

Module Detail	
Subject Name	Political Science
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Module Name/Title	Institutional Arrangements for Minorities and Special Categories: Religious and Linguistic Minorities
Module Id	
Pre-requisites	
Objectives	The paper is structured to understand the overall institutional arrangement of the Government towards special categories such as the linguistic and religious Minorities in India. In that context, it first analyzes the basic defining political principles, structures and procedures and other instruments of state policy which necessitated the establishment of statutory bodies for safeguarding and proper implementation of the rights of marginalized social groups and minorities in India. It then undertakes an analysis of specific constitutional and statutory bodies established for the mainstreaming of the marginalized wherein it presents the historical trajectory of their evolution, outlines their functions, and demarcates the constitutional framework within which they operate.
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Institutional Arrangements for Minorities and Special Categories: Religious and Linguistic Minorities

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Abstract

The paper is structured to understand the overall institutional arrangement of the Government towards special categories such as the Scheduled Castes, the Scheduled Castes and the Minorities in India. In that context, it first analyzes the basic defining political principles, structures and procedures and other instruments of state policy which necessitated the establishment of statutory bodies for safeguarding and proper implementation of the rights of marginalized social groups and minorities in India. It then undertakes an analysis of specific constitutional and statutory bodies established for the mainstreaming of the marginalized wherein it presents the historical trajectory of their evolution, outlines their functions, and demarcates the constitutional framework within which they operate.

Introduction

After independence, the constitution of India was adopted by the Constituent Assembly on 26 November 1949. It eventually came into effect on 26 January 1950. Broadly, the constitution

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besides defining basic political principles, lays down the framework for the structures, procedures, powers and duties of public sector institutions. It further delineates a set of rights and duties in the form of fundamental rights and directive principles of state policy for the citizens of India (Bakshi 2011).

Synchronous to the promulgation of the Indian constitution, India as a nation was extremely diverse and plural. It was a mosaic of various cultures, religions, ethnicities, identities, languages and regions. All these multicultural attributes made India truly a unique nation. However, juxtaposed with such pluralities were structural complexities which confronted policy makers and academicians alike. Cognitively speaking, the categories of caste, identity, religion, language etc. defined the temporal and spatial dimensions of the Indian society. These categories were not only pervasive but interdependent in terms of the inequality, subordination and dominance they generated (Mandelbaum 2010).

India's diversity, on one hand, was to be celebrated while on the other, it presented a political landscape beset with differences. Normatively, democracies and associated democratic traditions justify themselves by adopting principles of egalitarianism, social justice and inclusion. The fundamental issue therefore was to ensure equal and fair treatment of all social groups. This ontological question was to a considerable extent resolved by the promulgation of the Indian constitution.

Concurrently, inter-social group differences and inequality was acute and seemingly amplifying. Social institutions characterizing India appeared to be extremely viable and an instance where simultaneously old uses were retained and were demonstrating considerable adaptability (Negi 2011). Such inconsistencies resulted in disproportionate access and representation for marginal social groups and as such there was an urgent need to address such anomalies primarily through policy and legislative interventions, broadly categorized under 'affirmative action'. Since there is a component of discrimination towards members of marginalized social groups, such policies are also known as 'positive discrimination', 'protective discrimination', and 'compensatory discrimination' (Wiesskopf 2004).

Such instruments of state policy were supplemented by the establishment of statutory constitutional bodies for primarily safeguarding or protecting the various rights of the marginalized social groups and also ensuring their proper implementation.

Herein, one must place emphasis on how social policies implemented through legislations and supplemented by constitutionally mandated institutions are grounded in universal rights and how they compliment competing values, social norms, and power structures that have evolved historically (Cook 2011). Perhaps salience could also be placed on understanding the issue from changing political and social culture whereby prominence was being accorded to universal rights and empowerment of the individual. Further, given the multicultural and highly stratified complex of the Indian society, community identity retains itself at the centre stage and cultural, religious and linguistic differences stratify the society horizontally. Added to such an intricate social reality is the vertical and horizontal division of the society in terms of caste. Thus, group differentiation has been a norm in India and it in this context, it is not surprising that positive discrimination is a means whereby the Indian state has responded to the lot of the disadvantaged (Weisskopf 2004).

