development was soiled in the hands of State power. But there is a need to reverse this process in order to make the society strong in terms of its pressing entitlements. Prof. Amartya Sen used development as 'freedom'. To him, it frees human beings from their wants, it builds their capability to easily earn their livelihood. In short, development enhances one's potentiality to withstand the adversity of life. But, this is possible only when the realm of development is shorn of petty political gains.

The development, the question of bread and butter is in secular space. An integrated and holistic economic development in a democratic polity removes uneven growth of regions or communities. The EOC will be an instrument to communalize the entire education system, competitive examinations and entrepreneurships. The communal approach of identifying Muslims as a separate target group is bound to create fissures in a secular society and politics. Moreover, to push religious communities into development discourse as a binary opposition is an exercise fraught with grave danger as it might threaten the unity and integrity of the nation, as experienced in the bitter memories of partition. As Dipankar Gupta has argued, religious identities become sharpened, polarized and accentuated when religious groups are in proximity to each other, especially when they are competing for scarce resource, which in turn sharpens and hardens identities and boundaries around group. Thus, he asserted that the enterprise of development should not factor in religious groups

and identities; as such a move is fraught with dangers. One of these dangers is that it would lead to an undermining of the concept of citizenship that requires being privileged and strengthened.<sup>63</sup> Desecularization of process of planning, policy formulation and implementation, banking and civil services means debasing the concept of one nation, secular and democratic polity.

### **Conundrum of selecting deprived groups**

The proposed EOC bill defines the 'Deprived group' as a group of persons who find themselves disadvantaged or lacking in opportunities for reasons beyond their control or suffer from impaired ability to make good existing opportunities to access rights and entitlements available under law or schemes of the government.<sup>64</sup> While this definition is mired in ambiguity, tracing the identity of the beneficiary is never in doubt if we consider the fact that EOC implicitly excluded SC/ST/OBC/Women/Disabled from its purview, reasoning they were already identified victims of discrimination (4.5) However, the EOC maintains it will not be restricted to any pre-defined groups. The EOC should in principle be open to any person who feels disadvantaged, deprived or discriminated against on grounds of belonging to any social group. (4.4) The EOC also promises to pursue an evidence based approach of inequality and lack of opportunity when a complaint is registered by any social group. (7.11)

It excludes individuals who suffer from the denial by the system. It reinforces group identity as its real constituency for the redressal of grievances or discrimination. The SCR divided the members of the Civil Society into Socio-Religious Communities (SRC). It introduced a new division with a presumption that SRCs differ in their approach to development and more conspicuously the State discriminately delivers things to them. The social philosophy of the UPA government identified the Muslims (SRC) as the victim. The proposed EOC basking in the patronization of the Sachar Committee is banking on the assumption that only Muslim SRC will be able to approach them. NO other identity is relevant for the EOC. Caste identity cannot be tenable and so the question is will it have the necessary moral consciousness to actually investigate through an evidence-based approach like the complaints filed by economically disadvantaged members of some higher castes, like the poverty ridden Brahmins who man the 50 Sulabh Shauchalayas in Delhi?<sup>65</sup>



To conclude this initial assumption one has to critically locate the path treaded by the Indian state. The efficiency and urgency of the formation of the EOC has to be understood in the light of the role played by the ruling Congress party since Independence. It has recreated strong political categories of 'majority' and 'minorities' taking the clue from India's colonial antecedents to suit its political ambitions of ruling Indian state from larger than any political party of India. The segregation of Indian populace into two mutually hostile categories of majority and minority has paid the Congress party rich dividends in terms of electoral gain; it has reaped rich harvest also in the recent elections through promising the minorities religious reservation in all the state sectors without giving any thought to its rejection by the Congress leaders during freedom struggle when the imperial British power first mooted this pernicious idea of reservations on the basis of religion for the Muslims.

