Affirmative Action for Muslims? Arguments, Contentions and Alternatives[1]

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Abstract

India is one of the most unequal societies of the world. At the same time, it has the distinction of having the longest history of affirmative action programmes for alleviating socio-economic inequalities. Currently, three social groups—the Scheduled Castes (SCs), the Scheduled Tribes (STs) and the Other Backward Classes (OBCs)—enjoy the benefits of affirmative action programmes, of reservation in particular. However, the demands to get acknowledged as 'disadvantaged' and for inclusion in the system of affirmative action have not stopped. Of late, the demands for reservation for disadvantaged minorities, Muslims in particular, have ignited intense and polarized debates. All this has not only complicated the politics of 'recognition' and 'redistribution' but also affected the discourse on and capacity of existing affirmative measures to tackle the issue of group-based disadvantages. Against this backdrop, the objective of this article is two-fold: (*a*) to get into the complexities underlying the idea of affirmative action for Muslims; and (*b*) to move the debates on affirmative action beyond 'one policy fits all' perspective.

Keywords

Affirmative action, backwardness, disadvantage, equal opportunity, minority, Muslims, OBCs, reservation

Introduction

India has had a long history of social iniquities. It also has the distinction of having most comprehensive and longest-running affirmative action programme (Galanter, 1984, 2004). Of late, while many countries practicing one or the other form of affirmative action for the disadvantaged groups have succumbed to criticism and backlashes, India has not only persisted with the system of reservation (the dominant form of affirmative action), it has even gone ahead to expand reservation and affirmative action (Hasan and Nussbaum, 2012; Sowell, 2004). And yet, affirmative action continues to ignite fierce and polarized debates in academic and political circles. Demands to get acknowledged as 'disadvantaged' and for inclusion in the system of affirmative action are put forth every now and then even by communities/groups that have traditionally been relatively prosperous.[2] Oddly enough, there are groups which wish to be seen more disadvantaged than others and therefore they demand being moved from one 'disadvantaged' category to the other.[3] In recent years, the demands for inclusion of the Muslim community as a

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whole into the system of reservation have further added to the complexities underlying affirmative action policies in the country.[4] In brief, communities' demand for and political response to getting recognized as 'backward' has not only complicated the politics of 'recognition' and 'redistribution' but also led many to question the capacity of the reservation policy, a major tool of redistribution of state resources, to tackle issues of group-based disadvantages.

As far as inclusion of the Muslims in the system of reservation is concerned, some occupational groups among them have been included in the list of OBCs and thereby they enjoy the benefits of reservation. However, it is claimed that the average socio-economic standing of Muslims as a community is not only below that of the national average but also below that of the officially recognized backward groups such as SCs and OBCs. There is, thus, a clear case for the entire community being considered for the reservation policy. But the idea of an over and above quota for Muslims is beset with many fundamental challenges. First, there are legal/constitutional barriers to religion-based affirmative action. There has been adjudication against religion-based affirmative action.[5] Second, even if there is scope for certain forms of affirmative measures for disadvantaged religious minorities, it is not easy to implement them, for the history of affirmative action/preferential treatment in India has been marked by violent reactions and huge social and political backlash (Galanter, 1984; Sowell, 2004; Weiner, 1983). In the case of religious minorities, Muslims in particular, the reactions are likely to be more violent than in the case of SCs/STs and OBCs. But at the same time the issue of relative socio-economic disadvantages facing the Muslim community is the one that cannot be glossed over or placed under the carpet for several reasons. Given that the ideas of social equity and justice constitute the core philosophy of the Indian constitution, the state is under obligation to remove the socio-economic backwardness plaguing the community. Third, no disadvantaged groups are homogeneous both socially and economically, and Muslims are no exception. Affirmative measures, therefore, should not get reduced to merely a tool of addressing the issues (inability in getting access to privileged positions in the governmental structures) of a relatively privileged section of the disadvantaged group. Given that Muslims, as a social group, have been lagging way behind others in the critical sectors of life and that all Muslims are not social and economic equals, it is a great challenge to come up with intelligible criteria for the selection of beneficiaries. These and other problems underlying affirmative action for disadvantaged religious minorities, especially Muslims, have not been debated enough in academic, political and policy-making circles (Alam, 2010). Against this backdrop, the objective of this article is two-fold: (*a*) to interrogate various strands of debate on affirmative action for Muslims; and (*b*) to propose and critically examine various policy alternatives in order to enrich the ongoing debates and churning on affirmative action for Muslims.

