

NATIONAL COMMISSION FOR RELIGIOUS AND LINGUISTIC MINORITIES
HEADED BY JUSTICE RENGANATH MISRA
REPORT PUBLISHED ON 21ST MAY 2007

Additional Term of Reference

Para 3 of the Constitutional (Scheduled Caste) Order 1950

- ◆ On a careful examination of prevalence of the caste system among various actions 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.
- ◆ 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 the additional Term of Reference added by the government to our original Terms Reference several months after we began our work
- ◆ We recommend that the caste system should be recognized as a general social characteristic of the Indian Society as a whole, without questioning whether the philosophy and teachings of any particular religion recognize 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.
- ◆ We should like this fact to be duly recognized 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 recognizes 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.
- ◆ **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.

- ◆ 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.
- ◆ 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.

Modalities for implementing our recommendations

- ◆ 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.
- ◆ 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.
- ◆ 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.
- ◆ More specifically, we recommend the following legislative actions which in our opinion of the Ministry of Law and Justice or any another concerned authority may require such amendments.
- ◆ 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 Castes) Order 1951 as also for 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 level;
- e)** Enactment of a law to clothe with statutory status and judicial enforceability the Prime Minister's 15 - Point Program 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 chair persons 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 1933 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 Maulana Azad Education Foundation.