

RECOMMENDATIONS AND MODALITIES FOR THEIR IMPLEMENTATION

1. In the preceding chapters, we have discussed at length the socio-economic status of the religious and linguistic minorities, the legal and constitutional provisions for safeguarding their interests, and welfare and developmental measures adopted for giving a greater thrust to their growth and development with a view to mainstream them.. We have also reviewed the criterion which already exists for identifying the socially and economically backward amongst different categories of people in the country including the religious and linguistic minorities. While reviewing the status of socially & economically backward amongst different classes including the minorities, the Commission has been guided by the Constitutional provisions and the goals that the Constitution has set for the country. The ultimate objective as laid down by the Constitution is of a country secular in nature, based on the principles of equality, social justice and equity for all its citizens without discrimination on the basis of caste, creed, sex or religion. Taking note of the existing inequalities, it makes both mandatory and enabling provisions for facilitating the creation of a society where caste, class, religion will have none or minimal influence. In conformity with Constitutional directives two pronged strategy has been evolved for enhancing the status of its people. The socially and economically backward are eligible for benefits from all policies and programmes of Government without any discrimination as they are meant for all. Additionally, special provisions have been made for the categories of SCs, STs, OBCs, weaker sections and minorities to ensure

greater thrust and focus for their accelerated development to bring them at par with the general category of people through line Ministries/Departments/ Institutions. The Commission is aware that many of these programmes and interventions have enabled positive discrimination in favour of the backwards for their educational, social and economic development which have had favourable impact on their status. These programmes are being implemented for the last several decades.

2. The Commission has also taken note of the changing nature of the socio-economic structure of the society since independence. It was noted that due to the impact of various departmental and other policies and programmes, industrialisation and migration from rural to urban areas, the rigidities of the age-old social structures have undergone a change which have substantially blurred the existing divisions in the society. The dwindling role of Government has reduced the potential for employment within the Government. The economy is growing at a fast pace due to technological advancements, industrialisation and expansion of communication network. These have opened newer vistas for employment with the result that the potential for employment by and large exists outside the Government.

3. Despite the initiative taken by the Government through policies of positive discrimination and affirmative action through reservation, special schemes and programmes for social, educational and economic

development, it was noted that there is a wide spread perception by both policy formulators and implementers of programmes as also the target groups that the flow of benefits to them has not been uniform and the poorest amongst them have by and large been left out. While reviewing the policies and programmes, the Commission has consciously tried to identify the causes for such wide spread belief regarding unequal treatments. The Commission is of the view that a uniform approach towards socially and economically backward needs to be evolved which should not be based on caste, class or religion so that social justice and equity can be guaranteed to all. The criterion, therefore, should be uniform based on social, educational and economic indices equally applicable to all. Those educationally and economically backward are, by and large, also socially backward.

4. Ideally there should be no distinction on the basis of caste, religion or class. There should be single List of socially and economically backward including religious and linguistic minorities based on common criteria. The existing Lists prepared on the basis of backwardness of caste or class should cease to exist after the List of socially and economically backward is ready. The new list of socially and economically backward has necessarily to be family/household based. It should be all inclusive and based on socio-economic backwardness.

5. On the basis of the above, the Commission strongly feels that as education is crucial for development and enhancement of social and economic status, the focus has to be not only on extending the facilities for education to all equally, but also ensuring the quality of education. Education through acquisition of knowledge improves ability and capacity and instills confidence and competitive spirit. It nurtures and strengthens self reliance and enables individual to seek better employment opportunities. Educational programmes, therefore, have to equip the individuals for their social and economic development. Facilities

through various measures must, therefore, be provided by both the public and private sectors which should reflect the needs of the various sections of the society and its economy.

