

THE REAL DISCRIMINATION AGAINST MINORITIES BEYOND LEGAL AND PUBLIC RELATIONS NICETIES

Despite the Declaration on Ethnic, Linguistic and Religious Minorities, there remains considerable disparity between rhetoric and reality. This statement expresses the particular and distinctive concerns that arise from two regions, Europe and South Asia in which minorities continue to face challenges of recognition, protection of their cultures and religion as well as parity before the law.

The reaction of the British and the Spanish governments following 'terrorist' attacks in their respective countries are commendable and exemplary. Both countries concentrated on isolating an extreme fringe from the community while shielding the larger community of Muslims from hostilities and adverse media profiling. Both countries took steps to 'engage' the wider Muslim community in the national integration and policies. In the United Kingdom, the government has set up a special unit in the Home Ministry on Faith Communities. In a short time this Unit has made tremendous progress in setting up a continuous programme of consultations and promoting community capacities as well as integration.

However problems also remain at the ground level. Asian communities, be they Muslims, Sikhs or Hindus, continue to be viewed with some scepticism by the majority community. Respect and acceptance for Minority Cultures remains at a low level within industry and the media. The media in Britain remains hostile and archaic in the field of cultural pluralism, often adding fuel to a background of suspicions or encouraging a skewed debate based on the terms of secular fundamentalists. The only statutory body in the field of Race Relations, the Commission for Racial Equality remains not only reluctant to promote a sense of multiculturalism, but is engaged in attacking cultural pluralism. This continues to make minority communities with strong and distinctive cultures weary and marginalised in the wider public despite some Government initiatives. It is important for the State to initiate a realistic change in the media, private industry and its statutory bodies to make such minority communities feel fully integrated within the national community. It is not suggested that the State interfere in the freedom of the media, but the state should try and educate a large ignorance in the British media fraternity by encouraging debate. Perhaps British editors may take a novel approach of actually spending some time with minority communities.

The problem of distinctive and cultural minorities is greater in many other parts of Europe. The French obstinacy with eighteenth century secularist theories is extraordinary in the face of a new reality in Europe. It continues to treat the 'revolution' as almost a 'divine' mandate which cannot be altered in the face of new cultural migrations. What was possible to force upon people in the notion of 'liberty and fraternity' three centuries ago simply does not make sense in the twenty first century. The historic French contribution to universal human rights principles is valued by the entire world but it seems rather fundamentalist to fossilise a State's political philosophy and fail to adopt it to new challenges. After all, secular systems are human constructions which are not eternal revelations.

France prides by calling its humanities a 'sciences', but the very basis of science is 'that which exists until a new theory replaces it'. Even 'revealed' religions become sensitive to change and accommodate it in their stride. It would appear inconsistent for the 'legal sciences' in France to stick to a rigid interpretation of the 1905 Laicite law. It simply does not make sense in a world which has moved on from mono cultural Nation States in Europe to multicultural and pluralistic States.

The French position is particularly problematic and distressing for Sikhs who have faced extreme humiliation, perpetual attacks on their right to their practices and denial of basic opportunities simply because they do not agree with the State 'authorised' version of what a human head should appear as, i.e. uncovered and unbearded. If this is not cultural oppression, it is difficult to understand what is. Even the most extreme theocratic States have not enforced such cultural uniformity that France has done in the name of 'liberty and fraternity' giving these words a meaning that most liberal democracies would surely want to distance themselves from. By depriving Sikhs of jobs in the state sector, of refusing them identity Cards that do not comply with State sanctioned 'fashion' or appearance and even obstructing Sikh children access to State School education, the position of France is contrary to the very international instruments it gave rise to. In the interest of real and meaningful liberty, it is necessary in the face of an intractable situation of this rigid Secular French theocracy for the Commission to examine the basis of French law of Laicite and set up a special investigation on the plight of Sikhs in France and other European countries that are following in its footsteps.