The preferences and biases of the State can only remain outside the public gaze, when it invests more and more into the shaky cultural domains to divide the people along religious and communal life. It detracts people's attention from the failure of the State. EOC is such a ploy to ensure the longevity to the rule of Congress party and its cohorts.

As the above analysis of SCR and EOC amply demonstrate the existence of multiple democratic institutions to redress the violations of democratic rights, then the obvious questions arises about the intentions of its creation. Moreover, the Indian Constitution too provides enough guarantees to protect the religious and cultural rights of the citizens of India. Again, one has to return to the logic of State power. It consciously creates and imagery of mal-treatment of minority on the hurt psyche of the strong minority group which ultimately creates fear amongst them, and gradually it penetrates deep into their psyche. If this is not checked, then these groups develop a ghettoized mandate which largely determine their political and social behavior. It is a threat that the creation of EOC would strengthen ghetto mentality of the Muslim minority in India.

Neither it will serve the interest of Muslim minority in the 21<sup>st</sup> century nor will it serve the interest of the body-politic. It would create fissures and frictions between the communities. All this happened because it is not much debated and discussed at the

levels of society and different democratic forums. Indian State under Congress rule is hell-bent on patronizing the Muslim minorities to make them captive voters by creating a sense of fear nothing but an aggressive pursuance of a dominant discourse of State power by the Congress party since 1947.

The status of the Brahmins in many states is abysmal. In Andhra Pradesh, 44 percent of Brahmins in the 5 to 18 age group dropped out school at the primary level, according to a study by J. Radhakrishna.

By using the such studies, we wish to emphasize that conventional concepts of poverty no longer hold true in fast changing India. The face of poverty is rapidly changing. One image of poverty in India is a hydra-headed monster which spreads its tentacles erratically clasp one community on one area and ensnaring a different one in another. No one community is immune from this scourge.<sup>67</sup>

But the EOC has already betrayed its prejudices by naming backward Muslims and some obscure denitrified tribes as its preferred target groups<sup>68</sup>.

### **Does EOC actually have the constitutional mandate for recommending Muslim Reservation?**

Undoubtedly, the framers of the constitution were vehemently opposed to communal reservation of any kind. In the 9 judge case of Bommai Vs Union of India, a. 1994 S.C. 191918, Justice Ahmadi Explains.

"Since, it was felt that separate electorates for minorities were responsible for communal and separatist tendencies, the Advisory committee resolved that the system of reservation for minorities excluding SC/ST should be done away with".... (Para 26) A constitutional expert D.D. Basu forthrightly argues that, 'A resurrection of the baleful plant of the communal award which has been inserted into the Indian body politic by the British Prime Minister Ramsay MacDonald and which had its inevitable consequence in the blood partition of India'<sup>69</sup>

The Constitution of free India proclaimed the unity of the nation to be the objective in its preamble, abolishing any reservation or representation on the basis of the religious colour of any individual or community. And such reservation, if made now would violate the guarantee of equality in Articles 15(1) and 16(1)-(2).<sup>70</sup> Since casteism is not professed by other religions, such as Christianity, Buddhism and Islam the makers of the Government of India act, did not entertain any reservation in favour of Hindu is not only their present status but also historical, socio-economic, religio-political circumstances in which they lives. These factors cannot be implanted for the so-called Dalit Muslims as categories of castes. Only their present status can make them eligible for any state patronage and that should be based on secular criteria.

The Expert Committee believes that historical burden of circumstances exists because of the built in tendencies of the force generated by the socio-economic structures. It thus happens that the outcomes or consequences of the existing system disadvantage certain groups or communities in an enduring way. State is obliged and creates a public duty- Equal opportunities Commission Report of the Expert Group.

Positive discrimination in India is based on the premise that Harijans and Adivasis (SC/STs respectively) Languishing at the bottom of the social hierarchy have historically faced sustained psychological, social alienation and discrimination. As N Bhatkar in the Constituent Assembly justified the same for.