Affirmative Action for Minorities: The Politico-historical Context

During the colonial rule, religious minorities enjoyed benefits of affirmative action or protective measures in political structures and government jobs (Wright, 1997). After the colonial power left, these privileges given to minorities were done away with. The Constitution of India did not provide for affirmative measures for religious minorities as it did for formerly 'depressed classes'. Nonetheless, the issue was intensely debated in the Constituent Assembly. In the Constituent Assembly Debates (CAD) meetings held between December 1946 and August 1947 reservation was seen as a possible solution to allay the fears and apprehensions of the minorities (Hasan, 2009; Tejani, 2013). For instance, the

sub-committee on minority rights in its report (submitted to the Advisory Committee on Fundamental Rights on the 27 July 1947) had recommended reservation for religious minorities such as Muslims, Christians and Sikhs in the legislature on the basis of a joint electorate, and in public employment in proportion to their share in the overall population.[6] Accordingly, the Advisory Committee on Fundamental Rights recommended that seats for different recognized minorities, as a rule, would be reserved. However, the issue reopened following the report of a special sub-committee that had met in December 1948.[7] The report held that the situation in the country (following the Partition) had changed to such an extent that 'it was no longer appropriate in the context of Free India and of present conditions that there should be reservation of seats for Muslims, Christians and Sikhs or any other religious community'. It further held that reservation for religious communities 'did lead to a certain degree of separatism'.[8] As a matter of fact, majority of members belonging to minorities held that political safeguards would not serve the interest for minorities. Thus, acting upon the report of the special sub-committee, the Advisory Committee overwhelmingly voted for the abolition of political safeguards for religious minorities.

The reservation for religious minorities in services was reopened for discussion in the CA on the 14 October 1949. Moving an amendment (No. 3163 of the list of amendments) for Article 296,[9] B.R. Ambedkar proposed that '[t]he claims of members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State'.[10] Many members including Sardar Hukum Singh, Bhopindra Singh Mann and Naziruddin Ahmad pointed out that the present resolution was a reversal of the earlier decision. Sardar Hukum Singh argued that it was nowhere suggested that all safeguards would go. The only decision that was agreed to was: 'That the system of reservation for minorities other than Scheduled Castes in legislatures be abolished'. Naziruddin Ahmed submitted:

> It is absolutely clear on a perusal of the original report, the letter of Sardar Patel, the resolution moved by him and in the speeches in the Houses—that they all attempted reconsideration only of the reservation for minorities in the Legislatures. I may add that this was done with the fullest concurrence of the Muslim members of this House. I was one of those who thought that the reservation in Legislatures would not be good for minorities themselves; but with regard to consideration of their cases in making appointments, subject to efficiency was not reopened.[11]

Yet, Ambedkar's proposal was carried and became part of the constitution. With this, reservation for minorities was wholly rolled back.

What explains the change of mind of the members of the Constituent Assembly? It is suggested that it was largely the partition and consequent communal violence that served a major blow on the scope of reservation for religious minorities. First, Partition marked the departure of 55 Muslims, leaving behind only 28 members in the Constituent Assembly. With this, the bargaining power of the members of the minority communities in the Constituent Assembly got diluted substantially. Second, the changed circumstances forced the members of minority communities to demonstrate their loyalty to India. As Wright (1997, p. 853) puts it: 'neither were Hindu representatives willing to continue this concession nor were the remaining Muslim committee members prepared to press for it'. From now on, the minority rights got increasingly framed under 'secularism' and 'undifferentiated citizenship' rather than 'social justice'. Many members of the Constituent Assembly argued that in secular India political safeguards along

religious lines would be antithetical to the ideals of secularism. For example, Krishnaswamy Bharti from Madras argued that 'community should not be made the basis of civic rights…In a secular State right to representation is only the right to represent a territory in which all communities live'.[12] Other members, namely Mahabir Tyagi, also made similar points. In the given political circumstances, not only did these voices have wider appeal in the assembly, they were difficult to be countered.

For religious minorities, a fresh opportunity to get included in the social justice or affirmative action programmes arose when the first Backward Classes Commission was set up in 1953 to identify 'backward classes' and widen the coverage of affirmative programmes. The commission received representations from religious organizations. In their representations, Muslim organizations demanded that the Muslim community as a whole should be treated as backward. While the commission did not treat religious communities (minority religions) as a whole as a backward class, it recognized some groups/ sub-groups among them as 'backward classes'.[13] Like its predecessor, the second Backward Classes Commission constituted in 1979 (popularly known as the Mandal Commission after its chairman B.P. Mandal) also did not recognize religious groups as a whole as a 'backward class'. Rather, it identified some groups among non-Hindus as socially and educationally backward classes based on the two criteria: (*a*) all untouchables who had converted to a non-Hindu religion; and (*b*) such occupational communities which are known by the name of their traditional hereditary occupation and whose Hindu counterparts have been included in the list Hindu OBCs. Though the criteria for identifying OBCs among non-Hindus were short of careful thought and beset with methodological fallacies, the fact remains that a section of Muslims became part of affirmative action programmes.

The inclusion of some groups/sub-groups, however, did not satisfy the community elite. The demands for reservation for the entire community continued. In 1994, the Association for Promoting Education and Employment of Muslims (APEEM) convened a conference in New Delhi. This conference was of immense importance because the then Minister of Welfare in the Union Cabinet, Sitaram Keshri, not only attended the conference but also advocated separate quota for Muslims in educational institutions and public employment. This implied that the Conference had been convened with the tacit support of the Congress (Wright, 1997). APEEM has continued to buttress demands of reservation for Muslims in its successive conferences (Alam, 2009).