The situation of minorities in India, the world's largest democracy remains both intriguing and complex. There is much to be applauded at the State level. The president of India is a Muslim from a minority community. It's Prime Minister a Sikh is from a minority community. Its Chief of Armed Forces, a Sikh, is also from a minority community. It is difficult to imagine even the most advanced western democracies to have the will or the courage to promote a member of a minority to the most powerful and titular position. In fact, India can boast many members from minority communities in its diplomatic services, as Ambassadors, as heads of Ministries, in the police forces and even in the media. There has been a President from the schedule caste. On the face of it, it would appear that to talk of problems of minorities in India is verging on the irrational. Yet the experience of the average citizen and the reality on the ground is very different, concealed by a number of well meaning but subtly exclusivist laws and apparent pro-active but controlled State institutions.

A recent Indian Supreme Court decision threw a devastating blow at minorities, making irrelevant all painfully and carefully arrived definitions of 'minority' at the international level and particularly at the Working Group on Minorities. In a case brought by a member of the minority Jain community for recognition as a minority, the Supreme Court threw the petition out by stating that 'there is no majority in India. All are minorities among Hindus who are divided on caste lines'. The Supreme Court then went on to define the Jains as integral to the Hindu faith. Not only did the Supreme Court fail to guarantee any protection to minorities by this statement, but more dangerously, it has decided that 'it' the Supreme Court of India, will decide whether a religion is distinct or not. It denied the Jains a self definition of a distinct religion. This seems a new adventure in judicial activism in which a court not only

disregards international conventions and Declarations (Declaration on Rights of Ethnic, Religious and Linguistic Minorities) but further decides that it can make parallel and different laws to that constituted by the legislature.

The Indian Constitution clearly recognises the existence of minorities by virtue of articles 29 and 30 of part III of the Indian Constitution in Fundamental Rights which state:

Article 29 Protection of interests of minorities:-

Article 30 Right of minorities to establish and administer educational institutions;

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

Clearly the Constitution recognises that 'minorities' exist in India and by definition there must also exist a 'majority' in relation. There is no doubt that the legislature must have had and continues to have a concept of a 'majority' and who that majority is if it has sought to guard the rights of 'minorities'. If, as the Indian Supreme Court states, everybody and every group in India is a minority, then surely, there is no need for a distinct article for 'minorities'. The contradiction and the liberty taken by the Supreme Court to impose its own variations against democratic legislated constitutional article has neither been contested by the government nor received much attention from its statutory body, the Minority Commission of India whose very existence defies the Court's verdict. The Commission was appointed under Act XIX of 1992 by parliament.

In the Act the Minority commission is required to deal with

c) "Minority", for the purposes of this Act, means a community notified as such by the Central Government;

If there is no 'majority' in India according to the Supreme Court but only minorities, then surely the Minority Commission must constitute a parallel executive to the elected Government since it has to deal with every Indian citizen as a member of a minority!

The Court further states 'If claims of sections of Indian society to the status of 'minority' are considered and conceded, there would be no end to such claims in a society as multi-religious and multi-linguistic as India is'.

The Commission on Human Rights will appreciate that if the Commission and the Working Group on minorities were to adopt this defeatist position in the face of multiple claims by groups for recognition as a minority, the entire concept of minority would falter. It would reveal an intellectual paresis in the institution. It is difficult to understand why the Indian Supreme Court should deny the existence of minorities simply because the field is full of intellectual complexities. The Jains have been a distinctly recognised religious community for over a millennia. It does not do them justice for a State to deny them their distinctive status after such long historical continuity nor does it make sense for the Indian Supreme Court to state that every

Hindu is a minority. The equivalent statement would be to say that all Christians are minorities in the United States because there are several denominations.

And then the Supreme Court went on to reveal the real predicament and status of minorities in India by stating. 'The Commission (National Commission on Minorities) set up for minorities have to direct their activities to maintain integrity and unity of India by gradually eliminating the minority and majority classes!' This clearly violates the fundamental thrust of the Declaration on Minorities, i.e. To protect their right to distinct culture, religion, language, ethnicity etc.