“Communal representation has been eradicated from the constitution and seats have been reserved for ten years for the SC of their status in society and because of the prevailing social conditions, it would have been unjust not to provide for them some special facility in the constitution”<sup>72</sup> According to the Marxist historian, Irfan Habib, ‘Caste was a dehumanizing institution which created both vertical and horizontal inequality.’ Therefore, Historical burden of circumstances empirically stands for the

“Centuries of socio-eco discrimination and persecution which have largely rendered these deprived groups incapable of competing in open merit based examination against the so called upper castes. Who have enjoyed centuries of advantage in terms of intellectual traditions and general socio-economic dominance”. Reservation is viewed as a historical compensation for past disabilities which is expected to reduce and perhaps eliminate social inequalities between the disadvantaged and the privileged groups.

Members of the Indian constitution, although fundamentally opposed to any reservations considered it necessary under the prevailing circumstances. As Sardar Patel reasoned on advancing reservation for SC/STs

“Although temporally, we may recognize that this is up to the majority community to create by its generosity, a sense of confidence in the minorities; and hence, it will also be the duty of the minority communities to forget the past and to reflect on what the country has suffered due to the sense of fairness which the foreigner thought was necessary to keep the balance between community....in the long run, it would be in the interest of all to forget that there is anything like majority or minority in this country, and that in India there is only one community”.

As previously attested, Muslim reservation was rejected both by general members and nationalist Muslims. S Nagappa, an SC representative from Madras put forth the established view that ‘I do not think we are getting reservation because we are a religious minority. We are not a religious minority. We are an economic, political and social minority’. A bit more bluntly he reasserted,

“Look at the sacrifice we have shown. We have been ill treated for centuries, and yet we have been sticking to our religion... There have been some scapegoats who converted. But today seven crores continue to be Hindus, and this only means the “suffering attitude”, the sacrifice and toiling that denotes this community” He also denied the Muslim attempt to appropriate the

exceptional reservation for the Scheduled Castes by reminding them that they were no subject to any historical discrimination since

“You are the invaders, immigrants and you do not have as much interest as we have been in this country, and we are the people that produce the whole national wealth of this country, either by agricultural labour or industrial labour”<sup>73</sup>

Similarly the Muslim member Tajamul Hussain opposed the comparison of Muslims with the SC/STs because,

“Unlike the Scheduled caste we are not weak, we are not uneducated, we are not uncultured and we can always support ourselves. We must get into the assembly by open competition. The times have changed. Adjust yourself...I ask the majority, not to thrust reservation on the Muslims. If you honestly and sincerely believe that it is a wrong thing for God’s sake do not give us reservation! Do not make us a majority community, make us equal partners. There will be no majority or minority community in India”<sup>74</sup>

Since, the EOC is agreeably bound to the rule of the ‘historical burden of circumstances’ test, it is amply clear that Muslims can in no way come under the purview of affirmative-action based legislation since during the medieval period, Muslims, including fresh converts to Islam, represented the dominant socio-economic group. All Hindus, irrespective of caste were dhimmis or second class citizens who were subject to at least 20 humiliating subjections.<sup>75</sup>The authors of the EOC fail to provide any logical argument which supports their theory of historical burden of circumstances for Muslims. A leading sociologist, Andrew Beteille, rejects extension of positive discrimination except the harijans and adivasis who have suffered collectively the kind of social abuse and psychological injury that justify very special measures of redress in their case, including the reservation of jobs

The EOC thus, should heed its own words which emphatically state

“Equality of opportunity may or my not lead to equal outcomes...The concept suggests a fair race at the end of which some participants get rewards, others don’t. Unequal rewards are morally acceptable – indeed, even desirable – as long as everyone had an equal chance in the race and as long as the unequal rewards were due only to the unequal ability or effort”.<sup>76</sup>

The Muslims of India, even admitting their complex social stratification and separate group identities overall, experience satisfactory opportunities, but their failure to utilize them stemmed from their unequal ability, consequent to the pernicious and dominant influence of their religious orthodoxy.