The idea of affirmative action for Muslims received wider attention following the reports of the two commissions set up by the United Progressive Alliance (UPA) government in 2004. The prime minister's High Power Panel, popularly known as the Sachar Committee, analyzed the socio-economic status of the Muslim community vis-à-vis others.[14] Based on its findings on certain indicators of educational and economic attainment social groups can be vertically arranged as follows: forward-caste Hindus at the top, followed by Hindu OBCs as well as upper caste/class Muslims; distantly followed by SCs/STs, with the Muslim OBCs being at the bottom. While the primary mandate of the Sachar Committee was to map the levels of deprivation among Muslims and diagnose the problem, it also highlighted the areas of intervention and suggested multifarious measures (minus reservation) to overcome various kinds of deprivations among Muslims.

The 'National Commission on Religious and Linguistic Minorities' (NCRLM), appointed around the same time was, however, primarily mandated to find out solutions to socio-economic problems facing the Muslim community. Its mandate included: (*a*) suggesting criteria for identification of socially and economically backward sections among religious and linguistic minorities; (*b*) recommending measures for the welfare of socially and economically backward sections among religious and linguistic minorities, including reservation in education and government employment; and (*c*) to suggest the

necessary constitutional, legal and administrative modalities required for the implementation of its recommendations. Accordingly, the NCRLM in its report (2007) recommended reservation for Muslims. We will discuss its proposals with regard to reservation for minorities in greater detail in the following section; suffice here to say that it gave some legitimacy to the demands of reservation for Muslims.

Approaches to Affirmative Action for Muslims: A Critical Appraisal

While much of the discourse on affirmative action in India is focused on reservation, there are nonetheless many ways to tackle group-based disadvantages. In fact, many of them appear to be more capable of combating group based disadvantages than reservation. An attempt is made here to present a critical account of a wide array of approaches that might contribute to or could be useful in thinking about social equity for disadvantaged minorities such as Muslims.

The Quota Approach

The 'quota' is an outcome oriented policy approach, for it involves a fixed amount of budgetary alloca-tion and/or a fixed proportion of seats in educational institutions and public employment reserved for the disadvantaged group. In spite of severe criticism, the quota approach has been a very popular form of affirmative action. This form of affirmative action is particularly effective in societies that are deeply divided along religious, ethnic or linguistic axes. Since a quota for the disadvantaged group in question is 'fixed', it helps disadvantaged groups overcome prejudices against them in the system of distributive benefits and the wider society as well.

As discussed earlier, 'quota' is the dominant form of affirmative action in India. As a result, affirma-tive action in India has come to mean 'reservation' or 'fixed quota' for disadvantaged groups. Currently, three social groups namely the SCs, the STs and the OBCs are beneficiaries of reservation. As far as inclusion of Muslims in the reservation policy is concerned, some sub-groups among them are identified as OBCs. However, it has been claimed that Muslims have not received a fair deal in the reservation policy. While there is a demand for a fixed quota for the entire Muslim community, it has several strands. There are many who argue that relative backwardness of Muslims is more a matter of inter-group diversity than intra-group disparity, for Muslims as a whole are victim of invidious discrimination that has pushed them to the level of SCs/STs (Akhtar and Ahmad, 2003; Hasan, 2005). The nub of these argu-ments is that the identity-based biases run so deep in the system that not only are affirmative actions necessary, but also no affirmative action policy other than 'fixed quota' is ever likely to work.

Such arguments have, however, come under attack from within the community. Some sections of Muslims argue that class and caste categories should be retained while considering Muslims for affirma-tive action (Engineer, 2004). It is argued that like Hindus, Muslims are also characterised by internal differentiations in terms of caste-like groupings. Though Islam prohibits caste and class distinctions among Muslims, in practice the Muslim community is not immune to caste-like hierarchies (I. Ahmad, 1978; Karanath, 2007). More recent converts, the majority of whom were lower-caste Hindus, are not seen as socio-economic equals within the community (Ali, 2001; Mondal, 2003). This implies that all Muslims are not backward, nor do all of them require affirmative action. The basis of affirmative action

in the form of reservation for Muslims should, therefore, be linked to social and economic stratification within the community. The underlying assumption is that the benefits of reservation should go to those within the Muslim community whose social and economic status is no different from Hindu lower castes. Extending benefits of reservation to the entire community would only benefit the upper crust of the community who can advance in life on their own, while those who really need reservations would be left untouched. Hence, it will defeat the avowed purpose of the policy aimed at uplifting the deprived sections within the community. This argument is particularly advanced by the Pasmanda (backward) Muslims Organizations (Jenkins, 2003).