The Constitutional articles and the Supreme Court judgement are irrefutable evidence of the vast difference between fiction and fact of the experience of minorities in India. It is important because the two most important legislative institutions negate each other and make a mockery of the claim by India that it protects and respects its minorities.

Whereas the Constitution claims to recognise minorities and protect their rights in conformity with international norms, the Supreme Court has made official the real public practice, that such recognition really only exists not to protect but to 'eliminate' minorities as distinct groups.

In fact the Act (XIX of 1992 on Minority Commission) and the Supreme Court judgement makes evident a fear most minorities have been stating for years in post 1947 India, that the state has a hidden agenda of destroying their existence as distinct group by selectively declaring their category and then subjecting them to varying degrees of erosion of their distinctive aspects.

This Act states that it is the Government which will decide 'who is a minority'. This violates the principle of self definition or the criteria of recognising a minority adopted by various international bodies. The government arbitrarily decides the claim of any group to its own definition. Further, according to the Indian Supreme Court, the state established the commission not to protect but to eliminate the minority. Thus the state first identifies a distinct group, and then sets about eliminating its distinctive features. In most democratic countries of the world and indeed the purpose of the Declaration and the Working Group on Minorities is to 'eliminate' any discrimination against minorities, and not to 'eliminate' the very minorities as distinct group.

It is such verdicts from the Supreme Court that encourage political leaders to make inflammatory statements which further create fear of intolerance and 'assimilation' in the minorities. In March 2005, Mohan Bhagwat, the General Secretary of RSS (Rashtriya Swayamsewak Sangh), the body behind the BJP (Bharatiya Janata Party which formed the previous government) said that Muslims and Christians were not minorities because 'Their forefathers till a few years ago were Hindus only. It is the same blood which flowed in them and the rest of the Hindu society'. (quoted in Christian Post 2004). There has been no attempt by the current Government to criticise such remarks or to placate the minorities' fears.

This fear has been the repeated claim of almost all major minorities in India from the Sikhs, the Muslims, the Nagas, and the Jains and so on. Seen in this context, the President, the Prime Minister of India or a Sikh Ambassador of India cannot be

considered to be members of any minority. As State executives they are committed to eliminating their very distinctive identity in the long term. At best they are merely anthropological representations who do not 'belong' to or represent any minority. In most countries persons from minorities in high office are expected to be 'impartial' in authority, but according to the Indian Supreme Court, in Indian context, they have a duty to be partial to a hidden agenda of eliminating the minority as a distinct group. On balance, a member of minority would feel much safer to be in a western democracy with almost negligible chance of becoming a Prime Minister but at least a protected right to his/her distinctive culture, religion, language etc and with a hope that the state is committed to eliminating discriminations.

This dual and distressing experience of minorities, between legal fiction and fact, between an imagery of recognition and a policy of denial, remains well documented in reality around India and shown by innumerable examples, some of which are elaborated here.

After a great deal of domestic and international pressure, early this year the State released the Nanavati Commission report on the last day of its statutory duty to make public a report within 6 months of its completion. The report has much shortcomings as a serious enquiry and investigation. However what little it sheds has led to more questions about India's commitment to minorities and the real culture of its institutions.

The Nanavati Commission was the ninth Commission of enquiry in a cynical exercise to obfuscate the obvious in the massacres of Sikhs in Delhi in November 1984 following the assassination of India's Prime Minister, Mrs Indira Gandhi by her Sikh bodyguards. Over 3000 innocent Sikhs, many mourning Mrs Gandhi's death, were butchered, burnt alive with necklaces of tyres or beaten to death by well orchestrated mobs mostly from the Congress party, armed with fuel, similar sized iron bars, machetes and wooden logs. They had lists of Sikh addresses. The police connived and the Government remained silent or unavailable. The army was kept in the barracks. The new Indian Prime Minister at the time, Rajiv Gandhi, explained the attacks as 'when a large banyan tree falls, the earth beneath shakes.'