### **EOC and international trends: diametrically opposed**

According to the authors of the Bill, they have studied the institutions of Australia, Brazil, Canada, France, Hong Kong, South Africa, United Kingdom and the Unites States of America in the process of ‘embarking on the exercise of designing an EOC for India’

<b>COUNTRIES</b>	<b>INSTITUTION</b>	<b>MANDATE</b>
Australia	Human Right and Equal Opportunity Commission (HREOC)	Employment Education Provision of goods, services and facilities Accommodation Sports Human Rights
Hong Kong	Equal Opportunity Commission (EOC) Education	Employment Provision of goods and services Management of premises Eligibility to vote/ to elected to advisory bodies Activities of Government
United	Equality and Human	Health & social care

Kingdom	Rights Commission (EHRC)	Housing & property Justice & the legal system Education Shops and services Transport Employment Human Rights
United States of America	Equal Employment Opportunity Commission (EEC)	Employment (age, disability, national origin, religion sex)
India*	Equal Opportunity Commission (EOC)	Education Employment

The Sachar Committee had suggested that the proposed EOC for India could be based on the experience of the UK's commission for racial equality to ensure that the intentions of the act were translated into action on the ground.<sup>77</sup> The suggestion is patently preposterous considering the fact that racial or ethnic discrimination is not a factor in the India social and political spectrum. The drawing of parallels between two altogether different societies to arrive at the similar conclusion is nothing but distorting the facts in order to make its way for its own well-nurtured prejudices by juxtaposing one community against the other to prove their unequal accessibility to the available resources, Sachar Committee approaches the issue of inter-community relation in India with a pre-conceived predisposition of victimization of minorities, particularly the Muslim minority in India. This keeps the nation divided into different hostile sections and groups in the Indian society.

The Expert Group Claims that it has followed the international trend. It is another false claim which it makes. In 1982, a landmark bill for abolition of the Commission for Racial Equality was introduced in the House of Commons (Britain) by Mr. Ivor Stanbrook<sup>78</sup>. He raised critical concerns with commissions of this kind whose sole purpose was to 'emphasize our differences'. It

does more harm than good to the cause of harmonious race relations, since the commission deprives the black citizen from the identification that most of them seek to be citizens of the nation. The bill was defeated but the critical queries that it raised are applicable both for the proposed EOC and the minority rights commission, which play a similarly negative role in integrating the mindset of the minority with the mainstream.

What Stanbrook said applies well to the Indian condition where similar minority commissions prevent an India Muslim's national identification to outgrow his religious condition.

Secondly, while Sachar was preaching us the merits of the British system; a process of simplification, i.e. the existing Commission for Racial Equality (CRE), the Disability Rights Commission (DRC) and the Equal Opportunities Commission (EOC) were being merged to create a single Equality and Human Rights Commission (EHRC)<sup>79</sup>. The committee has overlooked these developments and has suggested formation a separate EOC instead of making issues related to 'equality of opportunities' as a part of National Human Right Commission (NHRC). Ideally if one proposes to author the EOC, then the Human Rights Commission, women commission, national Minorities commission and even SC/ST commission need to be merged into a single body.

Australia, Canada New Zealand have all combined human rights and equality commission regarding them as inseparable. The world trend is moving towards a single commission while the present EOC intends to further India's commission count. The advantage of a single commission lies in the fact that

"Single commissions have the potential to deliver an effective cross stand agenda emphasizing the core principle of equality, but certain conditions have to be in place. These include: a clear sets of values; awareness of the needs of its component strands; flexible enforcement and promotion powers; an awareness of indication of devolution; a clear understanding of its relationship with broader human right spectrum; a strong emphasis on independence; and



clear transitional agenda that will not poison the process of its birth. If done well, comparative experience shows that a single commission can deliver a mutually reinforcing equality agenda".<sup>80</sup>