6. As we have discussed in the Chapter on Welfare Measures, education is the key to development. It is the most important requirement for improving the socio-economic status of the backward sections among religious minorities. The literacy and educational levels among religious minorities vary considerably from one community to the other and from one area to the other. While educational level of Jains, Christians and Parsis is higher, that of Muslims and Buddhists is low and is next to SC/ST. Census statistics on the status of religious minorities reveals that the educational status of Muslims is relatively low. However, disaggregated data presents a picture of unevenness in the educational status of Muslims and Buddhists cutting across the States. The States of Bihar, Madhya Pradesh, Rajasthan and UP which account for almost 65 percent of the total population of Muslims in the country, present a dismal picture in terms of social indicators of development for the general population also. In terms of educational, social and economic status, in the under-developed or backward States, the poor and socially and economically backward of each community, including the Muslims, are equal victims and suffer equally from disabilities or deprivation. There is, therefore, an urgent need for taking a comprehensive view of socially and economically backward of all communities in an integrated manner and not deal with the issue of educational backward in a segregated manner. The need for expanding coverage and providing quality education, focusing on girl's education and strengthening vocational education is vital for educational development of weaker sections among all backward classes, SCs and STs and minorities.

7. Now that national programmes like Sarva Siksha Abhiyan are available to all sections of society throughout the country, there is a need

to ensure participation in the programme by all children belonging to religious minorities, SCs/STs and other backward classes so that the facilities are equally shared and dropout rates can be contained. Area based approach needs to be adopted and socially and economically backwards targeted locally.

8. The educational status of minorities has been discussed in the preceding chapters. We find that the enrolment of children of religious minorities at the primary level is better than that of SC/ST. However, the dropout rate of Muslims is higher at the middle and secondary level. Social and economic prosperity is closely linked to the level of education and training of an individual. Acquisition of knowledge and competitive spirit is essential for accessing facilities and opportunities that the society and its economy offer. The socially and economically backward minorities need to be enlightened about the importance of acquiring knowledge and creating competitive spirit with a view to ensuring that merit is properly rewarded and reservation is not used to kill initiative and competitive spirit. The intelligentsia among the religious minorities should convince the community for active participation in educational programmes/schemes and nurture initiative and spirit of competition amongst them.

9. As in the case of education, the economic status of religious minorities varies from group to group and area to area. While level of education and status has direct linkage with the employability and economic wellbeing of an individual, economic empowerment is also dependent on several other factors. The work participation both in the case of females and males, traditional and cultural influences especially with regard to female participation, the type and nature of work etc. also influence the economic status of individuals, households and often of communities. In the case of religious minorities, the work participation rate of Buddhists, Hindus and Christians is approximately the same as for all religious populations which is 39.1 percent. The WPR of

Sikhs is slightly less than the national average. However, in the case of both Jains and Muslims it is low though, perhaps, for different reasons. Muslims are the lowest at 31.3 percent. In terms of categories of workers more Hindus, Sikhs and Christians are cultivators than Muslims. Christians and Sikhs are lowest in terms of agriculture workers while Muslims have the highest percentage of workers in the household industry sector. In terms of 'other occupations' the number of Christians is proportionately the largest in this category at 52.8 percent. The number of Muslims in this category stands at 49.1 percent, Hindus at the lowest at 35.5 percent. The level of poverty determines the economic status of individuals. In terms of poverty figures while percentage of people living below the poverty line, Muslims approximate to that of Hindus in the rural areas, the percentage of Muslims living below poverty line in the urban areas is high. The largest number of people in the rural areas who live below poverty line belong to the category of other religions.

10. From the above figures, it can safely be said that by and large the religious minorities are more urban based than rural based. While more Christians are engaged in wage employment, more Muslims are employed in household industries and are by and large self-employed. Despite these variations, it is apparent that the population of religious minorities is as dispersed as that of majority community. It is, therefore, necessary that to economically empower the poor in a holistic manner adequate infrastructure has to be created and access through State and community interventions ensured keeping in mind their varied needs and requirements both in the rural and urban areas. Jain and Parsi communities are economically better off and very few of them would, if at all, come into the category of people below poverty line or backward classes.

11. The status of women in the society largely determines the social and economic well-being of a society and country. Their participation

in economic activities at home and outside on equal footing and the response of the community in providing support system to facilitate their continuous involvement at all levels indicates socio-economic health of the society. It is, therefore, important that equal rights are not only guaranteed to them but are ensured in all spheres and a protective, secure environment conducive to women's involvement is provided.