The first insult to this collective injury was when the State described these as Delhi riots, despite the fact that they were well orchestrated and against one unarmed community. Despite two immediate independent investigations by reputable retired Judges which detailed the orchestration, state involvement and named responsible people and despite televised pictures, the State set up an enquiry to investigate whether a planned 'riot' had taken place. Subsequent enquiries were set up after public pressure to find out 'how many people' were killed, whether the police was responsible, and whether the Government was responsible. It was ten years before six people were convicted. All enquires exonerated the Government. Despite two enquiries finding that two junior ministers 'may' have been involved, the state refused to bring charges on the ground that there was 'insufficient' evidence. The last Commission confirmed that two ministers in the current government, Jagdish Tytler and Sajjan Kumar, were involved. Reluctantly and after great deal of pressure from Sikh groups, human rights individuals and the press, the Ministers were forced to resign. The government was still exonerated. And the state continues to state that insufficient evidence exists to charge these individuals.

The evidence is overwhelming. Television clips are still available. Eye witness reports exist. The obvious question is why did the Government fail to protect its citizens for 4 whole days and how could such mobs act without police connivance. Why did the police force refuse to take down reports and what are institutional failures from the State institutions to the party level in letting a massacre go on for 4 days? The report is a mere 100 pages in an investigation which involves more than 3000 cases. In contrast the United Kingdom investigation by Lord into the death of Stephen was 11 volumes of documents and led to a complete overhaul of the police force, changes in law and categorisation of institutional racism as term in anti discrimination.

The massacres in India were against a minority; hence no real action has been taken even 21 years after the incident. The minority remains sceptical that it will ever see justice. On the other hand the case of Davinderpal Singh Bhuller, in which a Sikh asylum seeker was deported to India by Germany in what it concedes was an administrative mistake, shows another side of the Indian prosecuting system and a partisan judiciary. Mr Bhuller was charged with 'terrorism'. Despite lack of any evidence and a retracted confession obtained under torture, and despite the fact that the lead Judge in the Supreme Court hearing said that there was absolutely no evidence, Mr Bhuller has been condemned to be hung by a split decision in which the other two judges said. 'Proof beyond doubt should not be a fetish'.

Minorities face this day in and day out in India. On the one hand pressure to bring charges against two masterminds of a massacre are dismissed on insufficient evidence despite a very public massacre of a minority where immense evidence exists pointing at ex Government Ministers. On the other hand where the lead judge in a trial states that no evidence exists, the Supreme Court passes a death sentence, because the individual is from a minority community.

The Nanavati commission report and its mitigation of the Government hangs over most minorities as an example of the differential treatment of minorities. Mr Nanavati is also the enquiring investigator in the Gujarat riots in which Muslims were massacred.

Three years after the massacres of over 2000 Muslims in Gujarat following the fire on the Sabarmati Express train (27th February 2002), no one has yet been convicted. The victims who included women, babies and young children, were raped, beaten to death and their houses burnt have to live among those who were engaged in the violence against them. This form of barbarism which is epitome of medieval world, remains unaddressed and its perpetrators walk free causing fear among the minority Muslim community in Gujarat, in the knowledge that the State will not prosecute them. The case against 21 defendants on trial for setting fire to a Muslim owned bakery (Best Bakery case) and killing family owners, collapsed when the main witness withdrew her statement, allegedly under threats from local Hindu politicians. The prosecution made no effort to see her before the trial. On September 12, 2003, the Chief Justice of the Indian Supreme Court asserted that he had "no faith left in the prosecution and the [BJP] Gujarat Government."

Almost a repeat of the Delhi massacres, the police stood by or joined in the massacre. The police refused to record evidence and there are no witness protection programmes

offered to protect witnesses from intimidation. Relief and compensation is meagre. As after Delhi, the minority community has been made to feel that it is second class.