However, we feel there is compelling necessity to retain existing commissions the like National Commission for SC/ST and women because human right violations against these segments of the population are unfortunately of such immense proportion that addressing and resolving them requires separate organizations which are committed exclusively to their respective clients and any attempt to combine them could lead to the dangerous problem of overstretching the institution. This could result in a dilution of focus and a loss of effectiveness in respect of equality functions.<sup>81</sup>

Yet, there is no real rationale for extending separate Minority Commission or EOCs as the magnitude of their clientele are reasonable, proportionate to the national average and can be handled by the NHRC itself.

Finally, considering that the EOC prefers to examine only education and employment opportunities, it could be included within the NHRC, as even the other separate commissions for women, SC/ST/OBC may be unable to concentrate exclusively on the same and in the process some measures of justice may be denied. This, for us, is the most valid rationale for incorporating the proposed EOC within the NHRC.

Also, if issues related to the 'equality of opportunity' are incorporated with the NHRC, the apprehensions of a negative and parochialist influence of MMA dominating the EOC will be definitely curtailed. Simultaneously, it will cripple the minority-specific or minority-oriented functioning of EOC since the issue of 'equal opportunity' will be treated on the basis of actual discrimination and not on religious ground.

## Summing up the prejudiced view of the Expert Group

Country	Influence on the Expert Group	Indian Scenario Contrasted
1. UK	Formation of racial equality commission	The question of multiple races in India is a popular myth. Moreover Muslims in India never suffered racial discrimination from the Hindus, although prior to partition especially in Muslim ruled states it was very much extant the other way round! Even caste based discrimination cannot be explained in the racial sense.
2. France	Recognition of social identities in a previously universalistic state	Social identities in France represent the previously colonized people of Africa. No such parallel can be drawn in India between any groups.
3. South Africa	Instructive model, to ensure, special measures are taken to remove the effects of <b>past societal discrimination.</b> Audit the performance of employers and educational institutions on non discrimination and equal opportunity on cross cutting indices and issue codes of	No history of past or present societal discrimination of Muslims by Hindus. Instead, in the period of Islamic colonization, Hindus were consistently discriminated and treated as 'second class citizens' by the Islamic state. In contrast, South Africa was subject to the system of apartheid which had no parallel even in British India.

	good practice in different sectors.	
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Contrary to it the Expert Group differs and opines that the creation of a single body in Britain was to have a single body to look into all the matters relating to the discriminations. It says;

“Among the specific arguments in favour of this move is the conviction that overlapping and intersecting axes of discrimination need to be considered, and that an integrated body of expertise on dealing with all kinds of discriminations issues needs to be created...The British example suggests the trend towards the narrowing of focus in terms of evolving an integrated structure and norms which address the issue of discrimination per se”.<sup>82</sup>

This is a complete refutation to the all the arguments of the British government vis-à-vis the establishment of the single body. According to the British government

“However constituted, the new single equality body [Equal Opportunity Commission] will be insufficient if there are not more effective arrangements from the promotion and protection of human rights more generally. There are a number of options for the institutional structures relating to equality and for human rights. The proposed new single equality body will almost certainly require a human rights dimension if it is to do its work effectively. But this will not meet all the needs we have identified for arrangements for the promotion and protection of human rights.

There are arguments for and against a separate human rights commission standing alongside a separate single equality body. The practical advantages and disadvantages of the alternatives of single integrated human rights and equality commission and two separate bodies for equality and human rights require careful consideration. There are strong arguments for moving, over the proposed timescale for the establishment of a single equality body, to the establishment of an integrated human rights and equality commission. This is our preferred option”.<sup>83</sup>

The EG has totally ignored these arguments for the sake of single independent EOC on the ground that

“The UK model suggests that the road forward for the EOC in India cannot be viewed as fixed and static. The dynamic between the proposed EOC and other commissions including the experience which will be gained from their interaction and functioning may if not integration of functions and synergized exercise of power, if not integration of structure in future. Hence, multiplicity of commissions per se is not an issue”.<sup>84</sup>This argument seems to reject in toto the British model of a single body on the ground that these bodies are mainly concerned with only ‘discriminations’. In a way EG has negated all the prevailing institutions all over the world that have a single body. If one is to buy the arguments of the EG, then a single body for human rights and equal opportunity is not feasible! Can we then say, the Britishers have followed the wrong path of the Ausses and the Kiwis?