The official proposal to extend reservation to the entire Muslim community was put forward by the National Commission for Religious and Linguistic Minorities (NCLRM, 2007). There are basically two proposals. One, the entire Muslim community may be declared 'backward' within the meaning of that term in Article 16(4) of the Constitution—*notably without qualifying the word 'backward' with the words 'socially' and 'educationally'*—and that reservation could be given over and above the existing 49.5 per cent. The commission suggested 15 per cent reservation for minorities, subdivided into 10 per cent for Muslims and 5 per cent for other minorities. The second proposal was, in fact, placed as an alternative in case there was any difficulty in implementing the first proposal. According to this proposal, subject to minor adjustments inter se in accordance with the population of various minorities in various states/UTs, a sub-quota of 8.4 for minorities (internally sub-divided into 6 per cent for Muslims and 2.4 per cent for other minorities) within the 27 per cent OBC quota should be carved out on the ground that minorities account for 8.4 per cent of the total OBC population.[15] However, both the proposals appear to be faced with legal/constitutional problems. As far as the first proposal is concerned, recognising the entire the Muslim community as 'backward' for the purpose of reservation involves amendments in the constitution for (*a*) extending reservation to Muslims as a backward class'; and (*b*) removing the ceiling of 50 per cent.[16] On the second proposal, it has been argued that the inclusion of groups in the category of OBC is based on the twin criteria of 'social' and 'educational' backwardness. As stated earlier, since Indian Muslims comprise of multitude of sub-groups and many of them are of high social origin, the idea of inclusion of the entire Muslim community is not in the fitness of constitutional provisions.

One may, of course, argue that if objective position of Muslims as a whole is no different from officially recognized backward classes, the constitution should be amended to recognize them as 'backward' classes. After all, the constitution has been amended for similar purposes on many occasions. For example, it has been amended to grant the status of the Scheduled Caste to members of Sikh and Buddhist communities in 1956 and 1990 respectively. On the face of it, this argument has some merits. However, arguments such as these should not be made in isolation from larger social and political consequences. For one, if past experience is any guide, reservation has been an overly emotive and divisive issue. Attempts of increasing the quantum of reservation have met with violent resistance and political backlash (Kumar, 1992; Shah, 1991; Weiner, 1983). The extension of reservation to Muslims would not only be opposed at political and societal levels,[17] the reactions would be even more violent than in the case of OBCs. In other words, pressing for reservation for the entire Muslim community in the current socio-political clime may further isolate the community from the wider society. Second, as we have noted, the opposition to the idea of reservation for the entire Muslim community is also likely to come from within the community itself. In other words, considering all Muslims for reservation may also create many problems within the community itself.

In view of above complexities a pertinent question that arises: is there any scope under the existing legal/constitutional framework and political conditions to maximize the benefits of reservation for eligible Muslims? There are two issues to be looked into in this regard. It is often claimed that (*a*) that the method used by the Mandal Commission to identify OBCs among Muslims was flawed, leaving many genuinely deserving sub-groups among Muslims out of the OBC category; and (*b*) that Muslim OBCs are far more disadvantaged than their counterparts among the Hindus, and as a result the former are unable to compete with the latter and are thus much less likely to benefit from reservation earmarked for OBCs as a whole.

Let us take up the first claim first. As per the Nation Sample Survey Organisation (NSSO, 68th round) estimates, Muslim OBCs account for 7 per cent of the total population. In other words, half the Muslims (13.4 per cent of total population) are placed in the OBC category. However, sociologists and anthropologists have suggested that about 80–90 per cent of Muslims are descendents of converts who belonged to 'untouchables' and lower-caste Hindus (Mondal, 2003). It thus points to the fact that the Muslim communities who are socially and educationally backward, like their counterparts following other religions, have not been properly identified. To put it slightly differently, there is scope for identifying many more Muslim communities as socially and educationally backward classes and placing them in the OBC list. Of late, this exercise has been done in a number of states including West Bengal and Andhra Pradesh. It has not faced hurdles of any sort—legal or political. In brief, identification and inclusion of more Muslim communities in both central and state lists of OBCs is possible without any fetters. If the identification problem is overcome, it will substantially increase Muslims' share in the reservation policy.

With regard to the claim of not being able to appropriate benefits of reservation, it is not the Muslim OBCs who are particularly faced with this problem. As a matter of fact, a large number of communities have complained that they are unable to compete with relatively advanced communities within the OBCs, and are therefore not benefiting from the reservation regime. Acting upon such complaints, many states have created sub-quotas within the 27 per cent quota. This also includes a sub-quota for OBC Muslims. For example, Kerala has divided OBC into eight categories and accordingly has eight sub-quotas. There is one sub-quota for Muslim OBCs. Similarly, Karnataka has a sub-quota of 4 per cent for Muslim OBCs. Recently, Andhra Pradesh has added the category 'E' in the existing fourfold classification of OBCs to devise a sub-quota of 4 per cent for Muslim OBCs (Krishnan, 2012). Such classifications and sub-quotas have stood judicial scrutiny. Nor have they been subjected to political controversies. In brief, sub-quotas for most backward communities including Muslims (OBCs) are legally appropriate, judicially sustainable and politically non-contentious. Thus, if a comprehensive system for sub-quotas based on differential levels of backwardness/deprivation at the central and state level (where sub-quotas are not available) is done, it will benefit the most backward communities including Muslims identified as OBCs.