The Context

In context of inherent societal contradictions and incommensurability, the government located cumulative disadvantage of the marginalized within a broad discourse. Sociological imagination and policy imperatives apart; the strategy was concretized ‘dialogically²’ in recognition of the visible social reality and as a cumulative residue of various social movements and civil society interventions. Theoretically, it must be underscored that the gamut of government’s discourse was not exclusive; rather should be viewed as mutually reinforcing.

The government’s approach was characterized by a multi-pronged strategy guided primarily by: one, recognizing that certain social groups in the Indian society face marginalization; two, identifying that the contexts of their marginalization were multiple in nature; three,

² The term ‘Dialogic/Dialogism’ was initially conceptualized by Mikhail Mikhailovich Bakhtin in his book ‘The Dialogic Imagination: Four Essays’. The term is used here as it represents relationalism, dynamism and continual dialogue which merely does not answer, correct, silence or extend a previous work but informs or is continually informed by it. The analogy therefore is implicit.

contextualizing the disadvantage in a historical dimension; four, placing the debate within the broad principle of disparity and therefore the need to mainstream to the extent possible; and five, overcoming marginalization in the present by incorporating protective measures and promulgating safeguards in the form of affirmative action which includes among others constitutional provisions, legislations, statutes etc.

The above discussion can also be placed within the rubric of ‘anti-discriminatory and protective measures’ and ‘development and empowering measures’ (Thorat et. al. 2006). These measures ensure proportional participation of the marginalized in public spheres which otherwise would not have been possible given the entrenched and stratified form of disadvantage faced by them. In the absence of legal provisions, these measures have also been supplemented by general programs for inclusion and empowerment of the marginalized in the social, economic and educational spheres.

Notionally, the discourse can be situated within the hermeneutical³ exercise of need for institutions per se and is discursive, meant to encapsulate the processes and reasons for their emergence. Functionalism, somewhat adds value to the analysis whereby it emphasizes on the abstractness of institutions and their distinctiveness based on regulation of conduct, representation of collective will, definite procedures, specialization, formalized rules and stability etc. These aspects are particularly important as they underscore the ability of an individual or a group of individuals to enforce their will on others. Alternatively, institutions are also transformatory in their orientation.

There is abundant literature which establishes the complex relation between socially segregated societal relations and differential economic, social, cultural and civil rights of people. The continuum of disadvantage and marginality gets further severe if such complexity reflects itself in differential ‘access’ and ‘participation’ of various social groups. Incidentally, these two variables have been identified as the twin key mechanisms through which social exclusion between social groups perpetuates itself (Hills et. al. 2002).

³ Refers to the art of text interpretation.

National Commission for Minorities

Genesis and Historical Background

Minorities Commission was envisaged in the Ministry of Home Affairs Resolution dated 12th of January 1978, which specifically mentioned that “despite the safeguards provided in the constitution and the laws in force, there persists among the minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote national integration the government of India attaches the highest importance to the enforcement of the safeguards provided for the minorities and is of the firm view that effective institutional arrangements are urgently required for the enforcement and implementation of all the safeguards provided for the minorities in the constitution, in the central and state laws and in the government policies and administrative schemes enunciated from time to time”. Initially, the Minorities Commission was a non-statutory body and was attached to the Ministry of Home Affairs. It was subsequently placed under the newly created Ministry of Welfare in 1984.

National Commission for Minorities

With the enactment of the National Commission for Minorities Act, 1992, the Minorities Commission became a statutory body and renamed as National Commission for Minorities. The first statutory National Commission was set up on 17th May 1993 vide a Gazette notification issued on 23rd October 1993 by Ministry of Welfare, Government of India. Five religious communities that is, the Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) were notified as minority communities. As per the 2011 Census, these five religious minority communities constituted about 20.08 per cent of India’s population (Census of India 2011).