There is another reason for a single institution for equality of opportunity and human rights. It pertains to the simplification of the process of justice. That multiplicity of institutions dealing with related issues may lead to the overlapping of the works. This is not only detrimental to functioning of the institution itself but also to the aggrieved as well. The narrow mandate of the incomprehension to other institutions can be clearly seen from the above table. It is true that Australia and UK do not have specific institutions for human rights. They envisaged a single body to look in to the issues of equality and human rights. The smooth and successful functioning of the single commission in Australia, New Zealand, Canada, the USA, Ireland and UK is testimony to the fact that a single body is efficient to deal with both the issues without compromising with either one. The advantages of a single body are given below.

In India, more than a quarter of its population is illiterate. It is difficult on their part to differentiate an action whether it falls on the category of the breach of human rights or discrimination. As both human rights and equality are closely knit, it is difficult even

for and educated mass to differentiate between the two. Instead of making an aggrieved individual run from one commission to another, it makes sense to have a single commission to they can instantly approach, just like providing Single Window System relief to the aggrieved.

A single commission would result in better and effective management of the resources.

It will 'prevent overlapping of work and will be able to carry best practice into all the human rights target areas'<sup>85</sup>

The EG has not at all taken these factors in consideration. It is not that the EG was ignorant of possible overlapping jurisdictions which may lead to confusion and inefficiency. But in their views it is not a matter of concern but a matter of need in their own ward; 'it is inevitable that more than one institution will exercise jurisdiction over one subject, thus opening more than one option to any aggrieved party.'<sup>86</sup> If the logic of the argument is to the understood properly then, the central government should stop integrating various poverty alleviation and employment generation programmes under one flagship programmes like Swarna Jayanti Gram Swarozgar Yojana (SJGSY), because it limits the 'options' of the poor. The mission of integrated rural development only emerged after the experience of the dilution of development under the multiple rural development programmes. EG's aversion to such experiences is deliberately and politically motivated.

In this context the only country which can be comparable with that of India is South Africa. There is a South Africa Human Commission (SAHRC) and Commission Employment Equity (CEE). Interestingly the SAHRC has an Equity unit for the 'Promotion of Equality and Prevention of Unfair Discrimination Act No 2 of 2000 (PEPUDA), that seeks to ensure that the inequalities of the pas on the basis of gender, disability and race are eradicated in our societies.'<sup>87</sup> The South African example is noteworthy as they do not harp on past injustices perpetrated by the Apartheid regime, but they want to march ahead as a democratic nation leaving the

pas behind. They have formed a Truth and Reconciliation Commission to deal with the injustices of the past and to remove its traces to develop a sense of united nation. On the contrary, the Indian system aspires to keep the divide intact through institutional intervention of mediation of inter-community relations based on perceived notion of denial of equality. On the other hand, CEE has been established by the Employment Equity Act 55 of 1998. Its role is limited to the field of employment. This has been done in order to prevent the overlapping of the two institutions. It is clear that the EG group has closed its eyes to the global good practices particularly that of Britain and South Africa, to have its own way of independent single commission of EOC. We have already seen how it could not ill afford to suggest the EOC on the line of the National Human Rights Commission let alone integrate it with NHRC. Certainly this will not help the cause of the minorities which the MMA is desperately trying to.