The insecurity of the minority is further added by statements from political leaders and failure of the State to take any action against them. Ashok Singhal, the international President of the VHP (Vishwa Hindu Parishad, the organisation behind the Babri Masjid demolition in Ayodhya) went on to say 'successful experiment' (ref: from Freedom House publication) and the General Secretary of VHP, Pravin Togadia said "All Hindutva opponents will get the death sentence, and we will leave this to the people to carry this out. The process of forming a Hindu rule in the country has begun with Gujarat, and VHP will take the Gujarat experiment to every nook and corner of the country...." (Freedom House publication)

The Central Government has taken no action to date to ensure that Constitutional safeguards and prerogatives are maintained in Gujarat. It has not taken any action against such inflammatory statements. To its credit, the United States government refused a Visa to the Gujarat Chief Minister, Mr Modi for the actions of its government in which he is considered implicit as leader of the State. The central government ironically pleaded for the Visa to be given on the grounds that Mr Modi was democratically elected. It seems that the Indian state interprets a democratic mandate as a licence for its politicians to disregard human rights and constitutional commitments.

In contrast individuals involved against violence majority Hindu community or the State are 'found' within a few days of an incident and successfully charged. In the recent Bomb attacks in Delhi, the alleged perpetrators were caught within two weeks. However on August 28, six people were hurt in blasts at two mosques in western India by unidentified men on motorcycles hurled bombs in Jalna town and the Parbhani district in Maharashtra. No one has been caught. It is clear that the State has the means, the knowledge and the powers to catch and convict people where it wants to, but engages in protracted excuses when the victims are minorities.

Riots which are essentially against Muslims are officially admitted by the Indian state to be over a hundred a year. In what other country would such a large number of riots be put aside as irrelevant for a major investigation and enquiry into state functions and responsibilities? Surely there is a need to examine the entire political, institutional and judicial structures of the State if these number of riots are an annual threat to minorities.

Such massacres also recurrently involve Christians and Christian Missionaries as victims. During the current reign of the new 'secular' Government the following actions have taken place.

On August 22, armed assailants attacked and beat up, a parish priest, Father John Sunderam, in Kubbu in Jharkhand state's Lohardaga district. The attack left him in a coma and left another priest, Father Albanus Tirkey, in the hospital with injuries.

On August 26, a group of 300 Hindu fundamentalists stormed the Church of Our Lady of Charity in the town of Raikia, in Orissa. The attackers burst into the church and burned Bibles while tearing down the Tabernacle and destroying statues of saints. Police was present but did not intervene.

August 28, Father Job Chittilappilly was killed at his parish in the town of Thuruthiparambu in Kerala. Recent phone calls threatening him because of his pastoral activities among Hindu families leading up to the attack suggests that the murder was premeditated.

The Indian state is extraordinarily passing a law to stop conversions of Hindus into Christianity instead of charging the perpetrators of these crimes or charging fundamentalist parties with denying article 19, freedom of conscience. It seems an individual's freedom to choose his or her religion, particularly if they wish to adopt one of the minority religions, is now to be sanctioned and regulated by the State. The national commission of Minorities adds to the majority prejudice by making rhetorical statements such as 'the percentage of Christians in north-east India had risen to "abnormally high" levels.'

Dalits face many challenges as a minority group. Having faced and lived with the stigma of untouchability or being treated as outcastes or lower castes, they are denied or punished if they take steps to seek dignity or salvation from this predicament by changing their religion. When Dalits become Christians, the privilege of positive discrimination that was introduced to improve their opportunities, are taken away. Surely millennia of discrimination entrenched in society does not disappear simply because an individual changes his or her religion. There is no rational legal logic to this law in India. Why should the religion of a person deny him or her a right in a secular country, introduced to address centuries of marginalisation? The positive action intended to address such marginalisation should be treated irrespective of religion and the category for positive action should be defined as historically marginalised people rather than people belonging to a religion. If this logic was used in the race relations legislation in UK then Black and ethnic minorities who convert to Christianity and attend mixed churches would be denied protection. It is not the religion, but the background and descent of an individual which attracts prejudice and which needs to be addressed. It would appear that while claiming to be a secular State, the Indian State is actually engaged in promoting and protecting the Hindu religion by ensuring privileges are denied to people after conversions.