The Spatial Approach

The spatial approach is rather a process-oriented policy. It is most suited in the context where ethnicity-based deprivation is coterminous with backwardness of region. Nigeria offers the best example of this model of affirmative action. This approach envisages undertaking of various ameliorative schemes for the development of the backward region, leading to betterment of the local communities inhabiting the

given region. A distinctive feature of this approach is that spatiality masks both ethnicity and class as the basis of selection of beneficiaries, a major critique of the 'quota' approach. As the coverage of this form of affirmative action is broad based, programmes undertaken are socially and politically least contentious. However, such an approach may not yield desired or desirable results for various reasons. For one, disadvantaged groups are often poor in human and social capital. In such events, developmental initiatives may bypass the intended beneficiaries even in areas where they are in greater numbers. Second, biased bureaucracy or policy-implementing agencies may distribute funds or tailor schemes in such a manner that ends up benefiting well off groups/individuals.

How far does this approach suit affirmative action for Muslim minorities? In order to be able to answer this question, we need to, first of all, look at the spatial demography of Muslims. In 2001, Muslims with a population of 138 million accounted for about 13.4 per cent of the total population in the country (Census of India, 2001). Unlike other minority communities, Muslims are unevenly distributed across the length and breadth of the country. At the national level, the proportion of Muslims varies from 66.9 per cent in Jammu and Kashmir and 30.9 per cent in Assam to 5.5 per cent in Tamil Nadu. Of the total Muslim population in the country, over half (53 per cent) lives in just four states namely Assam, Bihar, Uttar Pradesh and West Bengal. The southern four states—Andhra Pradesh, Karnataka, Kerala and Tamil Nadu—together account for one-sixth of the total Muslim population in the country. At the sub-national level, while there is hardly a district that does not have Muslim population, there are 20 districts (out of 594 districts in 2001) across states where Muslims form the majority community. There are another 38 districts that have a substantial Muslim population, accounting for over a quarter of the total population but below 50 per cent. The spatial distribution of Muslims does suggest that there are some clusters of Muslims and therefore the spatial approach may be applicable as well as useful in designing affirmative action for Muslims. Let us now take a brief look at different aspects of spatial approach including coverage, efficacy and quantum of benefits.

In India, the spatial approach in the context of religious minorities has been in existence since 1987. Partly as a follow up to the Gopal Singh Committee Report, the Government of India prepared a list of 41 minority concentration districts (having 20 per cent or more population of minorities in a district based on the 1971 census) for focused attention of the government to implement developmental and welfare schemes. In 2008–2009, the Government of India revamped this approach to launch area development initiatives, also known as 'multi-sectoral development programmes' (MsDPs). This programme was launched in 90 minority concentrated districts (MCD) (based on 25 per cent or more minority population as per the 2001 census). However, the MsDP programmes came under attack for several reasons, such as inadequate coverage, flawed design and poor implementation.

In terms of coverage, MCDs contained only 37 per cent of the minority population. As far as Muslims were concerned, they accounted for 30 per cent of the total population in the MCDs and 40 per cent of the total Muslim population the country. Thus, the majority of Muslims lived outside the MCDs, and were therefore left out of the MsDP programme. The MsDP also had serious design, content and implementation problems. It was designed as an umbrella programme to intensify developmental activities in the MCDs. Since the district was made unit of planning, funding and implementation in absence of clear guidance as to where in the districts the projects were to be carried out, the schemes ended up benefiting the non-minority population. On content, the schemes launched under MsDP were not only very few but also did not promise far-reaching changes in the lives of minorities. For instance, these schemes basically related to housing (Indira Awas Yojna), construction of primary schools—more specifically construction of additional classrooms—and skill-development initiatives, etc. Again, in the absence of

clear guidelines on the selection of activities, the bulk of spending was reported to have been directed towards construction of houses (Khan and Parvati, 2013).

Realizing that a district was too big a unit for planning, the government has now switched to the sub-district as a unit of planning, funding and implementation of projects. A total of 710 minority con-centration blocks (MCBs, with a 25 per cent or more minority population) in 155 backward districts have been identified. Moreover, in selected sub-districts (blocks), as the new guidelines suggest, the villages having a higher minority population would be given priority for creation of village-level infra-structure/assets. With this, part of the coverage problem seems to have been addressed. Over 60 per cent of the Muslim population is now covered by MCBs.

However, the problems with regard to content and implementation remain. To make this approach contribute significantly to addressing developmental deficits in minority-concentrated areas, there is a need to enlarge the bouquet of schemes and remove institutional bottlenecks. On the front of education, for example, the focus should shift from construction of primary and upper-primary schools to the construction of secondary schools, colleges and technical institutes (other than ITIs). In each of the iden-tified blocks, schools matching the quality of Kendriya or Navodaya Vidyalays need to be opened up. On the economic front, funds exclusively for up-scaling home-based enterprises may be made available on easy terms and conditions. There should also be focus on creating durable assets and sustainable employment opportunities. The list is too long to be presented here.