12. In every organisation – governmental or non-governmental, planning and implementation are both equally important aspects of administration. Planning, formulating policies and programmes for the development of the country and its peoples for fulfilling the objectives that are laid down, is vital for sustainable development. Good governance not only depends on appropriate policies which are need based, identify target areas and groups or households but is equally dependent on a suitable administrative framework and mechanism that ensures delivery of services and facilities in an equitable and just manner. For effective implementation of programmes, it is important that infrastructure - institutional and administrative - is in place. Systems need to be in place to regularly review policies, programmes and mechanisms to assess their appropriateness and feasibility as also to constantly monitor to ensure that the target groups and beneficiaries are availing the services and facilities being provided for them. Concurrent evaluation is necessary to identify the gaps and or causes for tardy implementation and corrective measures taken midstream for realisation of aims and objectives.

13. In the preceding Chapters we have pointed out shortfalls and lacunae in the existing policies and programmes, and the anomalies that exist and have come to light in implementation. It has also been highlighted that these have resulted in marginalising the socially and economically backward of all categories since the benefits have gone to the upper crust within the groups

of backwards. Changes in the existing criterion for identifying the eligible out of the backwards is necessary. In a democracy, decentralisation of administrative and financial powers and authority is important. This is specially vital in a vast country like ours which has variations in terrain, population distribution, culture, tradition, state of development and needs – area and people-wise. In order to ensure that the socially and economically backward amongst all categories including the minorities are able to take benefits from the schemes and programmes, powers must be vested at a level from where the access to and for each individual/household of socially and economically backward is possible. In order to establish the efficacy of administration, it has to be ensured that the constitutional provision of equal treatment to socially and economically backwards irrespective of caste, creed is followed in word and spirit for ensuring the flow of benefits to the SEB families.

14. Reservation as a measure of affirmative action has been discussed in detail in Chapter No. 8. The Commission considered various view-points brought before it during the visits to States as also during interaction with governmental authorities, NGOs, social scientists etc. The Commission was of the view that ideally the criteria for reservation should be socio-economic backwardness and not religion or caste. Further, Article 16(4) should be the basis for providing reservation benefits to minority groups who are socially and economically backward. Reservation should be provided only as a short term, time-bound measure for enabling greater participation, both in education and employment. As we have mentioned earlier, the lists of SC/ST and OBC have not been scientifically prepared either on the basis of a proper survey or reliable data on socio-economic status of a particular caste or class. Therefore, the entire system of reservation, including that for SCs/STs and OBCs needs to be overhauled. Reservation as available to SCs and STs is open-ended as it is available to

all belonging to the category irrespective of income, educational and economic status. OBCs enjoy 27 percent reservation in employment, though creamy layer is excluded. The norms and methodology adopted, as pointed out in Chapter-VIII is full of anomalies and hence amenable to large-scale abuse. For this reason, the better off among the groups take advantage of reservation at the cost of the socially and economically backward and deprived. It is, therefore, necessary to limit benefits of reservation to the socially and economically backward only. Since BPL lists are prepared on the basis of social/educational and economic criteria, they are more scientific. They are also revised periodically. BPL lists should, therefore, be made eligible for grant of reservation without distinction on caste, class, group or religion basis.

15. The Commission is of the view that provision of educational facilities to all sections of population at all levels is most important. The quality of education at primary and secondary level is paramount to equip the weaker sections for competing on merit for admission in higher/professional educational institutions. As discussed in the Workshop organised by the Delhi School of Economics, referred to in the Chapter on Reservation, the four main dimensions of group disadvantages are caste/community, gender, region and sector of resident (rural or urban). It is also essential to ensure that creamy layer among the backward classes is kept out failing which concessions granted by the Reservation Policy will be grabbed by the creamy layer and not reach the poorest of the poor.

16. We now proceed to list the concrete recommendations we would like to make to answer each of the Commission's Terms of Reference – three original and a fourth one added later.