### **Incongruous Suggestions**

Let us take the example of Australia, where each state has its own Equal Opportunity Commission apart from the federal HREOC because of its federal nature. Similarly in Britain, which is a unitary state has a cell to deal with the people from Scotland and Wales. Apart from it, one member each from Scotland and Wales were to be appointed as member of EHRC<sup>88</sup>. In South Africa, SHRC has five offices in respective provinces to look into the requirements of the local residents. Now, looking at the Indian context, the good practices in other countries have been completely over looked. Strangely enough, the Expert Group recommends the establishment of five regional EOC' ...to make the EOC more accessible, allow it in local language and specialize in issues relevant to each region.', rather than establishing regional EOCs in every state. These issues have already been discussed in the last chapters. Existence of state Human Rights Commissions and State Minorities Commissions in India Should at least have been taken in to account.

Another unique illogical recommendation of the EG pertains to the appointment of the of the EOC members. We have already discussed in the previous chapter how the Ministry of Minority affairs (MMA) has made the EOC a mechanism for minorities by having a say in the appointment of all the REOCs and the national EOC. However the story does not end here. The Expert Group has put forward one bizarre eligibility criteria for the chairman of the EOC. The Proposed Bill says; '[t]he chairperson is to be an eminent person distinguished in public service and possessing a good understanding of the secular and egalitarian values of the constitution'.<sup>89</sup> Now, the question arises, who will decide whether a person possesses 'secular and egalitarian values' or not, As our Constitution has not defined the word the word 'secular', will the courts judge the 'secular' credentials of a person, if at all any question arises regarding the appointment of the Chairperson. This kind of illogical criteria for appointment of members to a national body is unprecedented anywhere in the world. Even in the case of our existing national commissions like, National Human Right Commission, National Commissions for Minorities and National Commission for Women, these kinds of criteria are not prescribed

Perhaps the crux of the over-indulgement the MMA in the formation of EOC lies in this eligibility criterion. Doesn't it look that the MMA has thrown every weight to make the EOC a 'secular' institution? In other words, the EOC stands to be a custodian of minorities in particular than a custodian of the deprived citizens of India.

## **Conclusion**

The above discussions clearly indicate that the mandate of the Expert Group was to suggest modalities on the formation of the EOC. Keeping in mind that a commission has to be created in India, it chooses to ignore the changing global notion on a single independent EOC for a unified body for human rights and equal opportunity. In the process they have suggested something which has been given up by a state to which it is supposed to take as role model.

In a secular democratic society the cover of human right should be sued to resolve complex issues, of discriminations. Equal opportunity to all is the centrality of a democracy. The primary task before the India State is to enforce equality in a secular manner and not to adopt any mode which is divisive and encourages intra-community rivalries and suspicions. It is this very aspect which was taken into consideration by the Minority Commission of India which in its 4<sup>th</sup> Annual Report took a rational view and departed from the traditional approach to compartmentalize the secular space and issues into majority and minority problems and issues. The Commission after great deliberations forthrightly recommended to rationalize the whole system by forming 'a National Integration-cum-human Rights' Commission with various sub commissions, one in charge of problem of minorities.'<sup>90</sup> The recommendation to form a comprehensive body which could prevent segregation of people and their problems continues to be part of the Minority Commission's recommendations till 1988, to say, the pre-Shahbano phase of the India secularism. The Shahbano case explicitly influenced the position of the Indian state and encouraged compartmentalization. The Minority Commission was no exception. And in its 12<sup>th</sup> report in 1989-90 the commission observed,

"It would be recalled that the 4<sup>th</sup> Annual Report (1981-82) strongly recommended the formulation of a comprehensive scheme for promotion of national integration and secular traditions and protection of human rights of all sections of the people including minorities by setting up of a national Integration-cum-Human rights Commission."