However, no amount of well-intentioned schemes/programmes can achieve anything unless they get implemented on the ground in true spirit of the schemes; and policies cannot get implemented unless the structures of implementation are simplified. Currently, the schemes launched under area initiative programme are jointly funded by the central and state governments. At a given point of time, different states have different parties in power which are differentially sensitive to the issues facing the minority communities and therefore policies aimed at benefiting minorities can be differentially successful across states.[18] Moreover, there are multiple layers of planning and approval of activities. This offers ample scope to the bureaucracy to delay approval and implement projects. In other words, this approach to affirmative action, despite having huge potential, may prove a damp squib.

In sum, if carefully designed and effectively implemented, the spatial approach can greatly help address developmental deficits among Muslims along with others living in backward or under developed areas/regions.

The Sectoral Approach

The sectoral approach involves identification of sectors for state intervention which may largely benefit the disadvantaged/targeted group. Like the spatial approach, the basis of selection of intended beneficiar-ies is not 'group'-based on ascriptive characteristics, for its explicit aim is to bail out the entire sector identified for government intervention. And yet, this approach can be used to benefit individuals without making explicit reference to their ethnic or religious identity. An ideal context in which sectoral approach can be useful is the one where the disadvantaged group in question displays higher concentration in the given sectors of economy or occupations.

A major advantage of the sectoral approach is that it is inclusive by design and thus not prone to legal and political controversies. For example, if a particular kind of enterprise is chosen for investment or for weeding out problems facing it, the entire sector benefits. Although it is possible that a particular social

group has a disproportionate presence in that enterprise, it does not have exclusive claims on the benefits out of state intervention. Hence, such policies enjoy greater acceptance.

As far as the application of this approach for addressing disadvantages faced by Muslims is concerned, it sounds great as a large number of Muslims are artisans and run home-based enterprises. There are certain enterprises or occupations in which Muslim workers are disproportionately engaged. These enterprises include carpentry, butchery, weaving, lock- and brass-making, carpet- and perfume-making, leather work, etc. Many of these enterprises face the problems of raw materials, financial capital, spatial segregation, lack of availability of appropriate modern technology and exploitation by big traders and so on. The onset of globalization and liberalization accompanied by unbridled powers of traders has further worsened the conditions of those employed in these occupations (Z. Ahmad, 2013; Harris-White, 2003; Jamil, 2014). Thus, a policy package that provides for up-scaling and modernizing small-scale enterprises by making capital available; up-skilling manpower (to use technology) by providing training; putting in place a mechanism to do away with exploitation by traders and so on may help large number of Muslims and may have multiplier positive effects on their lives.

In India, sector-based schemes have been in existence for some time. For instance, the Ministry of Cotton Textiles has launched a number of schemes for the handloom and handicraft sector. The handloom sector alone employs over 65 lakh persons.[19] The government has identified about 470 handloom clusters for development of the handloom sector. In 2008–2009, the Comprehensive Handloom Sector Development Scheme was introduced by the Ministry of Cotton Textiles for the development of two Mega Handloom Clusters—Varansi (Uttar Pradesh) and Sivsagar (Assam). There are also schemes for other small-scale enterprises launched by the Ministry of Small Scale Industries.

On the face of it, the sectoral approach may greatly help members of the Muslim community as the size of artisan class among them is disproportionately large. However, there are no studies to show how different schemes for traditional and marginal occupations work and impact the lives of those engaged in such occupations on the ground. Since most of such schemes are financed and implemented within the federal framework, that is, both central and state governments being responsible for financing, the efficacy of such schemes is likely to be variable across states depending on commitment of the state governments towards the welfare of people engaged in marginal occupations. Also, it is possible that the targeted groups may be used as the front but benefits of government schemes are actually cornered by others. In Malaysia, this kind of arrangement is known as 'Ali-Baba' enterprises (Sowell, 2004). In this case, Ali is someone who belongs to the targeted groups (the native Bhumiputras) and in whose name the enterprise/firm is registered. But actual control of the firm/enterprise is in the hand of 'Baba' who is someone outside the targeted group.

Anti-discrimination Measures

In multi-ethnic/multi-cultural societies, minority groups based on ethnicity, region, religion, language, national origin, etc., tend to have feelings of being discriminated against by the state agencies as well as the wider society. They often attribute their deprivations to invidious discrimination practised against them. In order to address the problem of discrimination—actual or perceived—many democratic and multi-ethnic countries—the United States of America, Canada, the United Kingdom, Brazil and South Africa, to name a few—have enacted anti-discrimination laws and created anti-discrimination or equal-opportunity authorities. For example, the United States of America passed the Equal Opportunity Act

in 1972 and created the Equal Employment Opportunity Commission to prohibit discrimination in employment and workplace. In 2010, the United Kingdom (UK) passed the Equality Act 2010 to replace all previous anti-discrimination laws with a single Act. The Act aims to prohibit discrimination on the basis of race, religion, gender, sexual orientation, marital status and age. Without giving the whole list of countries with equal-opportunity structures, suffice it to say that such measures are in existence and have proved useful to combat discrimination and problems of under-representation of disadvantaged groups in critical sectors of life such as employment and educational institutions. As Borooah (2010, p. 33) puts it, 'not only do EO policies attempt to eliminate discrimination bias by making it illegal, EO builds non-discriminatory policies into the fabric of the human resource management of organizations...'. These efforts are said to have made substantial impact on the lives of the minority groups often prone to discrimination (Khaitan, 2008).