Term of Reference No. 1

Criteria for Identifying Socially and Economically Backward Classes among the Religious and Linguistic Minorities.

16.1.1. In our considered opinion the ultimate goal should be 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. And, we do suggest that overall efforts should be directed towards gradually leading the Nation to that goal.

16.1.2. We, however, do understand that achievement of that ultimate goal will take a long time as it would obviously require building public opinion and procuring national consensus in its favour, as also a strong political will for translating it into concrete action. We are, therefore, recommending some other measures to be adopted now, pending the possible achievement of what we have called the ultimate goal.

16.1.3. The measures recommended by us will in our opinion pave the way for achieving the aforesaid ultimate goal in future on one hand, while ensuring on the other hand a faithful compliance at present with the constitutional directives of social, economic and political justice and equality of status and opportunity as proclaimed by the Preamble to the Constitution and detailed in its provisions on Fundamental Rights.

Religious Minorities

16.1.4. We wish to clarify, at the outset, that whatever recommendations of a general nature (for all minorities) we are making here are not only for the communities notified as “minorities” by executive action under the National Commission for Minorities Act 1992 but for all religious minorities – large or small – including the Hindus in the Union Territory of Lakshadweep and the States of Jammu & Kashmir, Meghalaya, Mizoram, Nagaland and Punjab.

16.1.5. We recommend that in the matter of criteria for identifying backward classes there should be absolutely no

discrimination whatsoever between the majority community and the minorities; and, therefore, the criteria now applied for this purpose to the majority community – whatever that criteria may be – must be unreservedly applied also to all the minorities.

16.1.6. As a natural corollary to the aforesaid recommendation we recommend that all those classes, sections and groups among the minorities should be treated as backward whose counterparts in the majority community are regarded as backward under the present scheme of things.

16.1.7. We further recommend that all those classes, sections and groups among the various minorities as are generally regarded as ‘inferior’ within the social strata and societal system of those communities – whether called ‘*zat*’ or known by any other synonymous expression – should be treated as backward.

16.1.8. To be more specific, we recommend that all those social and vocational groups among the minorities who but for their religious identity would have been covered by the present net of Scheduled Castes should be unquestionably treated as socially backward, irrespective of whether the religion of those other communities recognises the caste system or not.

16.1.9. We also recommend that those groups among the minorities whose counterparts in the majority community are at present covered by the net of Scheduled Tribes should also be included in that net; and also, more specifically, members of the minority communities living in any Tribal Area from pre-independence days should be so included irrespective of their ethnic characteristics.

Linguistic Minorities

16.1.10. In our opinion the concept of ‘backwardness’ is to be confined in its application to religious minorities as it has no relevance for the linguistic minorities.

The latter may be facing some other problems like discrimination and denial of constitutional rights in practice, but no linguistic group may be regarded as backward by itself. We are not, therefore, recommending any criterion for identifying ‘socially and economically backward classes’ among the linguistic minorities.

16.1.11. We are, of course, conscious of the fact that those linguistic minority groups who keep their education restricted to their own language are often handicapped in the matter of competing with others in respect of educational development and economic advancement. To address this problem we are recommending some specific welfare measures, but would not like to identify language as one of the criteria for identifying backward classes among the people.

Term of Reference No. II

Measures of Welfare for Minorities including Reservation

16.2.1. As democracy is a game of numbers, the numerically weaker sections of the citizenry in any society may and often do get marginalised by the majority. This is eminently true of the religious minorities in India where the society remains intensively religious and religion-conscious and the religious minorities live with a predominant religious community accounting for over 80 percent of the national population. In such a situation legal protection from the hegemony and preponderance of the majority community becomes a pressing need of the religious minorities as a whole, and not just that of the ‘backward’ sections among them. To provide such necessary protection by law we do have in the Constitution a Directive Principle of State Policy, Article 46, which speaks of “weaker sections of the people” – *notably without subjecting them to the condition of backwardness* – and mandates the State to “promote with special care” the educational and economic interests of such

sections. It is keeping this in mind that we are making certain recommendations for the religious communities as such – though we are, of course, also recommending some special measures for the socially and educationally backward sections among the minorities.