It further quoted the 4<sup>th</sup> report stating that the setting up of human Rights Commission

"would avoid competition between political parties in attempt to expose or champion the cause of minorities, whether reasonable or unreasonable, for catching their votes. Such competition certainly tended to increase divisiveness in the nation rather than promote national integration. "Finally the Commission



rejected the secular postulates and 'resolved to withdraw the earlier recommendations made by the commission in its 4<sup>th</sup> and 5<sup>th</sup> annual Reports about setting of a national Integration cum Human Rights Commission. '91 The Ministry of Minority Affairs should pay heed to the debate between Nehru and the Muslim League which had constantly pleaded compartmentalization of secular issues, like poverty, unemployment, education etc. The question propounded by Nehru in 1937 remains unresolved due to institutionalization of the policy of minorities. He asked in a press statement on January 10, 1937, 'In what way the interests of Muslim peasants are different from those of the Hindu peasants of those of Muslim laborers, artisans, merchants, landlords or manufacturer different from those of the Hindu counterparts?' The observation by a division bench of Justice T.S. Thakur and Justice Siddarth Mridul too questioned the rationale of the Sachar Committee.

"Poverty is a common enemy. It does not come to one community in particular. You should fight against poverty rather only. This is where the rot lies. You are saying that more money needs to be spent for on minority community. Should it not cut across the caste and religion? Does the Sachar committee say that facilities are available to other communities? Does it mean that drinking water facilities are available to the majority community welfare state say that that it would focus on a particular area because the minority community resides there? Can it say that it would spend more money in that area? 92"

The issue at stake is to ensure the practice of equality in the socio-economic sphere irrespective of caste-community considerations. It is important because if the basis of human entitlements like employment and education become the part of communal divide, it would cause irreparable loss to the secular democratic tradition of the country. We have to put the Sachar Committee Report and its progeny, the EOC, in this perspective in order to understand the strengths and weaknesses in the overall democratic framework of India. In our considered opinion, it should be placed to the region and scrutiny of public domain at

different forums for evaluation. Any haste and escape from the public gaze would strengthen the change of its explicit intent of minorities.

## APPENDIX I

	<b>Hindu Women</b>	<b>Hindu Gen. Women</b>	<b>SC Women</b>	<b>Muslim Women</b>
Literacy Rate* among women	54.1%	70%	43.8%	49.8%

%Census 2001

**NFHS-3 report states that the proportion of women who have never attended school is higher among Muslim women (48) than Hindus (41) Muslim women are also less likely than women of other religion to have completed secondary education.**

<b>*</b>	<b>TFR</b>	<b>% Currently pregnant</b>	<b>Mean number of children for women between 40-49 years</b>
Hindu	2.65	5.0	3.97
Muslim	3.09	6.7	4.60

\*NFHS-3

Every Muslim woman has approximately 0.63 more children than a Hindu woman.

Married women who are using contraception and the method, 1998-99

<b>*</b>	<b>Any method</b>	<b>Any modern method</b>	<b>OCP</b>	<b>IUCD</b>	<b>Condom</b>
Hindu	69.8	50.2	8.2	1.4	2.8
Muslim	56.3	37.6	12.6	0.8	3.5

\*NFHS-2

Source	Infant Mortality	Rate (IMR)	Child Mortality	Rate (CMR)
	Hindu	Muslim	Hindu	Muslim
Census 1991	74	68	97	91
NFHS-1	90	77	124	106
NFHS-2	77	59	107	83

Both Muslim women and SCs/STs have a high fertility rate in common but while the Muslim community has substantially low IMR/CMR, they are exponentially higher amongst SCs/STs.

Community	% Living in Urban Areas		
Hindu	26		
Muslims	36		
Poverty incidence/state*	Hindu SC/ST		Hindu OBC Muslim
<b>Total</b>	34.8	19.5	26.9
Gujarat	24	14	7
Karnataka	21	14	18
Bihar	56	29	38
Orissa	60	30	22
Chhattisgarh	40	27	40

\*Census 2001: In 10 of the 21 states surveyed by the Sachar Committee, Muslims were better placed than Hindus (overall).

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