The first attempt towards creating an Equal Opportunity Commission (EOC) was initiated by the UPA government as a follow-up to the recommendations of the Sachar Committee (2005). The government appointed an Expert Group in 2008 to 'examine and determine the structure of an Equal Opportunity Commission'. Underlining the importance of the Equal Opportunity Commission, the expert group observed: 'Perhaps equal opportunity situations would have been different had the Government set up Equal Opportunity Commission immediately after the enactment of the Constitution'.[20] Given that EOCs in other countries have been very effective in weeding out discrimination in hiring processes and in distribution of state resources, this is not an exaggerated statement.

The Commission envisaged an EOC that would be 'autonomous of the government of the day and be capable of responding quickly and effectively to any challenge it is faced with'; would entail multifarious functions—advisory/consultative, policy intervention, investigative and grievance redressal; would cover disadvantaged groups based on an open ended list of irrelevant personal characteristics; and would have jurisdiction over both public and private sectors. This makes the design of EOC not only morally better but also promises to positively affect the lives of disadvantaged groups/individuals far more than any other welfare measures for the following reasons.

First, since the principal reason for under-representation of disadvantaged groups including Muslims in various structures of opportunities is seen to lie in systemic discrimination against them, an effective EOC will not only help them redress their grievances sooner than later, it may instil confidence among them and thereby dilute the tendency (among disadvantaged groups/individuals) of withdrawing from competition for positions. Second, the jurisdiction of EOC is not just limited to jobs and educational institutions and that too in the public sector as in the case of reservation, but may also extend to unfair treatment in private sectors and a wide variety of other areas such as housing, institutional credit lending and so on. In other words, anti-discrimination measures including EOC can bring about far reaching changes in the lives of far more people across groups than reservation does or can.

Nevertheless, constitution of EOC like bodies is faced with two major, though not insurmountable, difficulties. One, there are many commissions dealing with issues of different groups with some functions similar to the proposed EOC. In other words, there is scope of overlapping spheres of mandate and jurisdictions between EOC and other commissions or statutory bodies like the Commissions for Scheduled Castes and Scheduled Tribes, the Women's Commissions, the Minority Commissions and so on. One way out of this impasse is to merge different bodies/structures/commissions into a single Equal Opportunity Commission or to take out some powers/functions (relevant to EOC) of different commissions and assign them to EOC. But this is not an easy task to do. This is precisely the reason why the EOC Bill could not be introduced in the Parliament. There were differences of opinions within the

government. One argument was that since EOC as proposed by the Expert Group would stand in conflict with other existing statutory commissions, it should cover religious minorities only. Others argued that EOC for minorities only would render it meaningless. It will be seen as another instrument of minority appeasement. Second, even an effectively functioning EOC may end up dealing with limited number of complaints. Given the pervasiveness of discriminatory feelings across social groups, the EOC will be flooded with the complaints of discrimination which in turn may seriously impair its ability to dispose of the cases in the given time frame. In such a situation, to have an EOC may mean like any other commissions that hardly serve the purpose for which they were created.

In sum, given the pervasiveness of discrimination the EOC can be an effective instrument of addressing social inequities, provided that it is designed in much better ways than the one proposed by the government, that is, for minorities only.

Conclusion

India is one of most unequal societies of the world. Inequalities are manifested in terms of caste, tribe, gender, religion and region and so on. These axes of inequalities are, however, not mutually exclusive. They tend to get nested in complex ways. Nonetheless, religion is a major axis of persistent inequalities. Given that the Muslim communities are faced with several forms of disadvantages relative to other socio-religious communities, and that India has the most elaborated affirmative programmes for disadvantaged groups, there is a strong case of affirmative action for Muslims. However, designing affirmative action for any group should be based on sound reason and criteria to convey right messages to the beneficiary group as well as the wider society. So, affirmative action policy for Muslims needs to factor in the followings: (*a*) that the nature and degrees of disadvantages facing Muslims vary across space and also in terms of social origin, that is, their relative backwardness is multi-layered; (*b*) that the existing constitutional provisions put some limitations to adoption of affirmative measures for Muslims similar to other disadvantaged groups; and (*c*) the political class is sharply divided on different forms of affirmative action, if not on the idea of 'affirmative action' for minorities per se. It thus suggests that a single set of measures will be inadequate to remove complex and multi-layered disadvantages facing the Muslims. To put slightly differently, there is a need to follow what may be called a 'mixed approach' or a 'multilateral approach'. For example, at one level initiatives may be taken to proper identification of backward classes among Muslims. At another level, spatial and sectoral approaches either combined or separately can be better designed and implemented to benefit Muslims along with other deprived groups to tackle developmental deficits thereof. At the other level, anti-discrimination measures such as EOC may be put in place. Taken together, these measures can be reasonably expected not only to help addressing grievances of Muslims and other marginalized groups but also to bring about substantive transformation in their lives.