16.2.2. We have a convinced opinion that backwardness – both social and economic – actually emanates from educational backwardness. We are, therefore, making certain measures for the educational advancement of the religious minorities – especially the Muslims and the Neo-Buddhists - who were identified under the National Education Policy of 1986 as educationally most backward among all the religious communities of the country. At the same time we are also recommending some measures for the economic betterment of the backward sections among the religious minorities.

16.2.3. As regards linguistic minorities, they are entitled to certain reliefs under some specific provisions of the Constitution, and it is in accordance with those provisions that we are recommending some welfare measures also for them.

General Welfare Measures

Educational Measures

16.2.4. We further clarify that by the word ‘education’ and its derivatives as used below we mean not only general education at the primary, secondary, graduate and postgraduate levels, but also instruction and training in engineering, technology, managerial and vocational courses and professional studies like medicine, law and accountancy. All these subjects and disciplines – as also the paraphernalia required for these like libraries, reading rooms, laboratories, hostels, dormitories etc, - are included in our recommendations for the advancement of education among the minorities.

16.2.5. As the meaning and scope of Article 30 of the Constitution has become quite uncertain, complicated and diluted due to their varied and sometimes conflicting judicial interpretations, we recommend that a comprehensive law should be enacted without delay to detail all aspects of minorities’ educational rights under that provision with a view to reinforcing its original dictates in letter and spirit.

16.2.6. The statute of the National Minority Educational Institutions Commission should be amended to make it wide-based in its composition, powers, functions and responsibilities and to enable it to work as the watchdog for a meticulous enforcement of all aspects of minorities’ educational rights under the Constitution.

16.2.7. As by the force of judicial decisions the minority intake in minority educational institutions has, in the interest of national integration, been restricted to about 50 percent, thus virtually earmarking the remaining 50 percent or so for the majority community – we strongly recommend that, by the same analogy and for the same purpose, at least 15 percent seats in all non-minority educational institutions should be earmarked by law for the minorities as follows:

- (a) The breakup within the recommended 15 percent earmarked seats in institutions shall be 10 percent for the Muslims (commensurate with their 73 percent share of the former in the total minority population at the national level) and the remaining 5 percent for the other minorities.
- (b) Minor adjustments *inter se* can be made in the 15 percent earmarked seats. In the case of non-availability of Muslim candidates to fill 10 percent earmarked seats, the remaining vacancies may be given to the other minorities if their members are available over and above their share of 5 percent; but in no case shall any seat within the recommended 15 percent go to the majority community.

(c) As is the case with the Scheduled Castes and Scheduled Tribes at present, those minority community candidates who can compete with others and secure admission on their own merit shall not be included in these 15 percent earmarked seats.

16.2.8. As regards the backward sections among all the minorities, we recommend that the concessions now available in terms of lower eligibility criteria for admission and lower rate of fee, now available to the Scheduled Castes and Scheduled Tribes, should be extended also to such sections among the minorities. Since women among some minorities – especially the Muslims and Buddhists – are generally educationally backward, we recommend the same measure for them as well and suggest that other possible measures be also initiated for their educational advancement.

16.2.9. In respect of the Muslims – who are the largest minority at the national level with a country-wide presence and yet educationally the most backward of the religious communities – we recommend certain exclusive measures as follows:

- (i) Select institutions in the country like the Aligarh Muslim University and the Jamia Millia Islamia should be legally given a special responsibility to promote education at all levels to Muslim students by taking all possible steps for this purpose. At least one such institution should be selected for this purpose in each of those States and Union Territories which has a substantial Muslim population.
- (ii) All schools and colleges run by the Muslims should be provided enhanced aid and other logistic facilities adequate enough to raise their standards by all possible means and maintain the same.
- (iii) The Madarsa Modernisation Scheme of the government should be suitably revised, strengthened and provided with more funds so that it can provide

finances and necessary paraphernalia either (a) for the provision of modern education up to Standard X within those madarsas themselves which are at present imparting only religious education or, alternatively, (b) to enable the students of such madarsas to receive such education simultaneously in the general schools in their neighbourhood. The Madarsa Modernisation Scheme may, for all these purposes, be operated through a central agency like the Central Wakf Council or the proposed Central Madarsa Education Board.