The states of Andhra Pradesh, Assam, Bihar, Chattisgarh, Delhi, Jharkhand, Karnataka, Maharashtra, Madhya Pradesh, Manipur, Rajasthan, Tamil Nadu, Uttarakhand, Uttar Pradesh and West Bengal have set up State Minorities Commissions and their offices are located in the respective state capitals. The functions of these Commissions, *inter-alia*, are to safeguard and

protect the interests of minorities provided in the constitution and laws enacted by Parliament and the state legislatures.

Constitutional Safeguards for Minorities of India

The constitution of India does not define the word 'Minority' and only refers to them 'based on religion or language'. However, it is exhaustive in its exposition of minority rights.

Two sets of rights have been delineated in the constitution for the minorities – one can be placed within the ambit of 'common domain' while the others in 'separate domain'. The former are rights, which are universally applicable to all the citizens of India, while the latter are specifically applicable only to the minorities for the protection of their identity. The constitution is also clear in its distinction between the 'common' and 'separate' domain. The Preamble to the constitution is of relevance to the minorities as it declares the state to be 'secular' and guarantees all citizens 'liberty of thought, expression, belief, faith and worship and 'equality of status and of opportunity'; the constitution in itself separately lists out rights, characterized under the 'separate domain'.

Specifically, the rights that can be placed under the 'common domain' and have significant implications for the minorities are as under:

Part IV of the constitution, containing non-justiciable Directive Principles of State Policy, includes the following provisions having significant implications for the Minorities:

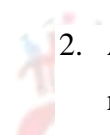
1. Article 38(2): The state is obligated to endeavour to eliminate inequalities in status, facilities and opportunities amongst individuals and groups of people residing in different areas or engaged in different vocations; and
2. Article 46: The state is obligated to promote with special care the educational and economic interests of the weaker sections of the people (besides Scheduled Castes and Scheduled Tribes).

Part IVA of the constitution, relating to Fundamental Duties as provided in Article 51A applies in full to all citizens, including those belonging to minorities stipulates as under:

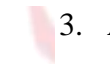
1. Citizen's duty to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; and
2. Citizen's duty to value and preserve the rich heritage of our composite culture.

Part III of the constitution, which deals with the Fundamental Rights is divided into two parts: first, the rights which can be placed in the 'common domain' and second, those which can be demarcated under the 'separate domain'. In the former the following fundamental rights and freedoms are covered:

1. Article 14: People's right to 'equality before the law' and 'equal protection of the laws';



2. Article 15(1) and (2): Prohibition of discrimination against citizens on grounds of religion, race, caste, sex or place of birth;





3. Article 15(4): Authority of state to make 'any special provision for the advancement of any socially and educationally backward classes of citizens' (besides the Scheduled Castes and Scheduled Tribes);

4. Article 16(1) and (2): Citizens' right to 'equality of opportunity' in matters relating to employment or appointment to any office under the state and prohibition in this regard of discrimination on grounds of religion, race, caste, sex or place of birth;

5. Article 16(4): Authority of state to make any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the state;

6. Article 25(1): People's freedom of conscience and right to freely profess, practice and propagate religion – subject to public order, morality and other Fundamental Rights;
7. Article 26: Right of every religious denomination or any section thereof – subject to public order, morality and health – to establish and maintain institutions for religious and charitable purposes, manage its own affairs in matters of religion, and own and acquire movable immovable property and administer it in accordance with law;
8. Article 27: Prohibition against compelling any person to pay taxes for promotion of any particular religion; and
9. Article 28: People's freedom as to attendance at religious instruction or religious worship in educational institutions wholly maintained, recognized, or aided by the state.

Minority rights, which can be placed in the category of 'Separate Domain' are:

-  1. Article 29(1): Right of any section of the citizens to conserve its distinct language, script or culture;
-  2. Article 29(2): Restriction on denial of admission to any citizen, to any educational institution maintained or aided by the State, on grounds only of religion, race, caste, language or any of them;
3. Article 30(1): Right of all Religious and Linguistic Minorities to establish and administer educational institutions of their choice;
4. Article 30(2): Freedom of Minority-managed educational institutions from discrimination in the matter of receiving aid from the State;
5. Article 347: Special provision relating to the language spoken by a section of the population of any State;

6. Article 350A: Provision for facilities for instruction in mother-tongue at primary stage;
7. Article 350B: Provision for a Special Officer for Linguistic Minorities and his duties; and
8. Explanation 1 below Article 25: Sikh community's right of 'wearing and carrying of kirpans.