Notes

2. Recognition of the Jats and the Maratahas as socially and economically disadvantaged and reservation for them offer the best example of this. The Jats, a land-owning and relatively prosperous community of north-west India, have long been struggling to get included in the system of affirmative action/reservation. Just ahead of the general elections to the Lok Sabha (2014), the UPA-II government at the centre approved the inclusion of Jats in the central list of OBCs. Similarly, the Marathas of Maharashtra have long been demanding reservation, though they have traditionally been relatively economically well-off and politically powerful communities.

3. For instance, the Gujjars, traditionally a pastoral community of north and central India, have been agitating for some time to be included in the list of Scheduled Tribes (STs). They claim that they are tribes and have wrongly been placed in the list of OBCs.

4. In response to the demands of Muslims for reservation, many states have made efforts to accommodate them (the Muslim community as a whole) in the system of reservation. For instance, the Andhra Pradesh government in 2004 issued Government Order (No. 33 of 12 July 2004) to grant over and above 5 per cent quota for Muslims in public employment and educational institutions. More recently, Maharashtra has joined the list. On 25 June 2014, the government approved 5 per cent quota for Muslims in the state. It has been challenged in the court and is likely to meet the same fate as it did in Andhra Pradesh.

5. For example, the Andhra Pradesh government in 2004 issued Government Order (No. 33 of 12 July 2004) to grant over and above 5 per cent quota for Muslims in public employment and educational institutions. It was challenged in the court and the Andhra High Court struck down the order. In 2007, the Andhra Pradesh government again pushed for a Muslim quota by reducing it to 4 per cent in order to keep the total quota consistent with the 50 per cent cap fixed by the Supreme Court. It was again challenged in and struck down by the Andhra Pradesh High Court.

6. Also see CAD (26 May 1949, p. 321).

7. The members of the sub-committee comprised J.L. Nehru, Rajendra Prasad, K.M. Munshi, B.R. Ambedkar and Sardar Patel. Sardar Patel, on 11 May 1949, laid down the report of this sub-committee before the Advisory Committee on Fundamental Rights.

8. On this see, CAD, Vol. VIII, 25 May 1949, p. 311, Appendix A.

9. Article 296 in the Draft Constitution originally contained: 'In the all India and provincial services the claims of all minorities shall be kept in view in making appointments to these services consistently with the consideration of efficiency in administration.'

10. CAD, Vol. X, 14 October 1949, p. 229.

11. CAD, Vol. X, 14 October 1949, p. 229.

12. See CAD, Vol. VII, 8 November 1948, p. 323.

13. The First Backward Classes Commission (1953–1955) held that 'it would be not fair or just to list all Muslims as socially and educationally backward. Officially, Muslims do not recognize any caste. It must be said to the credit of Islam it did not compromise its position in the matter of untouchables…There are certain professions, however, that are regarded as inferior even by the Muslims. The sense of high and low has gradually permeated Muslim society and there are a number of communities amongst them that are suffering from social inferiority and consequent educational backwardness. We have recognized this deterioration that has overcome Muslim society today and added the names of such backward communities found among them in the list of Other Backward Classes'. Government of India (1955): Report of the Backward Classes Commission (Vol. 1), p. 27.

14. The mandate given to the committee broadly included: (*a*) to 'obtain relevant information from departments/agencies of central and state governments and also conduct an intensive literature survey to identify published data, articles and research on relative social, economic and educational statistics of Muslims in India at the State, regional and district levels...'; and (*b*) to 'consolidate, collate and analyze the above information/literature to identify areas of intervention by Government to address relevant issues relating to the social, economic and educational status of the Muslim community'. Also see, Notification No. 850/3/C/3/05—Pol. Government of India, New Delhi.

15. Report of National Commission on Religious and Linguistic Minorities (2007), Government of India, p. 153.
16. Although there is no constitutional limit to the quantum of reservation, successive rulings of the Supreme Court beginning with *Balaji vs State of Mysore* (1963) fixed a ceiling of 50 per cent for all reservation taken together.
17. For example, when the government of Andhra Pradesh announced a 5 per cent reservation for Muslims in the state in educational institutions and jobs in 2004, it raised a political storm. The Bharatiya Janata Party (BJP) described this reservation as 'anti-national' and announced the launch of a rigorous campaign against it. On 18 July, Venkiah Naidu, a senior member of the BJP, told reporters that 'the decision of to give 5 per cent of reservation to Muslims in education and jobs is dangerous, divisive and against national interest'.
18. For example, the Gujarat government refused to distribute scholarships initiated by the Ministry of Minority Affairs to minority students until the Gujarat High Court directed it to implement the scheme. Other BJP-ruled states such as Chhattisgarh and Goa have also been reluctant to distribute scholarships to minority students.
19. See Ministry of Textiles, Government of India (also see, http://texmin.nic.in/policy/policy_scheme.htmhttp://texmin.nic.in).
20. Report of the Expert Group 'Equal Opportunity Commission: What, Why and How?' (2008), p. xvii. Government of India.

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