The Indian State is responding to international pressure on its handling of the post Nanavati Commission report and other massacres by enacting yet another legal fiction called the 'The Communal Violence (Suppression) Bill 2005'. However according to a leading Supreme Court human rights lawyer, Colin Gonzales, the Act is a 'dud'. (Indian Express 14th august 2005) The bill would not have prevented the 1984 riots (massacres). It cannot be invoked when communal crimes take place unless the state or the central government decides to declare an area communally disturbed. If a provincial State has the support of the central Government, it can engage in the most heinous communal crimes and get away with it. Moreover the Act can only be invoked in the most extreme circumstances and even then the government 'may' act.

Surely what is needed is not another legal Act, another legal fiction, but a complete investigation on the reasons why the raft of laws that exist become paralysed when such activities occur. It is time for the state to investigate itself, its own unwillingness to impose laws and ensure Constitutional rights rather than placate people with another 'beautiful' law.

Lastly we draw attention to Pakistan, the other large country in South Asia. It is regrettable that India and Pakistan remain locked in a cold war which shows only occasional glimpses of hope of friendship and peace. This state of affairs has overshadowed the rights of minorities who suffer as result and are perpetually being asked to prove their 'loyalty' to the State.

We commend Pakistan Air force for recruiting its first Pakistani Sikh. We also commend the Government for allowing greater concentration of Sikhs to settle around the Nankana Sahib Gurdwara, the birth place of the founder of Sikhi, Guru Nanak. However this has come almost fifty years after Pakistan became a Free State and it has taken considerable and constant lobbying by Sikhs from across the world. There does not appear to be any positive action by the State to hand back lands to the Sikh minority after they were confiscated after the bloody division of South Asia in the decolonisation process in 1947.

The Sikhs remain one of the marginalised minority communities in Pakistan and are rarely ever seen in any official capacity as fellow and loyal citizens. Many of the historic religious institutions of the Sikhs are in Pakistan. They have remained neglected and continue to be governed by bodies which are supervised by non Sikh State officials. This is an intrusion into the religious affairs of a minority community and an attempt at regulating the community's own space.

The formation of the Pakistan Sikh Gurdwara Committee has been welcomed by Sikhs throughout the world. However non Sikhs continue to be significant in the body and the number of Sikh pilgrims remains restricted. This has stifled exchange between the Sikh community of Pakistan and the Sikhs worldwide.

Sikhs in Pakistan continue to be a marginalised community with little prospect of positions in policy making bodies, State institutions or police and judiciary. This marginalisation is also felt by some other minority communities. Their redress does not seem to be a priority in the reforming policies now being pursued by the current Government.

In summary there remains significant problems for culturally distinct communities in Europe. There is also alarming confessional judgement by the Indian Supreme Court that confirms a fear expressed by minorities in India, that the state intends to eliminate their cultural, religious and historic survival as distinctive communities. The appointment of people allegedly from minority communities to high office masks a sinister reality on the ground faced by many minorities including the Dalits. There are also problems faced by minorities like the Sikhs that have been endemic in Pakistan.

It is requested that the commission examine the entire issue of minorities in India, the methods by which they are forced to compromise, remain subjugated, have to submit their fundamental rights and remain marginalised as well as victimised by a system

that fails to prevent massacre after massacre against them. The Indian constitutional articles, the charter of bodies such as the National Minority Commission and the judgements of the Indian Courts need to be scrutinised to appreciate the difference between imagery and reality. We urge the Commission to make appropriate recommendations after such an enquiry. The commission and other democratic countries cannot act like medieval Knights who ignored suspension of Christian ethics by crusaders as long as the fellow was a Christian. Simply because India is a democracy cannot absolve it of protecting and promoting the rights of minorities as distinct groups. And a few faces at the top should not deter the reality faced by the majority from those communities.

It is requested that the Commission request a response form the State government of Pakistan on its treatment of Sikhs, their access to equal opportunities and their right to manage their own religious institutions.

It is also requested that the Commission look into the institutional prejudices that exist in Europe against culturally distinct minorities.

Thank you