Functions

As per Section 9(1) of the National Commission for Minorities Act, 1992, the Commission is required to perform following functions:

1. Evaluation of the progress of the development of minorities under the union and states;
2. Monitoring of the working of the safeguards for minorities provided in the constitution and in laws enacted by Parliament and the state legislatures;
3. Making recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the central government or the state governments;
4. Looking into specific complaints regarding deprivation of rights and safeguards of minorities and taking up such matters with the appropriate authorities;
5. Getting studies to be undertaken into the problems arising out of any discrimination against minorities and recommending measures for their removal;
6. Conducting studies, research and analysis on the issues relating to socio-economic and educational development of minorities;

7. Suggesting appropriate measures in respect of any minority to be undertaken by the central government or the state governments;
8. Making periodical or special reports to the central government or any matter pertaining to minorities and in particular the difficulties confronted by them; and
9. Any other matter, which may be referred to it by the central government.

Section 2(C) of the National Commission for Minorities Act, 1992 stipulates that 'Minority' for the purposes of the Act, means a community notified as such by the central government. Therefore, all the functions of the Commission as laid down in Section 9(1) of the Act are related to the five notified communities.

Organizational Setup of the Commission

The Commission shall consist of a Chairperson, a Vice Chairperson and five Members to be nominated by the central government from amongst persons of eminence, ability and integrity; provided that five Members including the Chairperson shall be from amongst the minority communities.

New Initiatives

On the recommendations of the Sachar Commission, the Prime Minister initiated the '15 Point Programme for the Welfare of the Minorities'. It incorporated a host of initiatives, which included enhancing opportunities in education (equitable availability of Integrated Child Development Services, improving access to school education, greater resources for teaching Urdu, modernizing Madarsa education, making available scholarships for meritorious students from minority communities and improving educational infrastructure through Maulana Azad Education Foundation); expanding the share of the minorities in economic activities and employment (self and wage employment, upgradation of skills through technical training, provision of enhanced credit support and increasing recruitment in public sector services);

improving the living conditions of the minorities (providing equitable access to rural housing schemes and improving the conditions of slums inhabited by minorities); prevention and control of communal riots (this includes prevention of communal incidents, prosecution for communal offenses and rehabilitation of victims of communal riots).

Further, the government is also actively considering the establishment of an 'Equal Opportunities Commission' and creation of 'Diversity Index' whereby; access and participation of minorities and other marginalized social groups will be ascertained and corrected accordingly.

Constitutional Safeguards for the Religious and linguistic Minorities

See the section on National Commission on Minorities for further details in this regard.

National Commission on Religious and Linguistic Minorities

On 29th of October 2004, the Government of India constituted a National Commission on Religious and Linguistic Minorities to look into matters pertaining to the religious and linguistic minorities of India. The Commission was chaired by Ranganath Misra, former Chief Justice of India and is also popularly referred to as the Ranganath Misra Commission.

The Commission was entrusted with the following terms of reference. Broadly, to suggest criteria for the identification of socially and economically backward sections among religious and linguistic minorities; to recommend measures for welfare of socially and economically backward sections among religious and linguistic minorities, including reservation in education and government employment; and to suggest the necessary constitutional, legal and administrative modalities required for the implementation of its recommendations. The Commission in context of its terms of reference came out with specific recommendations. With regard to the first, the Commission recommended the evolution of a uniform pattern of criteria for identifying the backward, which should be based only on the educational and economic status of people and not on their caste or religion, and its application equally to all sections of the citizens irrespective of their caste or religion. Secondly, the Commission was of the opinion that

backwardness – both social and economic – actually emanates from educational backwardness and therefore suggested several measures for the educational and economic development of the minorities. Importantly, with regards to reservation, the Commission recommended that the minorities should be regarded as backward and 15 per cent reservation should be considered for their empowerment (10 per cent for the Muslims and 5 per cent for rest of the Minorities).