- (iv) The rules and processes of the Central Wakf Council should be revised in such a way that its main responsibility should be educational development of the Muslims. For this purpose the Council may be legally authorised to collect a special 5 percent educational levy from all wakfs, and (ii) to sanction utilisation of wakf lands for establishing educational institutions, polytechnics, libraries and hostels.
- (v) In the funds to be distributed by the Maulana Azad Educational Foundation a suitable portion should be earmarked for the Muslims proportionate to their share in the total minority population. Out of this portion funds should be provided not only to the existing Muslim institutions but also for setting up new institutions from nursery to the highest level and for technical and vocational education anywhere in India but especially in the Muslim-concentration areas.
- (vi) Anganwaris, Navodaya Vidyalayas and other similar institutions should be opened under their respective schemes especially in each of the Muslim-concentration areas and Muslim families be given suitable incentives to send their children to such institutions.

16.2.10. As regards the linguistic minorities, we recommend the following measures :

- (a) The law relating to the Linguistic Minorities Commissioner should be amended so as to make this office responsible for ensuring full implementation of all the relevant Constitutional provisions for the benefit of each such minority in all the States and Union Territories.
- (b) The three-language formula should be implemented everywhere in the country making it compulsory for the authorities to include in it the mother-tongue of every child – including, especially, Urdu and Punjabi – and all necessary facilities, financial and logistic, should be provided by the State for education in accordance with this dispensation.
- (c) Members of those linguistic minority groups whose education is limited to their mother tongue and who do not have adequate knowledge of the majority language of the region should be provided special facilities in the form of scholarships, fee concession and lower eligibility criteria for admission to enable them to acquire proficiency in the regionally dominant language.
- (d) Urdu-medium schools should be provided special aid and assistance – financial and otherwise – to enhance and improve their efficiency, standards and results.

Economic Measures

16.2.11. As many minority groups specialise in certain household and small scale industries, we recommend that an effective mechanism should be adopted to work for the development and modernisation of all such industries and for a proper training of artisans and workmen among the minorities – especially among the Muslims among whom such industries, artisans and workmen are in urgent need of developmental assistance.

16.2.12. As the largest minority of the country, the Muslims, as also some other minorities have a scant or weak presence in the agrarian sector, we recommend that special schemes should be formulated for the promotion and development of agriculture, agronomy and agricultural trade among them.

16.2.13. We further recommend that effective ways should be adopted to popularise and promote all the self-employment and income-generating schemes among the minorities and to encourage them to benefit from such schemes.

16.2.14. We recommend that the rules, regulations and processes of the National Minorities Development and Finance Corporation be overhauled on a priority basis – in the light of the recent report recently submitted by the NMDFC Review Committee and in consultation with the National Commission for Minorities – with a view to making it more efficient, effective and far-reaching among the minorities.

16.2.15. We further recommend that a 15 percent share be earmarked for the minorities – with a break-up of 10 percent for the Muslims (commensurate with their 73 percent share of the former in the total minority population at the national level) – and 5 percent for the other minorities in all government schemes like Rural Employment Generation Programme, Prime Minister's Rozgar Yojna, Grameen Rozgar Yojna, etc.

Reservation

16.2.16. Since the minorities – especially the Muslims – are very much under-represented, and sometimes wholly unrepresented, in government employment, we recommend that they should be regarded as backward in this respect within the meaning of that term as used in Article 16 (4) of the Constitution – *notably without qualifying the word 'backward' with the words "socially and educationally"* – and that 15 percent

of posts in all cadres and grades under the Central and State Governments should be earmarked for them as follows:

- (a) The break up within the recommended 15 percent shall be 10 percent for the Muslims (commensurate with their 73 percent share of the former in the total minority population at the national level) and the remaining 5 percent for the other minorities.
- (b) Minor adjustment *inter se* can be made within the 15 percent earmarked seats. In the case of non-availability of Muslims to fill 10 percent earmarked seats, the remaining vacancies may be given to other minorities if their members are available over and above their share of 5 percent; but in no case shall any seat within the recommended 15 percent go to the majority community.

16.2.17. We are convinced that the action recommended by us above will have full sanction of Article 16 (4) of the Constitution. Yet, should there be some insurmountable difficulty in implementing this recommendation, as an alternative we recommend that since according to the Mandal Commission Report the minorities constitute 8.4 percent of the total OBC population, in the 27 percent OBC quota an 8.4 percent sub-quota should be earmarked for the minorities with an internal break-up of 6 percent for the Muslims (commensurate with their 73 percent share in the total minority population at the national level) and 2.4 percent for the other minorities – with minor adjustments *inter se* in accordance with population of various minorities in various States and UTs.

16.2.18. We further recommend that the reservation now extended to the Scheduled Tribes, which is a religion-neutral class, should be carefully examined to assess the extent of minority presence in it and remedial measures should be initiated to correct the imbalance, if any. The situation in Meghalaya, Mizoram, Nagaland

and Lakshadweep which are minority-dominated and predominantly tribal, as also such tribal areas/districts in Assam and all other States, is to be especially taken into account in this respect.

16.2.19. We recommend that the judicial reservation recently expressed in several cases about the continued inclusion of the creamy layer in various classes enjoying reservation, inclusive of the Scheduled Castes and Scheduled Tribes, should be seriously considered for acceptance as a State policy.

Additional Term of Reference

Para 3 of the Constitution (Scheduled Castes) Order 1950

16.3.1. On a careful examination of prevalence of the caste system among various sections of the Indian citizenry we have concluded that caste is in fact a social phenomenon shared by almost all Indian communities irrespective of their religious persuasions. Many of the particular castes are found simultaneously in various religious communities, equally facing problems of social degradation and mistreatment both by their co-religionists and the others.

16.3.2. We are also conscious of the fact that the Constitution of India prohibits any discrimination between the citizens on the basis of caste, and yet it sanctions special affirmative measures for Scheduled Castes. At the same time it prohibits any discrimination on the ground of religion. Reading all these constitutional provisions together, we are convinced that any religion-based discrimination in selecting particular castes for affirmative action will conflict with the letter and spirit of the constitutional provisions. We are accordingly making the following recommendations on this additional Term of Reference added by the government to our original Terms of Reference several months after we began our work

16.3.3. We recommend that the caste system should be recognised as a general social

characteristic of the Indian society as a whole, without questioning whether the philosophy and teachings of any particular religion recognise it or not – since the Indian brands of certain faith traditions like Christianity and Islam have never assimilated many puritan principles of those religions, posing this question in respect of the caste system only and singling out for a differential treatment is unreasonable and unrealistic.

16.3.4. We would like this fact to be duly recognised that among the Muslims of India the concepts of *zat* (caste) and *arzal* (lower castes) are very much in practice; and even the Muslim law of marriage recognises the doctrine of *kufw* –parity in marriage between the parties in all vital respects including social status and descent – which in this country means nothing but caste.

16.3.5. In view of what has been said above, we recommend that Para 3 of the Constitution (Scheduled Castes) Order 1950 – which originally restricted the Scheduled Caste net to the Hindus and later opened it to Sikhs and Buddhists, thus still excluding from its purview the Muslims, Christians, Jains and Parsis, etc. – should be wholly deleted by appropriate action so as to completely de-link the Scheduled Caste status from religion and make the Scheduled Castes net fully religion-neutral like that of the Scheduled Tribes.

16.3.6. We further recommend that all those groups and classes among the Muslims and Christians, etc. whose counterparts among the Hindus, Sikhs or Buddhists, are included in the Central or State Scheduled Castes lists should also be covered by the Scheduled Caste net. If any such group or class among the Muslims and Christians, etc. is now included in an OBC list, it should be deleted from there while transferring it to the Scheduled Castes – placing the same persons in the Scheduled Caste list if they are Hindu, Sikh or Buddhist but in the OBC list if they follow any other religion – which is the case in many States - in our

opinion clearly amounts to religion-based discrimination.

16.3.7. We further recommend that as the Constitution of India guarantees freedom of conscience and religious freedom as a Fundamental Right, once a person has been included in a Scheduled Caste list a willful change of religion on his part should not affect adversely his or her Scheduled Caste status – as that would in our opinion conflict with the basic constitutional provisions relating to equality, justice and non-discrimination on religious grounds; as also with the spirit of the old and time-tested Caste Disabilities Removal Act of 1850.

Term of Reference No. III

Modalities for Implementing Our Recommendations

16.4.1. We have been asked also “to suggest the necessary constitutional, legal and administrative modalities” required for the implementation of our recommendations. In this regard we have to say as follows.

16.4.2. We are not suggesting any amendment in the Constitution – as we are fully convinced that none of our recommendations requires for its implementation any amendment of the Constitution and that each of these can be fully implemented by legislative or/and administrative action.

16.4.3. We recommend that all Central and State Acts, Statutory Rules and Regulations be suitably amended to implement those of our recommendations which in the opinion of the Ministry of Law and Justice or any another concerned authority may require such amendments.

16.4.4. More specifically, we recommend the following legislative actions which in our opinion are required either for the implementation of some of our recommendations stated above or otherwise in the interest of the welfare of minorities :

- (a) Enactment of a detailed law to enforce the dictates of Article 30 of the Constitution;

- (b) Amendment of the National Commission for Backward Classes Act 1993;
 - (c) Amendment of the Constitution (Scheduled Castes) Order 1950 and the Constitution (Scheduled Tribes) Order 1951 as also of the Central and State lists of the Scheduled Castes and Scheduled Tribes;
 - (d) Review of the laws and rules, processes and procedures, relating to selection and notification of OBCs at the Central and State levels;
 - (e) Enactment of a law to clothe with statutory status and judicial enforceability the Prime Minister's 15-Point Programme for Minorities 1983 as modified in 2006;
 - (f) Amendment of the National Commission for Minorities Act 1992 and the National Commission for Educational Institutions Act 2004 so as to make it necessary for the government to appoint as the chairpersons and members of these bodies – through a Search Committee as in the case of the National Human Rights Commission – only reputed experts in the constitutional, legal, educational and economic matters relating to the minorities;
 - (g) Necessary amendments in the Wakf Act 1993 and all the Rules framed under its provisions;
 - (h) Review and necessary overhaul of the laws, rules, regulations, procedures and processes relating to the National Minorities Development and Finance Corporation and the Maulana Azad Education Foundation.
- (a) Establishment of a Parliamentary Committee to consider and decide in the light of the Constitution policy matters relating to the minorities;
 - (b) Establishment of a National Committee consisting of Chairpersons of NHRC, NCW, NCBC, NCST, NCSC, NCM, NCMEI, NMDFC, CLM, Central Wakf Council and Maulana Azad Foundation along with nominated experts for monitoring the educational and economic development of the minorities;
 - (c) Creation of similar bodies in all the States/UTs for the same purpose and consisting of local top-level officials dealing with minority-related matters and independent experts;
 - (d) Establishment of a National-level Coordination Committee consisting of representatives of all the nationalised banks and other financial institutions to work under the RBI for monitoring credit flow to the minorities;
 - (e) Establishment of State Minorities Commissions and Minority Welfare Departments in all those States and UTs where these do not exist as of now;
 - (f) Decentralisation of all minority-related schemes, programs and plans so as to create suitable district-level mechanisms for their day-to-day implementation;
 - (g) Revision of the list of Minority Concentration Districts as suggested by the NCM in 1990s and initiating special educational, economic and general welfare measures there through the local administration;
 - (h) Appointment of Minority Welfare Committee consisting of officials and local experts in all districts of the country to act the nodal agencies of NCM, State Minorities Commissions and all other Central and State-level bodies working for the minorities.
- 16.4.5. We recommend the following administrative measures which in our opinion are required either for the implementation of some of our recommendations or otherwise in the interest of the welfare of minorities: