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**United Progressive Alliance (2004-14),
equality of opportunity and Muslims:
a paradigm shift or political pragmatism?**

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Thesis submitted for the degree of PhD

2014

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Abstract

This dissertation examines the record of the Congress-led United Progressive Alliance (UPA, 2004-14) government in India in its efforts to promote better equality of opportunity for religious minorities with special reference to Muslims. In order to address the concerns of religious minorities, especially disadvantaged Muslims, the UPA administration introduced new policies, administrative innovations and executive actions to deliver substantive equality of opportunity in a regime of ‘competing equalities’ for backward and disadvantaged castes. Conventional political science explanations of the UPA’s shortcomings on these policies, this thesis argues, offer only a limited understanding. A more comprehensive account needs to combine a historical reading of how minority rights have been framed within the Indian Constitution, how they have evolved in practice as a result of institutionalisation and path dependence, and a policy analysis of the UPA government’s performance. Taking this as its point of departure, the thesis develops an institutional policy analysis approach which combines historical institutionalism (and path dependence) and policy analysis with a particular emphasis on the policy process. It provides detailed case studies of the policy process in three areas: Muslims and public sector employment; the provision of service delivery for Muslim communities; and the efforts to create a new legislative framework against communal violence. By drawing on extensive official sources and in-depth interviews with key policymakers, the institutional policy analysis approach, it is suggested, offers a more rounded approach to why UPA’s policies were thwarted than hitherto. Although the UPA’s policies on religious minorities, especially Muslims, held the promise of delivering substantive equality of opportunity, institutionalised resistance to such change from backward and disadvantaged caste lobbies, the Bharatiya Janata Party (BJP) and the allied forces of *Hindutva*, and the civil service and the judiciary re-established the familiar pattern of path dependence and reinforced the limited understanding of minority rights during constitution-making.

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Table of Contents

Introduction	1
India's Muslims.....	3
Equality of opportunity, the Indian state, minorities and Muslims.....	7
Defining the puzzle of UPA, equal opportunities and Muslims: a paradigm shift or political pragmatism?	9
Organisation of the thesis.....	13
Chapter One. UPA, equality of opportunity and Muslims: a review of literature.	17
Introduction	17
Review of literature.....	18
Popular and journalistic accounts	18
Electoral incentives.....	20
Political ideology	22
Social justice	23
Social exclusion	29
Muslim community studies.....	33
Public policy studies	40
Conclusion	44
Chapter Two. Towards an institutional policy analysis: analytical approach and methodology	46
Introduction	46
Policy studies	46
The policy process	47
Policy actors and institutions	53
Public policy: methodology	56
Historical institutionalism: path dependence	58
Studying public policy in India.....	61
Analytical approach: a summary.....	65
Research questions	67
Methodology	69
Conclusion	73
Chapter Three. Equality of opportunity, the Indian state and religious minorities: an overview	74
Introduction	74
Constitution-making as a critical juncture: redefining minority rights.....	74
Religious minorities, equality of opportunity and the Constitution.....	78
Institutionalisation of caste and 'competing' equalities of opportunity after constitution-making	81
Institutionalised regimes of 'competing equalities'	83

Minorities, communal violence and contestational juncture: the 1980s, 1990s and 2000s	88
Religious minorities and the institutionalisation of ‘competing equalities’: the case of India’s Muslims.....	93
Muslims and public sector employment	96
Muslims and service delivery	98
Muslims and insecurity	99
Conclusion	100
Chapter Four. The UPA in power: the new equal opportunities framework, Muslims and the limits of change	103
Introduction	103
Agenda-setting: UPA and the 2004 general elections.....	104
Policy formulation.....	107
UPA (I) and a new framework of equality of opportunity for religious minorities with special reference to Muslims	111
Religion as a category of social exclusion.....	111
Religious minorities and SCs, STs and OBCs – a new level playing field	113
Proportionality in service delivery.....	115
Institutionalising equality of opportunity and promotion of social diversity (Equal Opportunity Commission and Diversity Index)	116
Decision-making: understanding the UPA’s decisions and non-decisions.....	118
Sachar Committee Report (SCR).....	120
Ranganath Misra Commission Report (RMCR).....	122
Equal Opportunity Commission and the Diversity Index.....	124
Implementation: executive action, symbolism and promotional policies.....	125
Executive action.....	127
Symbolic implementation	130
Promotional policies	131
Evaluation	132
Conclusion	134
Chapter Five. UPA, Muslims and public sector employment.....	136
Introduction	136
Agenda-setting	137
Policy formulation.....	140
Sachar Committee Report (SCR).....	140
Ranganath Misra Commission Report (RMCR): the parliamentary and executive domains.....	141
Parliamentary domain	142
Executive domain	143
Decision-making	148

Post-judicial intervention.....	151
Implementation and evaluation.....	153
Data on Muslims in central government employment: public access and denial..	154
MoMA, minorities' employment data and monitoring.....	157
Mamata Banerjee, Railways and West Bengal: a successful model of positive action?.....	163
Conclusion	165
Chapter Six. UPA, Muslims and service delivery	169
Introduction.....	169
Agenda-setting	170
Policy formulation.....	174
Decision-making	177
Education – provision of scholarships to religious minorities.....	178
Finance – access to credit	179
MSDP.....	182
Implementation and evaluation.....	183
Education – provision of scholarships targeted at religious minorities.....	183
Finance – access to credit	188
MSDP.....	193
Data, monitoring and evaluation.....	202
Conclusion	205
Chapter Seven. UPA, Muslims and communal violence bill.....	207
Introduction.....	207
Agenda-setting	208
Policy formulation and decision-making	210
The bill, Muslim organisations and civil society networks	214
Policy formulation: UPA (II).....	216
The bill, National Advisory Council and civil society networks – UPA (II)	219
Response to the draft bill	221
Decision-making: UPA (II).....	222
Conclusion	229
Conclusion.....	232
Introduction.....	232
UPA, equality of opportunity and Muslims: reassessing the experience.....	234
Post-Sachar evaluation: towards historical path dependence?.....	237
Issues for further research	240
The use of data on religious minorities.....	240
Further developing institutional policy analysis.....	241

Muslim civil society and political representation.....	243
Summing up: ‘the verdict of history’	245
Appendix	247
Bibliography	248

List of Tables

Table 3.1	‘Competing equalities’: SCs, STs, OBCs and religious minorities
Table 3.2	Muslim employees in government employment, 2006
Table 3.3	Percentage of Muslims in senior civil service posts
Table 4.1	A summary of UPA’s policy initiatives on religious minorities
Table 5.1	Central government and departments with high recruitment of minorities, 2006-2013
Table 5.2	Central government and departments with medium recruitment of minorities, 2006-2013
Table 5.3	Central government and departments with low recruitment of minorities, 2006-2013
Table 6.1	Some of the main recommendations of SCR and RMCR on education, finance and infrastructure
Table 6.2	The multitude of schemes and programmes for minorities under the UPA
Table 6.3	States and political parties in distribution of scholarship (mid 2008-mid 2013)
Table 6.4	Provision of PSL to minority communities
Table 6.5	Proportion of minorities in 121 MCDs as per Census 2001
Table 6.6	Share of minority in total minority population in MCD
Table 6.7	Budget allocation by union government for minorities in eleventh five-year plan
Table 6.8	Fund utilisation by MoMA during the eleventh five-year plan

List of Figures

Figure 2.1	Stages of the policy process
Figure 2.2	UPA and Muslims: actors and institutions
Figure 4.1	MoMA and organisational dependency: ministries and other structures
Figure 6.1	Priority sector advances in 121 MCDs by scheduled banks

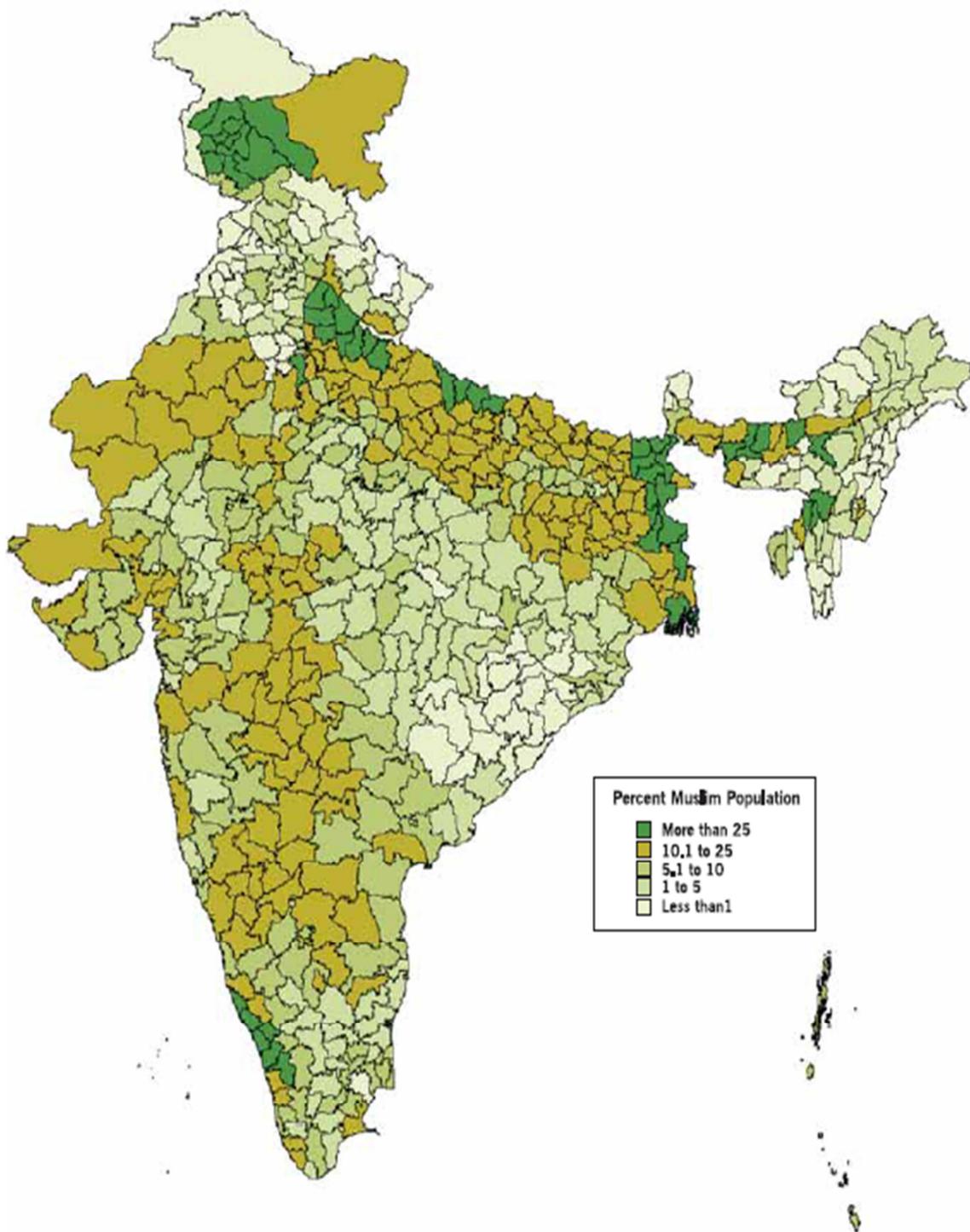
Abbreviations

AIADMK	All India Anna Dravida Munnetra Kazhagam
ANHAD	Act Now for Harmony and Democracy
ATR	Action Taken Report
BJD	Biju Janata Dal
BJP	Bharatiya Janata Party
BPL	Below Poverty Line
BSF	Border Security Force
BSP	Bahujan Samaj Party
BSUP	Basic Services to Urban Poor
CISF	Central Industrial Security Force
CPI	Communist Party of India
CPI (M)	Communist Party of India (Marxist)
CRPF	Central Reserve Police Force
DI	Diversity Index
DMK	Dravida Munnetra Kazhagam
DoPT	Department of Personnel and Training
EOC	Equal Opportunity Commission
EPW	Economic and Political Weekly
GoI	Government of India
IAS	Indian Administrative Service
IAY	Indira Awaas Yojana
ICDS	Integrated Child Development Service
IFS	Indian Foreign Service
IHSDP	Integrated Housing and Slum Development Programme
IIMs	Indian Institutes of Management
IITs	Indian Institutes of Technology
INC	Indian National Congress
IPC	Indian Penal Code
IPS	Indian Police Service
ITI	Industrial Training Institute
JD (U)	Janata Dal (United)
JMM	Jharkhand Mukti Morcha

JNNURM	Jawaharlal Nehru National Urban Renewal Mission
LSD	Lok Sabha Debate
MCD	Minority Concentration District
MGNREGS	Mahatma Gandhi National Rural Employment Guarantee Scheme
MNF	Mizo National Front
MoMA	Ministry of Minority Affairs
MPPGP	Ministry of Personnel, Public Grievances and Pensions
MPs	Members of Parliament
MSDP	Multi-Sectoral Development Programme
MSJE	Ministry of Social Justice and Empowerment
NAC	National Advisory Council
NCBC	National Commission for Backward Classes
NCM	National Commission for Minorities
NCMP	National Common Minimum Programme
NCSC	National Commission for Scheduled Castes
NCST	National Commission for Scheduled Tribes
NDA	National Democratic Alliance
NGO	Non-Governmental Organisation
NHRC	National Human Rights Commission
NIC	National Integration Council
NMDFC	National Minorities Development & Finance Corporation
NPF	Naga People's Front
NRDWP	National Rural Drinking Water Programme
NREGA	National Rural Employment Guarantee Act
OBCs	Other Backward Classes
PDP	Jammu and Kashmir People's Democratic Party
PIB	Press Information Bureau
PMO	Prime Minister's Office
PM's 15PP	Prime Minister's 15-Point Programme
PSA	Priority Sector Advances
PSL	Priority Sector Lending
RBI	Reserve Bank of India
RJD	Rashtriya Janata Dal
RMCR	Ranganath Misra Commission Report

RSD	Rajya Sabha Debate
RSP	Revolutionary Socialist Party
RSS	Rashtriya Swayamsevak Sangh
SAD	Shiromani Akali Dal
SCs	Scheduled Castes
SCR	Sachar Committee Report
SCSP	Scheduled Caste Sub-Plan
SDF	Sikkim Democratic Front
SEBCs	Socially and Educationally Backward Classes
SGSY	Swarnajayanti Gram Swarozgar Yojana
SJSRY	Swarna Jayanti Shahari Rozgar Yojana
SP	Samajwadi Party
SRC	Socio-Religious Category
SSA	Sarva Shiksha Abhiyan
SSB	Sashastra Seema Bal
SSP	Sikkim Sangram Parishad
STs	Scheduled Tribes
TMC	Trinamool Congress
TSP	Tribal Sub-Plan
UIDSSMT	Urban Infrastructure Development Scheme for Small and Medium Towns
UIG	Urban Infrastructure and Governance
UPA	United Progressive Alliance
VHP	Vishwa Hindu Parishad

District-wise Concentration of Muslim Population in India, 2001



Source: Prime Minister's High Level Committee, *Social, Economic and Educational Status of the Muslim Community of India: A Report* (New Delhi: GoI, 2006), 32.

Introduction

One of the most remarkable features of states' responses to 9/11 was the near uniformity of approach towards Muslim minority communities across the globe. The dramatic impact of the attack on the World Trade Centre and the 'War on Terror' were accompanied by policies that appeared to pathologise Muslim minority communities around the discourses of terror, identity politics and self-imposed isolation.¹ Increasingly constructed in the language of Huntington's self-fulfilling prophecy of *Clash of Civilisations*,² these policies posited Muslim minorities as 'the enemy within'. 'Europe', declared the distinguished French scholar Gilles Kepel, has 'emerged as the primary battlefield'³ between the values of Enlightenment and Islam. Helmut Schmidt, the former social democratic chancellor of Germany, opined that 'a peaceful accommodation between Islam and Christianity is possible only in authoritarian states'.⁴ In many Western states this 'clash of civilisations within' was attributed to multiculturalism, a political creed that had allegedly undermined collective citizenship by fostering identity politics. Thus, in the aftermath of the 7th July 2005 (7/7) bombings in central London, British public opinion appeared to agree on one thing: that multiculturalism was dead, and that it was militant Islam that had killed it off.⁵

Polemicists blamed this state of affairs on public policies and practices that encouraged the social and political isolation of minority immigrant communities. The events of Madrid on 11th March 2004 and London on 7th July 2005 gave further impetus to the critics of multiculturalism. However, serious political and administrative decision-makers, including experts in security, were obliged to address the realities of diverse societies, to keep jihadis and Islamophobes at bay, while recognising the need to confront the segregationist aspects of multiculturalism. This response was matched by

¹ See Gilles Kepel, *The War for Muslim Minds: Islam and the West* (Cambridge, Mass.: Harvard University Press, 2004); Olivier Roy, *Globalised Islam: The Search for a New Ummah* (London: Hurst, 2004); Tariq Modood, *Multicultural Politics: Racism, Ethnicity, and Muslims in Britain* (Minnesota: University of Minnesota Press, 2005).

² Samuel P. Huntington, *The Clash of Civilisations and the Remaking of World Order* (New York: Simon & Schuster, 1996).

³ Kepel, *The War for Muslim Minds*, 241.

⁴ Quoted in Jytte Klausen, *The Islamic Challenge: Politics and Religion in Western Europe* (Oxford: Oxford University Press, 2005), 3.

⁵ Martin Wolff, 'When Multiculturalism is a Nonsense', *The Financial Times*, 31 August 2005 (electronic edition).

political strategies, almost universally across the West, designed to build ‘social cohesion’ and promote integrationist values. Whilst the securitisation of Muslim minority communities reflected the hard edge of this policy, state-led efforts to examine causes of Muslim under-achievement and disadvantage mirrored the ‘softer’ integrationist intent.⁶ Almost all states in Europe have adopted policies that include a mixture of these approaches, with the initial emphasis on securitisation being displaced by a renewed policy interest in disadvantage and discrimination suffered by Muslim minorities.⁷

In developing countries a similar process has also been taking place. In Africa, in countries with large Muslim communities such as Nigeria and Tanzania, state policies have been characterised by both securitisation and the need to tackle concerns of identity and under-development. In Asia, where Muslim minorities traditionally have been subject to violence, post-9/11 many states have recognised that securitisation can only be legitimised if accompanied by realistic efforts to confront under-development and long-standing issues of (mis)recognition. Thus, in India, the post-9/11 response to country’s Muslims was distinguished, on the one hand, by the Bharatiya Janata Party (BJP)-led National Democratic Alliance (NDA) central government’s condoning of pogroms against Muslims in Gujarat in 2002, which cost 2,000 lives and displaced a further 150,000 and, on the other, efforts of the NDA’s successor, the Congress-led United Progressive Alliance (UPA), to overcome the ‘development deficit’ suffered by the country’s largest minority community.

Against the backdrop of the Indo-Pakistan Kargil war (1999), the mobilisation of India’s forces against Pakistan following an attack on the Indian Parliament by Islamic militants (2001), and the pogroms in Gujarat (2002), the election of the UPA government in 2004 marked a turning point. Committed to ‘preserve, protect and promote social harmony’, its National Common Minimum Programme (NCMP) promised ‘to provide full equality of opportunity, particularly in education and employment for Scheduled Castes (SCs), Scheduled Tribes (STs), Other Backward

⁶ See Liz Fekete, ‘Anti-Muslim Racism and the European Security State’, *Race and Class* 46 (July 2004), 3-29; Yunas Samad, ‘Community Cohesion without Parallel Lives in Bradford’, *Patterns of Prejudice* 47:3 (2013), 269-87.

⁷ See Klausen, *The Islamic Challenge*.

Classes (OBCs) and religious minorities’.⁸ These promises, moreover, were backed by Congress’ efforts to rebuild its relations with minorities, especially the Muslim community, through ‘affirmative action for all religious and linguistic minorities’. Drawing on the model of reservations in employment and education in Kerala and Karnataka, the party was determined ‘to adopt this policy for...Muslims and other religious minorities on a national scale’.⁹ For the first time since Independence, it appeared the concerns of India’s Muslims had found a receptive political audience.

India’s Muslims

India’s 138 million Muslims, with 13.4 per cent of the total population, are the largest religious minority followed by Christians (2.3 per cent) and Sikhs (1.8 per cent).¹⁰ India has the third largest Muslim population in the world (after Indonesia and Pakistan), and is home to some of the oldest communities since the birth of the faith. However, this legacy is bitter-sweet: Indian Muslims carry the burden of being stigmatised as ‘outsiders’, and more importantly, in recent times, as the ‘children of India’s Partition’.¹¹ Since Independence this weight has been difficult to endure because Muslims have had to demonstrate their loyalty to the new nation and to bear the brunt of a resurgent Hindu Right, notably since the 1980s. As one recent high-powered committee concluded, Muslims in India ‘carry a double burden of being labelled as “anti-national” and as being “appeased” at the same time’.¹² Negotiating these troubled waters has not been easy. And set against the background of domestic and global developments, the community has often felt, and has been viewed by many, as under siege. ‘The Muslims of India’, writes Glazer, ‘are thus a unique minority, unique in their size, unique in their relation to a foreign nation which is seen as the permanent and

⁸ National Common Minimum Programme of the Government of India. Available at: <http://pmindia.nic.in/cmp.pdf> [accessed on 11 April 2012].

⁹ Indian National Congress, *Manifesto 2004*. Available at: <http://www.indian-elections.com/partymanifestoes/party-manifestoes04/congress.html> [accessed on 12 April 2012].

¹⁰ Ministry of Home Affairs, *Census of India 2001* (New Delhi: Government of India (GoI), 2001).

¹¹ Laurent Gayer and Christophe Jaffrelot, ‘Introduction: Muslims of the Indian City: From Centrality to Marginality’, in Laurent Gayer and Christophe Jaffrelot, eds., *Muslims in Indian Cities: Trajectories of Marginalisation* (London: Hurst, 2012), 2.

¹² Prime Minister’s High Level Committee, *Social, Economic and Educational Status of the Muslim Community of India: A Report* (New Delhi: GoI, 2006). Hereafter Sachar Committee Report (SCR), after its chairman, 11.

unchanging enemy of India, unique in their history as a once dominant group that is now reduced to one that has lost power, property, and dominance.’¹³

Central to understanding the dilemmas facing the community today are its social and political challenges. Although its leaders like to project the idea of a monolithic and historic community, India’s Muslims have lost their historic status as dominant, cohesive and privileged elite under the Mogul and British Raj. Today, they are increasingly differentiated by language, caste, region, and social stratification, and resemble the economically and socially disadvantaged groups within Hindu society. Large sections are among the most deprived groups in India. Decades of identity politics since Independence have given way to more prosaic concerns about development and jobs; and as SCs, STs, and OBCs have witnessed a general improvement in their social development, the continued social exclusion of Muslims casts a deep shadow over the ‘success’ of India’s democracy.¹⁴

Geographically, India’s Muslims are concentrated in the north-west, north, east and west coasts, and the central region around Hyderabad (see Map, p. xiv). These geographical divisions are significant for a community which also tends to be divided by language and regional histories, with those in states in the south more integrated into the local economy and society. Apart from Jammu and Kashmir, Muslims are everywhere a minority in the states in which they live. Community concentration is strongest in the states of Uttar Pradesh, Bihar and West Bengal; it is particularly pronounced in western districts of Uttar Pradesh. In 2001, more than 60 per cent of the Muslim population was located in the three states of Uttar Pradesh, Bihar and West Bengal – states that are also among the least developed.¹⁵ Muslims also tend to be more urbanised than other Indians, with 35.7 per cent of the community living in cities, according to 2001 Census. But ‘urban Muslims are comparatively poorer than rural Muslims, in contrast to the situation prevailing for most of the other communities’.¹⁶ The social and economic condition of Muslims in India today is most problematic in the

¹³ Nathan Glazer, ‘Minorities and India’s Democracy’, in K. Shankar Bajpai, ed., *Democracy and Diversity: India and the American Experience* (New Delhi: Oxford University Press, 2007), 184.

¹⁴ For ‘success’ of India’s democracy, see Atul Kohli, ed., *The Success of India’s Democracy* (Cambridge: Cambridge University Press, 2001).

¹⁵ SCR, Ch. 4.

¹⁶ Gayer and Jaffrelot, ‘Introduction: Muslims of the Indian City’, 11.

‘cow belt’, the north and east of India where the legacy of Partition politics still looms large.

In the early 2000s, when the popular media regularly associated Muslims with terrorism and jihadi attacks (Indian Parliament, Mumbai, New Delhi), a High Level Committee established by the Prime Minister, Manmohan Singh, to examine the socio-economic and educational condition of India’s Muslims (subsequently known as the Sachar Committee after its Chairman and its report (Sachar Committee Report, SCR)), found strong evidence of a community mired in under-development. Nearly 70 years after independence, Muslims performed badly on almost all indicators of socio-economic development. Overall, the status of the majority of the community was only marginally above SCs and STs and below the Hindu OBCs. Only 8 per cent of the community’s urban population was found to be working in the formal sector compared to a national average of 21 per cent; 68 per cent maintained a lowly existence in the informal sector, working in casual employment in industries that were declining, or were adversely affected by economic liberalisation. Almost a third of the community’s population was below the poverty line, with average expenditure of urban Muslims at Rs 800 per month (2004-5) – the same as Dalits (at the bottom of Hindu caste system) and Adivasis (aborigines), and half that of upper caste Hindus. This status was further confirmed by findings that the male Muslim literacy rate (67.6 per cent) was only one per cent above Dalit men (66.6 per cent) at time when literacy rates among Dalits were improving rapidly as a result of reservations in education and employment. Surprisingly, the popular perception that the community’s educational performance was being thwarted because of madrasa education was shattered by the revelation that only 4 per cent of Muslims actually attended madrasa schools. But nothing was more striking than the overwhelming under-representation of Muslims in the state sector: at all levels in public sector employment, in institutions of public representation, and in non-official bodies, the community was significantly under-represented, if not, at times completely unrepresented. While the representation of excluded and minority groups in state and national legislatures was increasing, that of the Muslim community was declining.¹⁷

The systematic under-development of the Muslim community since 1947 is further reflected in its social structure. Socially, it has been divided into three categories.

¹⁷ Ibid., 1-6; SCR, especially see Chs. 3, 4, 5 and 8.

At the apex is the *Ashraf* ('noble') who claim descent from central Asia and represent the elites. Significant sections of the *Ashraf* migrated to Pakistan, leaving the community's leadership severely depleted. They also include high-caste Hindus, such as Kshatriyas, who converted to Islam during Mogul rule. Below the *Ashraf* is *Ajlaf* ('commoner'), converts from Hinduism of middle and lower castes, often identified with such occupations as weaving, tailoring and hair-dressing, who form the bulk of the community. The lowest social group is *Arzal* ('degraded') who shares the same occupations and life-patterns as the former untouchable castes (SCs). Caste is present in Muslim society but the status of 'each non-*Ashraf* "caste" (*zat*, equivalent to *jati* among Hindus) varies according to its lineage, ethnicity, traditional occupation and physical proximity to higher "castes".¹⁸ Taken together, the *Ajlafs* and *Arzals* constitute nearly 40.7 per cent of Indian Muslims,¹⁹ and the social condition of these groups both approximates to the most disadvantaged groups in Indian society and is reinforced by disadvantage arising from religious discrimination, periodical communal violence and uncertain employment patterns. The social exclusion of these groups, and the absence of substantive equality of opportunity for Muslims, is one of the major challenges facing Indian democracy today.²⁰

It is important to recognise that India's Muslims can no longer be constructed as a homogenous community defined primarily by religious identity.²¹ The levels of social and political differentiation within the community, as we shall see in subsequent chapters (Chapter One and Four), has proceeded at pace. Particularly noteworthy for this thesis is the increasing political mobilisation of Dalit Muslims, for example, the *pasmanda* movement in Bihar, which seeks to access the reservations accorded to SCs and STs. What is interesting about these mobilisations is that they are rooted among the *Ajlafs* and *Arzals*, the most disadvantaged and deprived sections of India's Muslims,

¹⁸ (Gayer and Jaffrelot) *ibid.*, 7. Caste, or caste like formations, are almost universal across South Asia and cut across all faith communities, see Louis Dumont, *Homo Hierarchicus: The Caste System and its Implications* (London: Paladin, 1972). The tensions between the sociological reality of caste and the egalitarian precepts of some of the faiths – Buddhism, Christianity, Islam, and Sikhism – are, as we shall see in subsequent chapters with reference to India's Muslims, at the core of the politics of equality.

¹⁹ (Gayer and Jaffrelot) *ibid.* The reference here is to the proportion of Muslims falling into the OBC category and the data from National Sample Survey 61st round (2004-5).

²⁰ As we shall see in Chapter One, the debate about the 'development deficit' within the Muslim community is increasingly framed within the discourse of social exclusion.

²¹ This point is made most forcefully by Hasan Suroor, *India's Muslim Spring: Why is Nobody Talking about it?* (New Delhi: Rupa Publications, 2014). The work is reviewed in Ch. 1.

and aim to secure the public goods for development (reservations and equal proportion of state services) accorded to their Hindu, Buddhist and Sikh counterparts.

Equality of opportunity, the Indian state, minorities and Muslims

The UPA's efforts to provide 'full equality of opportunity' for minorities, especially Muslims, need to be seen in its historical and contemporary dimensions. The Indian Constitution, like most liberal democracies, bars any discrimination on the grounds of religion, race, caste, descent and place of birth and recognises that equality of treatment is a precondition of effective citizenship. Procedural equality in the operation of state structures and their interface with citizens is firmly specified. Unlike other liberal democracies at the time, however, the Constitution recognised the principle that equality of opportunity is, for some groups, dependent on the recognition of their cultural rights (e.g. personal laws, dress code etc.). This was an important concession, presaging a later debate in western liberal democracies that equality of opportunity is subject-dependent.²²

However, for minorities²³ (non-Hindu religious groups) the framing of equality of opportunity in the Constitution was qualified by two major considerations that created a structural imbalance. First, historic minority rights relating to reservations in legislative assemblies, employment and state services were dramatically curtailed, with the result that minorities could no longer make political claims based on religious identities.²⁴ Second, reservations in legislatures, employment and education were introduced for SCs and STs to address the concerns of socially and economically disadvantaged lower castes. The provision of protective equality for SCs was to be limited to Hindu caste groups only. Religious communities (Buddhist, Christian, Muslim, Sikh), which professed an egalitarian creed but had social groups with similar status to SCs, were excluded.²⁵ Although subsequently the remit of reservations would

²² See Gurpreet Mahajan, *Identities and Rights: Aspects of Liberal Democracy in India* (New Delhi: Oxford University Press, 1998); Paul Kelly, ed., *Multiculturalism Reconsidered: 'Culture and Equality' and its Critics* (Cambridge: Polity Press, 2002).

²³ The Constitution of India provides a vague definition of 'minorities'. This will be discussed in Ch. 3. Here and subsequently it is taken to mean non-Hindu groups.

²⁴ See Rochana Bajpai, *Debating Difference: Group Rights and Liberal Democracy in India* (New Delhi: Oxford University Press, 2011). This work is discussed in Ch. 1.

²⁵ However, Sikh SCs were brought under the reservations net in 1956 and Buddhist SCs in 1990.

be expanded through the category of OBCs, particularly at the state level, and thrown open to non-Hindu communities, the Constitution institutionalised a form of path dependence that minorities, notably Muslims, have found difficult to reverse.²⁶

Since Independence this framework of equality of opportunity has not matched the aspirations of some of the minorities. Muslims in particular have struggled to assert procedural equality in the face of discrimination, violence and regular stigmatisation as the Indian nation's 'other'.²⁷ Simultaneously, they have witnessed the transformation in the social and developmental status of backward communities that now stands on the cusp of surpassing them in terms of socio-economic indicators. Naturally, therefore, Muslim groups have raised demands for a 'full equality of opportunity', a radical conception of the term which, in contrast to the procedural or liberal approach outlined above, privileges the 'equality of outcome'. 'The absence of fair distribution is', for the radical approach, '*ipso facto*, evidence of unfair discrimination.'²⁸ Typically, this approach aligns itself with reservations and quotas as the surest way of delivering outcomes – in contrast to positive, or affirmative action, that is often associated with the 'liberal' conception of equal opportunities.²⁹ The radical approach seeks to politicise 'decision-making' and, like the framework of protective equality, is anchored in a

²⁶ 'Distinctive and separate strategies', notes Zoya Hasan, 'were followed for different groups. The Constitution and state made a basic distinction between the cultural rights of minorities and group rights for communities that were discriminated on the basis of caste. While minorities were located in the framework of religion, disadvantaged castes were removed from this realm and located in the framework of social justice.' *Politics of Inclusion: Castes, Minorities, and Affirmative Action* (New Delhi: Oxford University Press, 2009), 5. For discussion of institutionalisation and path dependence, see Chs. 2, 3.

²⁷ For the construction of Muslims as the 'other' of Indian nationalism, see Christophe Jaffrelot, *The Hindu Nationalist Movement and Indian Politics, 1925 to the 1990s: Strategies of Identity-Building, Implantation and Mobilisation (with Special Reference to Central India)* (London: Hurst, 1996).

²⁸ David Mason, 'Competing Conceptions of "Fairness" and the Formulation and Implementation of Equal Opportunities Policies', in Wendy Ball and John Solomos, eds., *Race and Local Politics* (Basingstoke: Macmillan, 1990), 51.

²⁹ The terms reservation, affirmative action and positive action are often, misleadingly, used interchangeably. Affirmative action was first used in the United States in 1961, under the Kennedy government, to refer to policies that recognised race, colour, religion, gender, sexual orientation or national origin in order to benefit an under-represented group. Affirmative action may, but does not normally, include reservations and quotas. It is generally aimed at combating discrimination and using promotional policies to ensure a more representative presence of excluded minorities. Such measures can include advertising in minority press, targeting, codes of practice, monitoring, training against bias in recruitment and service delivery, and pro-active measures. Reservations are fixed quotas for preferential selection. Such quotas are mandatory and are often seen as compensation for past injustices inflicted on a particular social group. Positive action is the British variation of affirmative action but does not include the use of quotas. For our purposes, the radical approach is used interchangeably with substantive equality. See Jacob T. Levy, *The Multiculturalism of Fear* (New York: Oxford University Press, 2000).

community ‘collectively as the object of policy’.³⁰ As we shall see in subsequent chapters, in India both for policymakers and campaign groups, radical or substantive equal opportunities offer the tantalising prospect of building new (and old) vote-banks.

Defining the puzzle of UPA, equal opportunities and Muslims: a paradigm shift or political pragmatism?

The election of the UPA government in May 2004 was followed by a raft of policy initiatives aimed generally at minorities but even more specifically at Muslims. These measures came on the heels of high-powered commissions or committees that investigated the conditions of the minorities, or were charged with examining new, alternative approaches to the existing framework of equality of opportunity with lessons drawn from comparative experience. The most notable of these committees was the SCR which single-handedly focused the discourse of Indian Muslims on ‘identity’, ‘security’ and ‘equity’. The SCR and other policy initiatives included the creation of new institutions such as the Ministry of Minority Affairs (MoMA), new draft legislation to tackle communal violence, the use of executive discretion to implement affirmative action to enhance Muslim employment in the public sector, and improve service delivery to Muslim communities. It also included the recommendations made by the National Commission for Religious and Linguistic Minorities, also known as Ranganath Misra Commission after its Chairman, that reservations in employment and education should be implemented for disadvantaged Christians and Muslims. At one level these policy measures sought to create an even playing field within the framework of ‘competing equalities’.³¹ At another, it was also distinguished by an effort to transcend these ‘competing equalities’ to create a new overarching framework of equality of opportunity along western, especially British lines, as the United Kingdom merged its different regimes of discrimination and disadvantage (gender, disability, and ethnicity)

³⁰ Nick Jewson and David Mason, *Equal Employment Opportunities in the 1990s: A Policy Principle Come of Age?* (Discussion Paper in Sociology: University of Leicester, 1993), 12. Jewson and Mason offer a threefold typology of equal opportunities policies in employment: minimalist, liberal and radical.

³¹ See Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (Berkeley: University of California Press, 1984). The term ‘competing equalities’ is used by Galanter to refer to the policies of compensatory discrimination in India in the judicial tendency to resolve disputes among compensatory discrimination policies and the norms of equality with reference to SCs, STs, and OBCs. In this research we operationalise the term ‘competing equalities’ with reference to equal, but different, opportunity frameworks for religious minorities (procedural equality) and SCs/STs (protective equality) in the Indian political system.

into the Equality and Human Rights Commission under the Equality Act (2010). This new approach, adapted to Indian requirements and allied to the needs of minorities, according to some analysts, represented a ‘paradigm shift’ in policy thinking.³² Such a shift also held out the promise of a new deal for minorities, the possibility that they too would realise the full potential of Indian citizenship.

Yet, within three years after UPA’s election most of these policy initiatives were on the backburner. While publicly the Congress-led coalition still professed commitment to these policies, its allegiance was more tactical, symbolic and performative. What accounts for this about-turn? Why was the momentum lost? Was this simply another example of failed ‘vote-bank politics’, a poor effort to rebuild Congress’ traditional relationship with Muslims? Or was the government’s record more the outcome of enduring historically institutionalised resistance to a policy change that would place minorities, especially poor Christians and Muslims, on par with India’s other disadvantaged communities?

This thesis focuses on the institutionalised opposition to UPA policies that rendered them ineffective or sometimes non-implantable. Its central argument is that we cannot understand UPA’s reluctance to implement the new initiatives generated by its policy process mainly through the calculus of political incentives, the trade-off between action and votes. Political explanations are important in assessing how the Congress-led UPA acted, or did not act, but provide a partial account. Most importantly, we also need to recognise the structural factors that constrained the government’s actions. A more comprehensive account of the UPA’s policies on minorities, but particularly Muslims, therefore, would recognise the deeply embedded historical institutional opposition to a policy change that would accept India’s largest religious minority as an integral part of the system of reservations and affirmative action. This opposition emanated from three significant constituencies. First, it came from the institutionalised SCs, STs and OBCs regimes and lobbies that view themselves as the guardians of these caste groups’ interests, and as such, saw provisions for minorities as encroaching upon their rights because of the potential threat to dilute their existing institutional structures and legal provisions of reservations. Second, it was rooted in state structures (civil service and

³² Tarunabh Khaitan, ‘Transcending Reservation: A Paradigm Shift in the Debate on Equality’, *Economic and Political Weekly (EPW)* 43:38 (20-26 September 2008), 8-12.

judiciary), which since Independence have become accustomed to treating minority demands as religiously defined, and therefore, beyond the realms of public policy in a secular state. This institutional resistance, which intersects with the majoritarian view of minorities, as we shall see, acted as a powerful constraint on policy change at national and state levels. Finally, it was articulated most forcefully by the BJP and the allied forces of *Hindutva*, but not without significant representation within Congress as well. This constituency viewed itself as the custodians of the Constitution but the thrust of its resistance was to protect the ideological construction of caste as it applied to disadvantaged Hindu caste groups. Locating itself as the firm defender of the constitutional settlement, this opposition rejected the claims of religious identity as a marker of social and economic disadvantage. In short, the combined opposition of these three major institutional forces undermined the ground from which the UPA could implement its new initiatives.

This thesis substantiates the above argument by developing an institutional policy analysis approach. Our perspective combines two distinct approaches to the subject. First, it is located firmly within neo-institutionalism, the argument that institutions matter and shape patterns of behaviour of political actors and outcomes.³³ Neo-institutionalism, however, is a broad church with many competing and contradictory schools of thought. What is central to our analysis is the need to situate and understand the role of core institutions, how, for instance, the constitutional settlement after Independence created a framework of reservations in which the distinction between caste and religion became solidified. Drawing on the seminal works of Hasan,³⁴ Bajpai³⁵ and Verma,³⁶ who have highlighted the importance of this distinction for the subsequent development of Indian democracy, we examine how this division between caste and religion became institutionalised after 1950 with deleterious consequences for religious minorities, especially Muslims. Accordingly, we borrow from historical institutionalism, especially its emphasis on the enduring impact of institutions, to provide the broad perspective for situating the comparative experience of minorities, particularly Muslims. Within historical institutionalism we highlight

³³ See Jon Pierre, B. Guy Peters and Gerry Stoker, eds., *Debating Institutionalism* (Manchester: Manchester University Press, 2013).

³⁴ Hasan, *Politics of Inclusion*.

³⁵ Bajpai, *Debating Difference*.

³⁶ Vidhu Verma, *Non-Discrimination and Equality in India: Contesting Boundaries of Social Justice* (London: Routledge, 2012).

recurring behaviour and outcomes through the use of the concept of path dependence: that is, a critical juncture, the creation of particular institutional structures at a given point in time (e.g. India's constitution-making), which produce a chain of events (path dependence) that generates 'increasing returns' to actors who benefit from existing institutional arrangements that make policy change increasingly difficult. Policy changes that require a radical reassessment of existing arrangements often require another critical juncture.³⁷ Thus, it is our argument that the distinction between caste and religion established at Independence in the provision of reservations for socio-economically disadvantaged castes has 'locked-in' a form of path dependence that has witnessed the increasing expansion of reservations for SCs, STs and OBCs since 1950, while on the other hand, the claims of disadvantaged religious minorities have become relatively marginalised because they do not fully come within the framework of backward classes.

Historical institutionalism and path dependence provide the framework within which this thesis is located. However, it also concentrates on the UPA's policy process on minorities. Thus, in examining critically how these policies were implemented, we have drawn from public policy analysis the concept of the policy process (how policy is evolved, formulated, decided, implemented and evaluated) and policy sectors (key actors and structures).³⁸ We have used this framework to track the progress of particular policies aimed at increasing Muslim employment in the public sector, improving service delivery to Muslim communities, and creating model anti-communal violence legislation. The thesis recognises the constraints of policy analysis in the Indian context, where access to decision-making and data is severely restricted, and as a result, utilises in-depth interviews with key personnel who were integral to the policy-making process. These insights constitute the major new empirical findings of this research: indeed, for the first time, it sheds new light on why some policy options were pursued, others neglected, and others still left in abeyance.

To recapitulate: institutional policy analysis combines historical and policy analysis approaches. This hybrid approach has been developed because it enables us to undertake a detailed analysis of UPA's policies on minorities from 2004 to 2014, and demonstrate the limits of policy change beyond those put forward by conventional

³⁷ This is discussed in more detail in Ch. 2.

³⁸ Here we draw extensively on the work of Michael Howlett and R. Ramesh, *Studying Public Policy: Policy Cycles and Policy Subsystems* (Oxford: Oxford University Press, 2003). This is reviewed in Ch. 2.

political explanations. It does not, of course, preclude the possibilities of change, but our analysis suggests that the likelihood of transformative policy change is severely limited.

In developing the hybrid framework of institutional policy analysis it is necessary to acknowledge that historical institutionalism is the independent variable and the policy process is the dependent variable.³⁹ Or in other words, the form of historical path dependence on caste and religious minorities established at Independence has heavily circumscribed the limits of policy change. The policy process for any government in this area, for example the UPA, suggests that policy change is certainly possible but it needs to overcome a very high threshold of resistance from institutions and actors that have become the main beneficiaries of the constitutional settlement in this important policy sector. Neither electoral incentives nor the nature of the policy process under the UPA were the major determinants of the outcome of UPA policies on minorities: rather it was the in-built opposition from the three major constituencies identified above which were pre-eminent in determining their fate.

Finally, it is important to emphasise that this thesis is not about policy evaluation *per se*. Whilst we review evaluation in the policy process with special reference to the two key areas – employment, service delivery (the communal violence bill was not legislated upon) – a systematic and comprehensive assessment of the impact of UPA policies in this area is beyond the remit of this work. Instead the primary objective of this work is to better understand the institutional resistance to UPA's policies, how they were stymied, and why they were difficult to implement. This resistance is explored both with reference to the nature of the policy process during the UPA government and the enduring influences of historical institutionalism that ultimately defined the possibilities of change.

Organisation of the thesis

No work, let alone a PhD thesis, can adequately cover the vast range of policy initiatives on minorities by the UPA government from 2004 to 2014. The UPA government itself,

³⁹ This is further discussed in Ch. 2.

during its tenure, sedulously avoided a serious evaluation of these policies.⁴⁰ Taking as our point of departure the SCR's emphasis on the Muslim community's need for recognition of its 'identity', to guarantee Muslims 'security', and provide 'equity' in public services, we examine detailed case studies of efforts to improve Muslim employment in the public sector, enhance the provision of public sector service delivery to Muslim communities across India, and enact a model anti-communal violence law. These case studies are thus inevitably limited and detailed, but nonetheless, provide crucial fresh insights into the shortcomings of the policy process and confirmatory evidence of the broader pattern of institutional path dependence.

Chapter One reviews the existing literature on the UPA and minorities with special reference to equal opportunities and Muslims. This literature, it is argued, is limited because it is heavily biased towards instrumentalism, specifically, electoral incentives in determining UPA's policies, to the exclusion of institutional and structural constraints. The chapter also reviews the studies located in the fields of social justice, social exclusion and Indian Muslim community studies. Only the 'grey literature' produced by advocacy organisations, it is suggested, addresses some of the research questions central to this thesis. These works, however, are too narrowly focused on policy evaluation to provide meaningful insights into the policy process or a broader understanding of why these policies were thwarted.

In Chapter Two, in order to overcome the shortcomings of existing policy studies, and situate the UPA experience in a historical perspective, we develop a framework of institutional policy analysis which combines the policy process approach common to the discipline of policy studies with historical institutionalism and path dependence – hence institutional policy analysis. Institutional policy analysis, we argue, offers a more relevant analytical framework for the history of minorities or reservations in India because it brings into sharper relief the different regimes of equal opportunities, the structures that continue to reproduce them, and the institutional resistance to change. The chapter also outlines in detail the methodologies used to operationalise the research.

⁴⁰ In February 2013, the government announced the setting up of a high-powered committee to evaluate the implementations of SCR's recommendations. The interim report was submitted to government in mid-March 2014 and the final report was due by June 2014. The report was finally submitted on 29 September 2014, after the submission of the thesis. This report was submitted too late to be fully integrated into the thesis but is discussed in the Conclusion.

Chapter Three examines the historical development of the different regimes of equal opportunities since Independence. It reviews in depth how minority rights were framed during constitution-making with a special emphasis on the cleavage between caste and religion. Subsequently, this cleavage created different forms of institutionalisation for disadvantaged castes and minorities, and in the 1980s, a mobilisation by some of the minorities against a perceived sense of discrimination – a development which gave rise to the Hindu Right, and ultimately, to the emergence of the BJP as the party of government. The election of the UPA in 2004, however, marked a new phase, a contestational juncture,⁴¹ which promised a radical vision of equality of opportunity for India’s religious minorities.

Chapter Four offers a synoptic account of the UPA’s policy process on the subject. In setting the context before the three subsequent case studies, it gives an overview of policies on minorities viewed through the lens of the policy process – agenda-setting, policy formation, decision-making, implementation and evaluation – and highlights the key developments, including the UPA’s new paradigm of equal opportunities. These conceptual and institutional innovations in policy-making are contrasted with the ambivalence and ambiguity in implementation and evaluation. This dissonance, it is suggested, was not only the result of twin-tracking on the part of the Congress and the UPA, but also the product of institutionalised opposition.

Chapter Five undertakes an assessment of the UPA’s efforts to improve the representation of Muslims in government employment at the national level. It maintains that despite the high-profile commitment to increase the numbers of Muslims in national public sector employment, the use of affirmative action did not appreciably improve Muslim representation in this sector. The government, moreover, was unable to win the argument to implement the recommendations of the Ranganath Misra Commission Report (RMCR), thereby resorting to ‘symbolic implementation’. That this policy initiative was heavily compromised by institutional resistance is further demonstrated by the incomplete and inadequate monitoring data on Muslim employment in central government jobs. If policy design and implementation had been operationalised according to policy declarations, more relevant policy instruments would have been used to deliver these outcomes.

⁴¹ The idea of contestational juncture as a prelude to a critical juncture is discussed at length in Ch. 2.

Chapter Six reviews the UPA's initiatives in three key areas of service delivery for Muslims. Some of the high profile programmes, including the Prime Minister's 15-Point Programme (PM's 15PP) for minorities, have been criticised for being ineffective. Our detailed analysis of some of the policy process in three areas of service delivery demonstrates that poor outcomes were the product of weak design and implementation in the policy process as well as institutional resistance, notably at the state level, against policies specifically targeted at Muslim communities. Although recently some modifications have been made to modes of implementation, such changes are unlikely to overcome high levels of institutional opposition to service delivery provisions aimed at Muslims.

Chapter Seven assesses the failure of the two anti-communal violence bills (2005 and 2011). These bills were the core of UPA's post-Gujarat anti-communal violence strategy for better security for India's minorities by increasing the likelihood of punishments for perpetrators of violence and negligent state officials. The UPA's inability to steer the passage of these bills through Parliament was compounded by not only institutional opposition – from opponents and supporters of the bill – but also the culpability of India's two major parties, the Congress and the BJP, in communal violence in the past (e.g. anti-Sikh riots in Delhi (1984), the demolition of Babri Masjid in Ayodhya (1992), and anti-Muslim pogroms in Gujarat (2002)). Security, the essential requirement of citizenship, remains an elusive dream for some of India's minorities.

Finally, the Conclusion reassesses the core arguments of the thesis to reflect on the UPA's experience in light of the Sixteenth Lok Sabha elections in May 2014 which witnessed the emergence of the BJP as the party of government and marked the end of the contestational juncture signified by the UPA victory in 2004. It also addresses the utility of the institutional policy analysis approach in the study of other areas of Indian public policy and Indian studies.

Chapter One

UPA, equality of opportunity and Muslims: a review of literature

Introduction

The formation of the UPA government in 2004 is generally seen as a major change in Indian politics: the election of a Congress-led coalition surprised most analysts, and the appointment of Manmohan Singh, a Sikh, as Prime Minister was symbolic of the new approach towards India's religious minorities. Arguably, the new policies, institutional innovations, and executive decisions taken by the UPA administration in its first term represented a 'paradigm shift' in how equality of opportunity is understood in India.⁴² This departure, it is suggested, marked a radical break, especially for religious minorities, who had become victims of social exclusion and discrimination. The SCR, for example, by recognising the social and economic marginalisation of India's Muslims drew attention to the 'development deficit' suffered by the community since Independence. The RMCR, probably the most radical official document on India's minorities since 1947, drew a pointed reference to 'inequalities' which excluded disadvantaged religious minorities, such as Christians and Muslims, from accessing the right to reservation in employment and education. In brief, these and other initiatives appeared to mark a critical turning point.

The substance of these new policies is discussed in Chapter Four. This chapter reviews the literature on the UPA, equality of opportunity and Muslims with the aim of introducing in the next chapter an alternative framework for understanding the administration's policies. The shortcomings of existing studies, it will be argued, require a new institutional policy analysis approach that is historically grounded.

⁴² See Tarunabh Khaitan, 'Transcending Reservation: A Paradigm Shift in the Debate on Equality', *EPW* 43:38 (20-26 September 2008), 8-12.

Review of literature

In reviewing the literature on UPA policies on religious minorities, especially Muslims, it is possible to identify seven genres which are neither exclusive nor exhaustive.⁴³ These include: popular and journalistic accounts, electoral incentive studies, political ideology, social justice, social exclusion, Muslim community studies, and the grey literature produced by public policy institutes and non-governmental organisations (NGOs).⁴⁴

Popular and journalistic accounts

Surprisingly little serious academic effort has been expended on a review of the performance and policies of either the UPA I (2004-9) or UPA II governments (2009-14). Popular or journalistic accounts still dominate the field. While we cannot expect academically rigorous analysis from such accounts, they are influential in establishing the terms in which the UPA governments are discussed, and therefore merit consideration. Thus, Bhambri's *Sonia in Power: UPA Government, 2004-2006*⁴⁵ explores the UPA's rise to power and the Left parties' role in coalition formation. Essentially a compilation of press articles, the author examines domestic and foreign issues such as bureaucracy, elections and democracy, federalism, governance, relations with Pakistan and the Kashmir problem. This volume is useful in highlighting the role of Sonia Gandhi in coalition-building, but as the title indicates, it covers a brief period in the tenure of the UPA, and the journalistic nature of this volume, moreover, detracts from its analytical quality.

Gaur's *The UPA Government: Achievements, Failures and Challenges*⁴⁶ covers a longer time span and offers a more detailed narrative of coalition politics. Although reasonable coverage is provided of key milestones, such as the vote over energy policy,

⁴³ For reasons of clarity and coherence, the literature on policy studies generally and in India is assessed in Ch. 2.

⁴⁴ Traditionally, grey literature refers to 'rapid publication, variable formats, no public peer review, and no commercial source of general availability'. See Bonnie C. Carroll and Gladys A. Cotter, 'A New Generation of Grey Literature: The Impact of Advanced Information Technologies', *Publishing Research Quarterly* 13: 2 (Summer, 1997), 5. Given the contemporaneous nature of the research, and the lack of official assessment of the UPA's policies, this thesis draws on grey literature produced by NGOs and other advocacy organisations where relevant.

⁴⁵ C. P. Bhambri, *Sonia in Power: UPA government, 2004-2006* (Delhi: Shipra, 2006).

⁴⁶ Sanjay Gaur, *The UPA Government: Achievements, Failures and Challenges* (Jaipur: Yking Books, 2012).

the overall assessment is cursory, with little detailed analysis of policies. Minorities, for instance, are hardly mentioned. For a work aimed at a general audience, the general tone is set by its sensational, racy style.

Similarly, *The Other Side of UPA-II: An Analysis of the Second Innings of the Government of World's Largest Democracy*⁴⁷ also falls into the same genre. Its concentrates on how the UPA came to power in 2009 and a review of its policies. This assessment, however, is far from comprehensive: it is merely a compilation of government announcements, without critical understanding or analysis. Unsurprisingly, minorities' issues rarely feature in this volume.

In contrast, Baru's *The Accidental Prime Minister: The Making and Unmaking of Manmohan Singh*⁴⁸ achieved notoriety during the Sixteenth Lok Sabha elections. An insider account, written by Manmohan Singh's former media advisor, this volume covers the period up to 2009. Its main objective, as the author acknowledged, was to demonstrate how Manmohan Singh was both 'made' and 'unmade' as Prime Minister by the machinations of the Gandhi family.⁴⁹ As an informed, journalistic account it provides invaluable insights into the working of the Prime Minister's Office (PMO), the major challenges which faced the UPA (I) administration, and the complex process of managing the coalition (see Chapter Four). It also offers a welcome revisionist perspective on Manmohan Singh as a reforming, radical Prime Minister who was frustrated by the Congress hierarchy and its coalition partners.

The Accidental Prime Minister is a major advance on previous journalistic accounts, but it also suffers from notable shortcomings. First, notwithstanding its focus on policy, an assessment of UPA's approach to religious minorities is entirely absent.⁵⁰ Second, the work's objectivity has been questioned because it was inspired by the refusal of the UPA (I) to extend Baru's tenure as a media advisor, allegedly at the

⁴⁷ B. C. Narula, *The Other Side of UPA-II: An Analysis of the Second Innings of the Government of World's Largest Democracy* (New Delhi: Orange Books International, 2012).

⁴⁸ Sanjaya Baru, *The Accidental Prime Minister: The Making and Unmaking of Manmohan Singh* (New Delhi: Penguin, 2014).

⁴⁹ 'Prime Minister Manmohan Singh "Surrendered" to Sonia Gandhi and Allies: PMO's Former Media Adviser Sanjaya Baru', *DNA*, 11 April 2014; 'His Hands Tied, Prime Minister Manmohan Singh Surrendered to Sonia Gandhi: Ex-Media Adviser Sanjaya Baru's Book', *Indian Express*, 12 April 2014.

⁵⁰ Interestingly the few references that are made to Muslims, for instance, relate to the potential negative impact on the Congress of the nuclear energy deal with the US. Baru, *The Accidental Prime Minister*, 211, 251.

behest of the Congress hierarchy.⁵¹ Finally, Manmohan Singh himself has distanced himself from the work's revelations, thereby casting doubt on some of the major claims, especially those relating to the Gandhi family.⁵² Overall, as we shall see below, *The Accidental Prime Minister* sheds new light on the tenure of the UPA (I) but it is far from a comprehensive – or unbiased – account of the government's policy formation process.

Electoral incentives

Wilkinson in *Votes and Violence: Electoral Competition and Ethnic Riots*⁵³ has advanced a compelling argument that communal riots in Indian politics are determined by the nature of electoral competition in the states. Political leaders in states, according to Wilkinson, are more inclined to protect religious minorities when they are dependent on them for electoral support, or when party politics is so competitive that there is a high probability that they will need to rely on minority votes or minority-supported parties in the future.⁵⁴ Hence, when minority groups are swing voters, or when their backing is needed to support the ruling government or coalition, political leaders have a greater incentive to protect minorities. These outcomes result from a high degree of party fractionalisation, leading Wilkinson to emphasise a correlation between the level of party competition in a state and the state government's prevention of riots.⁵⁵ Wilkinson's argument has been influenced by Brass' contention that 'the fomenting of violence both to win votes and to ward off defeat by arousing communal sympathies and animosities is part of the standard repertoire of contemporary political practices in north Indian politics'.⁵⁶

Further developing this approach in his analysis of UPA policies on minorities, Wilkinson suggests that these were determined primarily by the electoral support given by the minorities to Congress and its allies. This support proved pivotal in some states

⁵¹ Ibid., especially see Ch. 13.

⁵² 'PMO Rubbishes Baru's Claims, Says No Files Shown to Sonia', *The Tribune*, 13 April 2014 (electronic edition).

⁵³ Steven I. Wilkinson, *Votes and Violence: Electoral Competition and Ethnic Riots in India* (Cambridge: Cambridge University Press, 2004).

⁵⁴ Ibid., 138.

⁵⁵ Ibid., 137-8.

⁵⁶ Paul Brass, 'The Rise of the BJP and the Future of Party Politics in Uttar Pradesh', in Harold A. Gould and Sumit Ganguly, eds., *India Votes: Alliance Politics and Minority Governments in the Ninth and Tenth General Elections* (Boulder: Westview Press, 1993), 274.

and gave the UPA ‘a powerful incentive to attend to minority concerns’.⁵⁷ However, this support from, and for minorities, could not be allowed to alienate the mainstream Hindu electorate. UPA policies on minorities, therefore, did not mark a radical departure but continuity – with the familiar commissions on the conditions of minorities, especially Muslims – and selective measures designed to garner maximum electoral advantage. Criticising the implementation of the SCR for not mainstreaming Muslims in ‘anti-poverty and education programmes’,⁵⁸ Wilkinson argues that result was a ‘large number of relatively under-funded and uncoordinated’ schemes that were unlikely to have a major impact.⁵⁹

Wilkinson’s instrumentalist interpretation of electoral incentives has some major shortcomings. First, he fails to explain why ‘mainstreaming’ Muslims in ‘anti-poverty and education’ in the past has failed to deliver better results, unless it is the outcome of religious discrimination, or ‘religious blindness’.⁶⁰ Second, he acknowledges the success of reservations as most effective way of delivering jobs for the community but dismisses this policy option as a part of community-centred politics. Reservations for SCs and STs, and subsequently OBCs, as we shall see below, have had the most transformative impact on the life chances of these groups. The UPA’s approach to policy implementation might well have been selective, but what is lacking from Wilkinson’s analysis is a rounded understanding of the historical context in which caste-centred equality of opportunity policies in India have evolved, and the role of institutions – the legislature, executive and judiciary – in framing the context in which policy formation and evaluation take place. Above all, he fails to explain how these institutional structures and political agents have resisted the extension of reservations to poor Christians and Muslims.

⁵⁷ Steven I. Wilkinson, ‘The UPA and Muslims’, in Lawrence Sáez and Gurharpal Singh, eds., *New Dimensions of Politics in India: The United Progressive Alliance in Power* (London: Routledge, 2012), 69.

⁵⁸ *Ibid.*, 76.

⁵⁹ *Ibid.*

⁶⁰ It is useful to note here that since the 1990s, there has been increasing recognition of need to address religious discrimination in public life and to bring religion within the protected categories of equal opportunities legislation. Interestingly, equal opportunity policies in the West in the 1970s were often criticised for being ‘colour blind’.

Political ideology

Sáez and Singh's *New Dimensions of Politics in India: The United Progressive Alliance in Power*⁶¹ assesses the UPA (I)'s performance on a wide range of fronts – poverty eradication, federalism, education, state secularism, minorities, foreign policy, energy security and anti-terrorism – and reflects on policy formation and implementation, and the continuities and discontinuities with previous administrations. However, despite this broad coverage, the central thesis of the work is that the 'UPA experience suggests that *ideology matters*'.⁶² Before the 2004 general elections, Congress and its allies attempted to create clear blue water between themselves and the NDA, with the party's manifesto emphasising that 'it was not a moment for a narrow pursuit of partisan power. This is the moment to consolidate all forces subscribing to the fundamental values of our Constitution'.⁶³ At the heart of this difference was the concept of nationhood – at direct variance from the NDA's – which valued diversity and respected the 'time-honoured sensitivity to the cultural [and] linguistic identity of the people of India, and its pluralist conception of nationhood'.⁶⁴ With an eye to NDA's performance, and especially the Gujarat pogroms, the UPA's NCMP committed the alliance to:

...to preserve, protect and promote social harmony and to enforce the law without fear or favour to deal with all obscurantist and fundamentalist elements who seek to disturb social amity and peace, [and] to provide full equality of opportunity, particularly in education and employment for SCs, STs, OBCs and religious minorities.⁶⁵

Although these commitments, as we shall see in Chapter Four, were designed to rebuild the relationship between religious minorities and the Congress party, they were founded on the experience of states in the south, notably Kerala, Karnataka and Tamil Nadu that had established reservations in employment for disadvantaged Muslim groups.⁶⁶

⁶¹ Lawrence Sáez and Gurharpal Singh, eds., *New Dimensions of Politics in India: The United Progressive Alliance in Power* (London: Routledge, 2012).

⁶² Sáez and Singh, 'Conclusion', in Sáez and Singh, eds., *New Dimensions of Politics in India*, 151. Emphasis original.

⁶³ Indian National Congress, *Manifesto 2004*. Available at: <http://www.indian-elections.com/partymanifestoes/party-manifestoes04/congress.html> [accessed on 12 April 2012].

⁶⁴ Harihar Bhattacharyya, 'UPA (2004-) and Indian Federalism: A Paradigm Shift?', in Sáez and Singh, eds., *New Dimensions of Politics in India*, 38.

⁶⁵ National Common Minimum Programme of the Government of India. Available at: <http://pmindia.nic.in/cmp.pdf> [accessed on 11 April 2012].

⁶⁶ Aniket Alam, 'Quota for Muslims', *Frontline*, 21:17 (14-27 August 2004); S. Viswanathan, 'Proven Success', *Frontline* 24:7 (7-20 April 2007).

Ideological considerations played a leading role in shaping the UPA's policies on minorities by creating an overarching context within which these policies were framed. But ideology *per se* is an inadequate tool to explain why certain policies were selected for implementation and others not. Congress' ideological outlook needed both to accommodate minorities while preserving support from the majority; as such, it is difficult to determine the correspondence between ideological positions at any one time and the policies followed. Ideological explanations, moreover, overlook how the opposition, particularly the BJP, and its associated *Hindutva* forces, has influenced the national discourse on minorities, making it difficult both for Congress and other secular parties to promote pro-minorities policies, even when the BJP has been electorally weak. The strength of any party's ideology, therefore, is relational; in coalition politics driving through an ideological agenda becomes difficult, if not impractical.⁶⁷ Ideological accounts, therefore, provide an overarching explanation for the government's policies on religious minorities, but missing from them is a causal mechanism that explains the selection of policies, decision-making, implementation and evaluation. Perhaps more pertinently, they ignore the importance of institutional factors – the legislature, executive and the judiciary – in defining the context in which policy outcomes are determined.

Social justice

The UPA's policies on religious minorities and SCs and STs have also received the attention of political and social theorists alike. Operating within the framework of normative political theory, Heredia's *Taking Sides: Reservation Quotas and Minority Rights in India*,⁶⁸ Verma's *Non-discrimination and Equality in India: Contesting Boundaries of Social Justice*⁶⁹ and Bajpai's *Debating Difference: Group Rights and Liberal Democracy in India*⁷⁰ are three works that claim to offer fresh insights into understanding recent policy shifts.

⁶⁷ See Katharine Adeney and Lawrence Sáez, 'Introduction: Coalition Politics, Religious Nationalism and Public Policy: A Theoretical Examination', in Katharine Adeney and Lawrence Sáez, eds., *Coalition Politics and Hindu Nationalism* (London: Routledge, 2005), 8.

⁶⁸ Rudolf C. Heredia, *Taking Sides: Reservation Quotas and Minority Rights in India* (New Delhi: Penguin, 2012).

⁶⁹ Vidhu Verma, *Non-Discrimination and Equality in India: Contesting Boundaries of Social Justice* (London: Routledge, 2012).

⁷⁰ Rochana Bajpai, *Debating Difference: Group Rights and Liberal Democracy in India* (New Delhi: Oxford University Press, 2011).

Heredia's *Taking Sides* is a general, discursive overview of the relationship between claims for social justice of religious minorities and the nation-building process. The author argues that though the Constitution sought to create an egalitarian and caste-free society through affirmative action and reservations for the backward and weaker sections of society, for religious minorities the impact of these policies has been unfair.⁷¹ In assessing the conditions of religious minorities, particularly Muslims, Heredia draws extensively on findings of SCR, RMCR, and National Commission for Minorities (NCM) reports, to highlight the degree of disadvantage suffered by these groups. For Heredia, the provision of equality of opportunity for religious minorities has proved challenging. Indeed, the author contends that 'a constitutional democracy must work within an understanding of justice, through constitutional rights and procedures, for equity and equality for all its citizens, reconciling freedom and equality, human rights and egalitarian policies'.⁷² Importantly, Heredia's work offers an entry point for understanding the development deficit of some religious minorities (Christians and Muslims) by acknowledging that '*for historical reasons, the sticking point of minority rights has been religion, not language*'.⁷³

Whilst Heredia's conclusion that – 'reserved quotas have resulted in a positional change for some groups, but they have not brought any real structural transformation in the broader society'⁷⁴ – underscores the observations of both critics and supporters of reservations alike, his methodological eclecticism and highly discursive style diminish the analytical quality of the work. In brief, the volume offers only fragmentary insights into the role of institutions in the process of policy formation and implementation, and is at best, a poor synthesis of the literature on religious minorities in post-1947 India; at worst, it is a highly derivative discourse which singularly fails to develop a clear and sustained line of argument.

Non-discrimination and Equality in India, on the other hand, is a general inquiry into the evolution of concept of social justice and its relationship to equality of opportunity and anti-discrimination within Indian politics since Independence, with special reference to reservations. Described by the author as an essentially 'descriptive'

⁷¹ Heredia, *Taking Sides*, 169.

⁷² *Ibid.*, 10.

⁷³ *Ibid.*, 225. Emphasis added.

⁷⁴ *Ibid.*, 4.

and ‘philosophical’⁷⁵ account, *Non-discrimination and Equality in India* maps out how the concept of social justice was historically constructed in terms of anti-discrimination legislation and affirmative action provisions for SCs and STs. The Indian Constitution, posits Verma, not only allowed for group rights in the form of reservations for SCs and STs, thereby creating a framework of ‘competing equalities’, but in so doing, recognised the claims of these groups for substantive equality of opportunity. These provisions, furthermore, were embedded in a form of ‘governmentality’ that recognised ‘constitutional provisions, special legislations and judicial announcements’ for these groups and ‘endorsed a set of bureaucratic categories’ that were tied to the ‘state as both a political bounty and a mover of economic activity’.⁷⁶ In short, the distinction between socio-economically disadvantaged castes and religious communities was predicated on a historical concept of social justice that was firmly institutionalised during constitution-making.

However, over time the extension of the state in areas of social justice, according to Verma, has politicised the post-Independence settlement; and the ‘Mandalisation’ and ‘marketisation’ of Indian politics after 1991 has created a growing disenchantment with the idea ‘that the state can be the vehicle for social justice’ because it has now become ‘the object of competing and irreconcilable claims’.⁷⁷ As neo-liberal economic policies have reinforced upper castes’ privileged social status, suggests Verma, the conventional idea of social justice is being challenged by new understandings of anti-discrimination and equal opportunity that emphasise group inequalities, resulting in ‘demands for various measures of affirmative action – mostly through quotas – that [would] improve the bargaining positions of sexual minorities, disabled, religious minorities and disadvantaged women’.⁷⁸ Inevitably, some minorities have questioned the secular credentials of the Constitution which concede reservations for Hindu SCs, STs, while rejecting the claims of similar caste groups among Christians and Muslims. Simultaneously, to further complicate matters, multiple axes of disadvantage and discrimination have also emerged among protected groups and the new groups mobilising for social justice.

⁷⁵ Verma, *Non-Discrimination and Equality in India*, 206.

⁷⁶ *Ibid.*, 208.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*, 210.

Non-discrimination and Equality in India offers a synoptic review of the complex and shifting terrain of equal opportunities and anti-discrimination in contemporary Indian politics, and how ideas of social justice are being redefined. It presents, as we shall see in Chapter Four, a thoughtful engagement with the new framework of equal opportunities developed under the UPA administration. Yet, it succeeds only as a general interpretation of the normative principles underpinning the change without offering an account of ‘why’ this change came about, or more precisely, ‘why’ a particular set of policies were followed by the UPA. This still remains an important lacuna in the study of the subject.

Bajpai’s *Debating Difference* also explores the theme of social justice and how it has evolved with the development of group-differentiated rights in India, though from an ideological perspective.⁷⁹ As a wide-ranging account of what the author calls ‘public reasoning’,⁸⁰ the work unpacks how liberal principles have defined group-differentiated rights and also, paradoxically, permeated the discourses of subalterns and nationalists. Methodologically rooted in liberal theory, postcolonial theory and ideological analysis, this study compellingly deconstructs the ideological frames created at the time of constitution-making, which have ultimately set the parameters of public discourse on the subject. It does so by focusing on the political rhetoric of the Constituent Assembly Debates and parliamentary debates in post-Independence history with reference to three critical junctures in Indian history: constitution-making (1946-49), the Shah Bano case (1986), and the Mandal debate (1990).

Bajpai develops a model of Indian liberalism predicated on the inter-related concepts of ‘secularism’, ‘democracy’, ‘social justice’, ‘national unity’ and ‘development’ that, according to her, generated a hegemonic ‘legitimising vocabulary’ of group rights.⁸¹ Bajpai rejects the argument that Partition undermined the rights of religious minorities during constitution-making: rather they were limited because of the long-term ideological outlook of Indian nationalism which privileged national unity. The dominant interpretation of the nationalist vocabulary in the Constituent Assembly, insists Bajpai, was against the special treatment of minorities, particularly religious

⁷⁹ Strictly the work falls into the ideological genre but it is discussed here under social justice because of the intellectual affinities with the social justice literature.

⁸⁰ Bajpai, *Debating Difference*, 4.

⁸¹ *Ibid.*, 23.

minorities, for it was perceived as a threat to national unity.⁸² Nationalist public reasoning imbued with an ideal of secular, united India with a strong centre was unable to countenance legislative and employment quotas for religious minorities. On the other hand, quotas were deemed necessary for socio-economically disadvantaged Hindu caste groups as a compensatory measure. A meticulous reading of constitutional debates leads Bajpai to conclude that considerations of ‘legitimising vocabulary’ was uppermost for lawmakers in narrowly framing the rights of religious minorities at Independence.⁸³

Whereas constitution-making in the late 1940s occurred against the background of centralisation of power, and the ‘containment of group rights’⁸⁴ based on religion, the 1980s and 1990s witnessed the decentralisation of power accompanied by expansion of reservation-based group rights and the rise of lower caste parties, culminating in ‘a shift to more multicultural and egalitarian conceptions of secularism, democracy and social justice, as witnessed in the legislative debates on Shah Bano and Mandal’.⁸⁵ Bajpai’s detailed analysis of the Shah Bano case suggests that change in the Congress’ multicultural policy did not amount to a ‘fundamental break in the normative vocabulary.’⁸⁶ Similarly, the Mandal debate, which led to an extensive expansion of quotas for OBCs, was framed in a ‘legitimising vocabulary, by linking equality closely to democracy, and distancing it from national unity’.⁸⁷ In both cases, the conceptual sleight of hand ensured that the key principles of the constitutional settlement remained in place.⁸⁸

Bajpai extends this analysis to the UPA government in her contribution to *New Dimensions of Politics in India*.⁸⁹ In an empirically rich paper bristling with new insights, she draws attention to the shortcoming of instrumentalist accounts of UPA policy-making on minorities and group-differentiated rights, with a plea to understand the ‘ideological distinctiveness of the UPA’.⁹⁰ This uniqueness is to be found in the Congress’ accommodation ‘of identity-based quotas, a change of position that has

⁸² Ibid., see in particular Chs. 2 and 3.

⁸³ Ibid., 20-3.

⁸⁴ Ibid., 15.

⁸⁵ Ibid., 288.

⁸⁶ Ibid., 25.

⁸⁷ Ibid.

⁸⁸ Ibid., 287.

⁸⁹ Rochana Bajpai, ‘Beyond identity: UPA Rhetoric on Social Justice and Affirmative Action’, in Sáez and Singh, eds., *New Dimensions of Politics in India*, 79-95.

⁹⁰ Ibid., 80.

involved an important shift in the meaning and significance of social justice in Congress discourse, and a reorientation of its relationship to national unity and development'.⁹¹ The core of Bajpai's argument, again drawing on her previous analysis, is that while the UPA embraced a major expansion in quotas – for OBCs in higher education and private educational institutions, and was committed to reservations for religious minorities, which was pursued largely through 'stealth', that is, through 'executive action' instead of primary legislation – this commitment was shot through by pro-poor redistributionist policies and a need to align the new policies with a more egalitarian conception of social justice. 'It is in light of this normative-discursive shift in conceptions of social justice', concludes Bajpai, 'that the policies enacted by the UPA for the expansion of affirmative action can be adequately grasped.'⁹² For Bajpai, the Congress' actions mirrored a 'polity-wide shift that can be traced back at the national level to at least the Janata Dal in the 1990 Mandal debate'.⁹³ But a justification of reservations for minorities in terms of a 'development deficit', contends Bajpai, is unsustainable because unless the UPA can generate legitimacy for 'policies of special treatment for minorities in terms of the common good...[they are] vulnerable to criticism from the Hindu Right'.⁹⁴

Bajpai's incisive analysis is a major contribution to understanding the 'legitimising vocabularies' of the UPA policies on religious minorities. She correctly draws attention to the continuities with previous debates, as well as the Congress' position in seeking to balance its traditional, pro-redistributionist outlook with the need to accommodate new group claims. Above all, she highlights the ideological boundaries within which the debates about minority rights in India can be framed, the overarching need to locate them within the conception of national unity, social justice, development and the common good if policy change is to be effected.⁹⁵ However, although this conceptual analysis of ideological rhetoric is certainly a major advance on instrumentalist explanations, it still provides us with only partial insights into the policy 'black box' of the UPA government in which the formation, selection and

⁹¹ Ibid., 90.

⁹² Ibid., 85.

⁹³ Ibid.

⁹⁴ Ibid., 95.

⁹⁵ There are some *prima facie* similarities between the ideological analysis of public rhetoric on group-differentiated rights in India and historical institutional path dependence. These are discussed in more detail in the Conclusion.

implementation of public policy in this area still remains shrouded in mystery. ‘Legitimising vocabularies’ are crucial for understanding the justification of policies, but no less significant is the role of institutions – and embedded oppositional forces – in shaping the policies and their outcomes.

Social exclusion

Another body of literature that has addressed the subject situates itself within the debate on social exclusion. Identified with the ‘politics of presence’,⁹⁶ it ‘responds to a broad sense of ethnic, racial, gender, and minority exclusions by questioning the separation between ideas and identity’.⁹⁷ Social exclusion perspectives require the presence of excluded groups in decision-making as a necessary condition of articulating their interests, and are often linked to social marginalisation and structural factors that deny some groups and communities political, economic and social opportunities.⁹⁸ Especially relevant here is the experience of the British Muslim community and the work of Tariq Modood who has demonstrated how Islamophobia has interacted with structural factors in Britain to produce a marginalised Muslim community that has become the subject of a public policy discourse on ‘parallel lives’.⁹⁹ The need to develop socially inclusive policies, as we have seen in the Introduction, was highlighted by 9/11 which focused global attention on Muslim communities.

Following the publication of the SCR, a large body of literature has emerged which interrogated the Muslim community’s ‘development deficit’.¹⁰⁰ These works lack the historical dimension to be found in the works on normative political theory discussed above. Two works that are an exception to this rule are Hasan’s *Politics of Inclusion: Castes, Minorities, and Affirmative Action* and Gayer and Jaffrelot’s *Muslims in Indian Cities: Trajectories of Marginalisation*.¹⁰¹

⁹⁶ See Anne Phillips, *The Politics of Presence* (Oxford: Clarendon Press, 1995).

⁹⁷ Zoya Hasan, *Politics of Inclusion: Castes, Minorities, and Affirmative Action* (New Delhi: Oxford University Press, 2009), 2.

⁹⁸ *Ibid.*

⁹⁹ Tariq Modood, *Multicultural Politics: Racism, Ethnicity and Muslims in Britain* (Minnesota: Minnesota University Press, 2005).

¹⁰⁰ See, for example, Gurpreet Mahajan and Surinder S. Jodhka, eds., *Religion, Communities and Development: Changing Contours of Politics and Policy in India* (London: Routledge, 2010), especially contributions by Amir Ali, Javeed Alam and Tanweer Fazal.

¹⁰¹ Laurent Gayer and Christophe Jaffrelot, eds., *Muslims in Indian Cities: Trajectories of Marginalisation* (London: Hurst, 2012).

Politics of Inclusion is the most engaged account of the position of minorities, especially Muslims, within the framework of substantive equality of opportunity defined by social justice for disadvantaged castes. For Hasan, the distinction between caste and religion as the foundational principle of reservations by Indian constitution-makers created a permanent cleavage by excluding disadvantaged religious minorities, even though they suffered similar discrimination and disadvantage, and had sizeable untouchable castes. This distinction, Hasan insists, has resulted in the privileging of caste-based social categories, which reflects their position in Indian society and politics, and ‘underlines the limitations of the paradigm of social justice’.¹⁰² Hence, observes Hasan, ‘even with constitutional safeguards for minorities, large sections of them have been feeling a sense of marginalisation and alienation from the nation-state’. This alienation, according to Hasan, arises because for minorities ‘social and economic rights were missing from this framework’.¹⁰³ Dissimilar state responses to similar social inequalities, contends Hasan, illustrate a narrow concept of social justice, and mask discrimination and disadvantage among minorities today.

Politics of Inclusion draws attention to the different trajectories of disadvantaged castes and minorities since Independence. While reservations in employment, quotas in political representation and education have enabled SCs, STs, and latterly OBCs¹⁰⁴ to make substantial strides, and ensure recognition and security, religious minorities of equivalent social status, particularly Muslims, have suffered a terminal marginalisation. ‘The evidence’, Hasan concludes, ‘suggests that there are unjustifiable disparities prevailing among different groups as a result of discrimination, lack of equal opportunities, and lack of affirmative action for some groups.’¹⁰⁵ Indeed, *Politics of Inclusion* is a powerful indictment of the caste-based approach to social justice and discrimination. What is required today, according to Hasan, is a re-evaluation of ‘the political frameworks constructed at the time of Independence in the background of Partition [and] whether they are appropriate’.¹⁰⁶

By linking social exclusion to a substantive, egalitarian conception of equal opportunities, Hasan offers a powerful critique of the narrow social justice approach

¹⁰² Hasan, *Politics of Inclusion*, 8.

¹⁰³ Ibid.

¹⁰⁴ OBCs do not have quotas in political representation.

¹⁰⁵ Hasan, *Politics of Inclusion*, 15.

¹⁰⁶ Ibid.

centred on caste discrimination and disadvantage. This reading places the claims of groups among religious minorities, such as Christians and Muslims, on par with their social peers by drawing on contemporary discourse of disadvantage, discrimination and under-development. Not unnaturally, such claims threaten to undermine the exclusiveness of existing provision based on caste.

Hasan further develops her argument in her contribution to *Congress after Indira: Policy, Power, Political Change (1984-2009)*.¹⁰⁷ The unprecedented degree of mobilisation of Muslim community electoral support for the Congress, and its contribution to the formation of the UPA government in 2004, argues Hasan, enabled Muslims to be ‘seen as possible subject of development in India’.¹⁰⁸ By recognising religion as a category of development policy, the UPA set up new committees and commissions (e.g. SCR, RMCR) to investigate the community’s condition, established new schemes targeted at minorities (e.g. PM’s 15PP), and created a new institution (MoMA). Hasan asserts that ‘the creation of the [MoMA] in 2006 was a political step to demonstrate an acceptance of the category of minority for the purpose of policymaking for development’.¹⁰⁹

Yet these initiatives, according to Hasan, quickly became ensnared in institutional and political opposition. MoMA, in Salman Khurshid’s words, soon became ‘powerless and redundant’,¹¹⁰ a ministry wholly unsuitable to being a ‘nodal ministry to monitor implementation [of SCR]’,¹¹¹ and instead championed ‘flagship schemes’¹¹² rather than need-based policies for the Muslim community. The strict adherence to an area-based approach, moreover, for identifying Minority Concentration Districts (MCDs) and Multi-Sectoral Development Programme (MSDP) limited the targeted recipients because the fear of judicial review prevented the UPA government from going ‘beyond the area development approach’.¹¹³ Of the development initiatives that were undertaken, they were characterised by low budgetary allocations, poor

¹⁰⁷ Zoya Hasan, *Congress after Indira: Policy, Power, Political Change (1984-2009)* (New Delhi: Oxford University Press, 2012), 166-192.

¹⁰⁸ *Ibid.*, 169.

¹⁰⁹ *Ibid.*, 171.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*, 173.

¹¹² *Ibid.*, 172.

¹¹³ *Ibid.*, 175.

utilisation of funds, and weak monitoring of impact.¹¹⁴ But perhaps most disconcerting for Hasan was the finding that the ‘Congress did not really push the government to seriously implement the Sachar Committee recommendations’.¹¹⁵ Its reluctance to fully lead on the SCR recommendations together with Muslim community leaders’ inability to mobilise their own poor sections meant that the Congress was willing to ‘take the issue only up to a point’ and pursue ‘the broader agenda of inclusive growth’.¹¹⁶

The argument advanced by *Politics of Inclusion* is further developed by Gayer and Jaffrelot’s *Muslims in Indian Cities*. An account of Muslims in 11 major cities, it uses an ethnographic approach with quantitative data to provide an overview of ‘trajectories of marginalisation’. Drawing on the findings of the SCR and other surveys, Gayer and Jaffrelot emphasise the increasing residential ghettoisation and socio-economic marginalisation of India’s Muslims brought on by decades of insecurity and discrimination. These processes, they argue, are more pronounced in the ‘cow belt’ states of the north because the ‘Hindu traditionalists who ruled over north India – the Chief Ministers of Uttar Pradesh and Madhya Pradesh especially – never implemented the policies that had been designed by the government, such as the promotion of Urdu’.¹¹⁷ As a result, Muslim representation in administrative or security services is negligible. The case for the community’s claim to reservations, suggests Gayer and Jaffrelot, is even ‘more compelling’ than ‘the Hindu OBCs’.¹¹⁸

Both *Politics of Inclusion* and *Muslims in Indian Cities* illustrate the alternative conceptual and historical reading of post-Independence India viewed through the experience of minorities and the framework of ‘politics of presence’. Both highlight the radical egalitarian conception of equality of opportunity linked to distributive justice and proportionality. Methodologically, *Politics of Inclusion* is especially insightful because of the need to link policy and political processes to explain the ‘paradoxes of inclusion and exclusion’. Fully developed, such an approach has the potential to draw out the ‘inbuilt biases of the policies and institutions that maintain and create power

¹¹⁴ Ibid., 172-6.

¹¹⁵ Ibid., 173.

¹¹⁶ Ibid., 184.

¹¹⁷ Laurent Gayer and Christophe Jaffrelot, ‘Conclusion: ‘In Their Place’? The Trajectories of Marginalisation of India’s Urban Muslims’, in Gayer and Jaffrelot, *Muslims in Indian Cities*, 314.

¹¹⁸ Ibid., 316.

inequalities in India today'.¹¹⁹ This, as we shall see below, is the point of departure for our work which combines a policy-based approach with an institutional analysis of UPA's policies on religious minorities, especially Muslims.

Muslim community studies

Muslim community studies in India represent another body of literature that needs to be acknowledged.¹²⁰ Sikand's *Muslims in India: Contemporary Social and Political Discourses*¹²¹ explores some of the challenges facing Indian Muslims today – madrasa education, inter-religious and intra-Muslim relations, conflict in Kashmir, Muslim women and Islamic law, and Hindu-Muslim relations. His *Muslims in India since 1947: Islamic Perspective on Inter-Faith Relations*¹²² also covers some of the same ground but extends the examination to Dalit Muslims. The emergence of Dalit Muslims, Sikand insists, is in response to the Dalitisation of Indian politics and aims to build a non-*Ashraf* and *Ajlaf* political identity which can access political and economic benefits by transcending inter-caste and inter-religious divisions. It is also an attempt to construct a separate identity. Although recognising the existence of 'jati' identities, Dalit Muslims seek to 'subsume them within the wider collective Dalit identity, based on a common history of suffering as well as common racial origins as indigenous people.'¹²³ However, though Sikand's work is rich in details of the community's recent development, including the emergence of the history of the All India Backward Muslim Morcha, these works offer incomplete insights into how the state has responded to the community's demands and avoid a comprehensive coverage of the experience of the UPA governments.

¹¹⁹ Hasan, *Politics of Inclusion*, 12.

¹²⁰ There is a rich body of literature which covers the pre-UPA period and is not assessed here. See Asghar Ali Engineer, ed., *Problems of Muslim Women in India* (Mumbai: Orient Longman, 1995); Hajira Kumar, *Status of Muslim Women in India* (New Delhi: Aakar Books, 2002); Mushirul Hasan, *Legacy of a Divided Nation: India's Muslims since Independence* (London: Hurst, 1997); Mushirul Hasan, 'Minority Identity and its Discontents', *EPW* 29:15 (19 February 1994), 441-51; Haseena Hashia, ed., *Muslim Women in India since Independence: Feminine Perspectives* (New Delhi: Institute of Objective Studies, 1998); V. T. Rajshekar Shetty, *India's Muslim Problem: Agony of the Country's Single Largest Community Persecuted by Hindu Nazis* (Bangalore: Dalit Sahitya Academy, 1993); Zoya Hasan and Ritu Menon, *Unequal Citizens: A Study of Muslim Women in India* (New Delhi: Oxford University Press, 2004).

¹²¹ Yoginder Sikand, *Muslims in India: Contemporary Social and Political Discourses* (Gurgaon: Hope India Publications, 2006).

¹²² Yoginder Sikand, *Muslims in India since 1947: Islamic Perspectives on Inter-Faith Relations* (London: Routledge Curzon, 2004).

¹²³ *Ibid.*, 110-11.

Abdul Shaban's *Lives of Muslims in India: Politics, Exclusion and Violence*¹²⁴ highlights some key issues that face Indian Muslims today. As the title indicates, it deals with politics, exclusion, and violence but is mainly centred on the community's experience of communal violence. Interestingly, the author notes that despite government policies 'a lower caste Muslim is more likely to be identified as Muslim than as Dalit by the majority and state administration', resulting in 'the failure of the desired representation of Muslim OBCs in government services...and non-recognition of extremely lower-caste Muslims (as SCs) for reservation'.¹²⁵ This aspect, however, is insufficiently developed. Neither is there any substantive assessment of the UPA's policies: of the twelve chapters in the volume, only one covers public policies on Muslims, and briefly mentions SCR and Equal Opportunity Commission (EOC), with the author preferring to locate the debate within the framework of multiculturalism and social exclusion.¹²⁶

Omar Khalidi's *Khaki and the Ethnic Violence in India: Army, Police and Paramilitary Forces during Communal Riots*¹²⁷ raises critical and challenging questions concerning the religious and ethnic composition of army forces, the paramilitary units and the police – key institutions in the control of communal violence – by examining the significant under-representation of Muslims in the security forces.¹²⁸ According to Khalidi, this under-representation is to some extent a legacy of the colonial era, but also the consequence of Partition¹²⁹ which inspired a general distrust among Indian elites of Muslims in security forces. Muslim representation in the colonial Indian army was not insignificant, but within some Indian states, such as Kashmir, there was institutionalised discrimination against the community.¹³⁰ Khalidi notes continuities in these practices in the post-Independence period: 'martial races' (Sikhs and Gurkhas) are still over-represented while merit-based recruitment has done little to improve the presence of Muslims in the Indian army. Anti-Muslim bias, according to Khalidi, is also found in the inculcation of 'national values' in army training or professional military education,

¹²⁴ Abdul Shaban, ed., *Lives of Muslims in India: Exclusion and Violence* (London: Routledge, 2012).

¹²⁵ Abdul Shaban, 'Introduction', in Abdul Shaban, ed., *Lives of Muslims in India*, 15.

¹²⁶ See Ranu Jain, 'Policies for Muslims in India: Locating Multiculturalism and Social Exclusion in the Liberal Democratic Framework', in Abdul Shaban, ed., *Lives of Muslims in India: Exclusion and Violence*, 66-87.

¹²⁷ Omar Khalidi, *Khaki and the Ethnic Violence in India: Army, Police and Paramilitary Forces during Communal Riots* (New Delhi: Three Essays Press, 2010).

¹²⁸ *Ibid.*, 2.

¹²⁹ *Ibid.*, 11.

¹³⁰ *Ibid.*, 17-8.

the selection of non-Muslims in promotion, and the role of the army during outbreaks of communal conflict.¹³¹ As recently as 2001, for example, the Army issued an advert specifying ‘no vacancy for Muslims and tradesmen.’¹³² Overall, Muslims remain heavily under-represented in all sectors of the security services in India and it leads Khalidi to conclude that if the country values legitimacy in the exercise of order, especially over minorities, there is a need for better representation of ethnic and religious minorities in these services.¹³³

Similarly, Khalidi’s *Muslims in Indian Economy*¹³⁴ provides a general overview of the community at the national and state levels, and the historical changes in livelihoods since the colonial period. Based on detailed case studies – Delhi, Uttar Pradesh, Bihar, Deccan, Andhra Pradesh, Karnataka, and Maharashtra – Khalidi demonstrates the different trajectories of regional development of Muslims in post-Independence India. The most dramatic transformation, according to Khalidi, has been in education and employment. Before Independence, Muslims, especially in Bombay, Hyderabad and Mysore states, Delhi, Bihar, and the central provinces, had embraced modern education, and also exceeded their proportion in government posts (30-36 per cent Muslims in the army compared to a national population share of 23 per cent).¹³⁵ However, Partition and the elimination of reservation in government jobs and separate electorates led to a secular decline in these trends, while reservation for SCs and STs enabled these groups to create a powerful middle class to represent their interests.¹³⁶ Khalidi explains the absence of Muslim civil servants in government in terms of ‘migration to Pakistan, discrimination and educational lag’¹³⁷ but also draws attention to Muslim politicians who are allocated to less significant and less powerful portfolios, and thus ‘unable to patronise the community’s poor members in the manner done by others.’¹³⁸ The poor utilisation of the community’s own assets (e.g. Wakf boards), the misuse of the Evacuees Property Act, the Enemy Property Act, that handicapped Muslim businessmen from selling their properties, and most importantly, government discrimination against Muslims, asserts Khalidi, have resulted in an economically

¹³¹ Ibid., 55-83.

¹³² Ibid., 18.

¹³³ Ibid., 84.

¹³⁴ Omar Khalidi, *Muslims in Indian Economy* (Gurgaon: Three Essays Press, 2006).

¹³⁵ Ibid., 224.

¹³⁶ Ibid., 226.

¹³⁷ Ibid., 47.

¹³⁸ Ibid., 49.

insecure community.¹³⁹ These findings together with the lack of a decisive policy intervention on behalf of the government lead Khalidi to conclude that ‘the pattern of economic stratification among Muslims – a community of miniscule numbers in trade, slightly larger numbers in military and bureaucracy, larger numbers of artisans, and the largest number as landless peasants – continue into our own times.’¹⁴⁰

Khaki and the Ethnic Violence in India: Army, Police and Paramilitary Forces during Communal Riots and *Muslims in Indian Economy* fill an important gap in Muslim community studies. Both draw attention to the claims for the substantive equality of opportunity for Muslims. Both also illustrate that despite the different trajectories of Muslim development in some of the regions, the absence of a clear policy targeted at the community has resulted in its present under-development.

A more nuanced approach to Muslims and development is offered by Fazal whose work provides sophisticated insights into the construction of Muslim political identity in colonial and post-colonial India as well as state responses to Muslim demands for reservations.¹⁴¹ Fazal argues for the need to deconstruct the Muslim demand for reservations for the whole community, a demand that is opposed by ‘Muslim backwards who resist any attempt at the “bundling of unequals” together’.¹⁴² Although the Constitution allows the state to make reservations for Socially and Educationally Backward Classes (SEBCs), or OBCs, the uncertainty of these categories, and their close identification with caste, most notably at the national level after 1950, maintains Fazal, has led to a large variation in state practices, particularly in the south.¹⁴³ The OBCs category among Muslims, insists Fazal, has overlapping similarities with socio-economically disadvantaged castes among Hindus, particularly among the *Ajlafs* and *Arzals* who share common occupations and often are Muslims by conversion.

¹³⁹ Ibid., 51-53, 68-69, 91, 107, 132, 188-9.

¹⁴⁰ Ibid., 223.

¹⁴¹ See Tanweer Fazal’s, ‘Between Identity and Equity: An Agenda for Affirmative Action for Muslims’, in Gurpreet Mahajan and Surinder S. Jodhka, eds., *Religion, Communities and Development: Changing Contours of Politics and Policy in India* (London: Routledge, 2010), 228-47; ‘Between “Minorityism” and Minority Rights: Interrogating Post-Sachar Strategies of Intervention’, *History and Sociology of South Asia* 4:2 (July 2010), 145-51; and *Nation-state Minority Rights in India: Comparative Perspectives on Muslim and Sikh Identities* (London: Routledge, 2014). For reasons of space we focus on the first article.

¹⁴² Fazal, ‘Between Identity and Equality’, 229.

¹⁴³ Ibid., 230-5.

In the absence of a constitutional consensus on OBCs, historically states in the south (Kerala, Tamil Nadu and Karnataka) soon established their own category of OBCs while those in the north (such as Bihar, Uttar Pradesh, Rajasthan, Madhya Pradesh, and Jharkhand, West Bengal and Assam) resisted the OBCs status for Muslims until relatively recently.¹⁴⁴ By examining the historical context in which states have been able to provide ‘protective discrimination’ for Muslims, Fazal offers three contrasting examples: ‘reservation for all Muslims’ (except the ‘creamy layer’) as witnessed in Kerala and Karnataka; reservations for Muslims as backward classes as in Tamil Nadu; and the Bihar model which bifurcates OBCs further into Most Backward Classes. While Kerala and Karnataka as examples have been favoured by Muslim leaders, Fazal supports the other two models for they ‘stand the scrutiny of logical consistency and the principles of social justice’.¹⁴⁵

Fazal’s argument is refreshingly non-polemical, emphasising the possibilities of change within the existing constitutional framework. The Tamil Nadu and Bihar models which Fazal favours remain firmly within ‘the ambit of a caste-based reservation policy for the backward classes’.¹⁴⁶ However, as he also acknowledges, in the debate between identity and equity the case for ‘protective policies’ for poor Muslims has to contend with the opposition of the Hindu Right and there is no logical reason why in a caste-based reservation system ‘Arzals or Muslims of Dalit origins’ should be excluded from ‘entitlements earmarked for the scheduled castes’.¹⁴⁷ As we shall see, these are not easy hurdles to overcome.

The plea for a more grounded approach to the Muslim question is further explored by Alam¹⁴⁸ who interrogates the case of reservations for, and the idea of, Muslims as a marginalised community by calling for a more ‘careful understanding’ to ‘develop effective affirmative action policies’.¹⁴⁹ For Alam the argument for reservations for the whole Muslim community, which is favoured by its leadership, is predicated on backwardness, discrimination and social exclusion. However, this rhetoric

¹⁴⁴ For recent development in West Bengal, inclusion of Muslims in state’s OBCs category and provision of quota in government jobs, see Ch. 5.

¹⁴⁵ Fazal, ‘Between Identity and Equality’, 244.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid., 245.

¹⁴⁸ Sanjeer Alam, ‘Social Exclusion of Muslims in India and Deficient Debates about Affirmative Action: Suggestions for a New Approach’, *South Asia Research* 30:1 (2010), 43-65.

¹⁴⁹ Ibid., 43.

overlooks the fact that other religious communities also have significant backward sections, that reservations for all would not benefit the poor Muslims, are against the secular constitution and might intensify communal discord. According to Alam:

...the various strands of debates on socio-economic disadvantages of Muslims and affirmative actions for them largely rest on simplification of the problem and are guided by rhetoric rather than engaging and exploring the idea of the multi-dimensional nature of socio-economic deprivation in the country.¹⁵⁰

A close examination of national family and health survey data leads Alam to assert that contrary to the assumption of the Muslim community as a whole facing social exclusion, the degree of disadvantage of Muslims *vis-à-vis* other communities is somewhat limited. Rather, the deprivation of Muslim community is determined by its special distribution and 'trajectories of their history and the political economy.'¹⁵¹ Alam also maintains that there is no correlation between 'being Muslim' and their socio-economic backwardness, although discrimination against Muslims in some sectors undoubtedly exists. Muslim deprivation, insists Alam, has more to do with the geographical concentration of Muslims in states in the north and east, the least developed states in India.¹⁵² The most important factor that affects 'the national average of their socio-economic well-being', concludes Alam, is 'regionally biased demography of Muslim communities'.¹⁵³ As such, instead of blanket communal reservations a 'geographical approach' to affirmative action is required.¹⁵⁴

Alam's work is an important corrective to community studies that emphasises victimhood and discrimination. He, moreover, throws into sharp relief the multi-dimensional nature of Muslim deprivation that requires specific, targeted programmes within the framework of affirmative action, not reservations. However, his analysis also draws attention to the innate resistance within the Indian political system to policies – reservations or affirmative actions – aimed at Muslims.¹⁵⁵ It is these biases and

¹⁵⁰ Ibid., 53.

¹⁵¹ Ibid., 57.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid., 58.

¹⁵⁵ Ibid., 52.

institutional resistance to change in the policy process that we shall examine in detail in subsequent chapters.

In contrast, Hasan Suroor's *India's Muslim Spring: Why is Nobody Talking about it?*¹⁵⁶ is a more optimistic re-evaluation of the 'Muslim Question' which, according to the author, has been too narrowly focused on the community's failings. Instead, he turns his gaze on the emergence of new perspectives and strategies within the community. Suroor explores these new voices among India's Muslims by drawing on interviews with young professional and educated groups on what it means to be a Muslim in India today, and how they see their future. The author argues convincingly that a quiet but historic shift is taking place among Muslims, driven by a new generation.¹⁵⁷ Although discrimination is still pervasive, the young generation, Suroor contends, has a more 'grown-up approach' to today's India.¹⁵⁸

Suroor insists that the Muslim community in India is in transition from 'accommodation' and 'compromise'. This 'new mood of pragmatism'¹⁵⁹ was reflected in the 2013 municipal elections in Gujarat in which Muslims voted in large numbers for the BJP, contributing to the party's success in key Muslim-majority towns. Such a dramatic turnaround since the 2002 riots, according to Suroor, is the result of an increasing shift from the traditional preoccupation with identity issues to education, jobs and security. For the first time in post-Independence India, he argues, 'the balance of power is rapidly shifting from fundamentalists to the moderates'.¹⁶⁰ This change has been possible because for the younger generations 'partition has no resonance' and they have no special affinity with Pakistan, enabling them to be less conflicted about their identity.¹⁶¹ The real challenge before Indian politics, insists Suroor, is how political parties will respond to the changed terms of the 'Muslim Question'.

Suroor's understanding of the new mood of changes among younger Muslim generations is a valuable contribution to community studies. However, the evidence on

¹⁵⁶ Hasan Suroor, *India's Muslim Spring: Why is Nobody Talking about it?* (New Delhi: Rupa Publications, 2014).

¹⁵⁷ *Ibid.*, xiii.

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*, 29.

¹⁶⁰ *Ibid.*, 26.

¹⁶¹ *Ibid.*, 51.

which the author constructs his argument is too light to carry the weight he places upon it. The differences between the older and younger generations, for instance, are posited in binary terms as a clash between ‘fundamentalist’ and ‘liberals’.¹⁶² Most of the interviewees were well-educated young, professional Muslims – businessmen, bankers, and journalists – who represent only a small section of the community. One of the interviewees claims that ‘India is the safest and best place for Muslims to live’¹⁶³ but this statement overlooks the systemic impact of communal violence, not to mention more recent outbreaks in Muzaffarnagar. In brief, as the title suggests, Suroor’s volume captures the new mood within the community, but as the voting pattern of the community in the Sixteenth Lok Sabha elections has demonstrated, younger – and indeed, older Muslims – have yet to demonstrate large scale endorsement of the BJP’s vision of India.¹⁶⁴

Community studies cover an ever expanding field of study – declining political representation;¹⁶⁵ anthropological exploration of Islam among different sectarian traditions;¹⁶⁶ Muslims in Indian cities;¹⁶⁷ communal conflict;¹⁶⁸ social inclusion¹⁶⁹ and changes in India’s Muslim youth¹⁷⁰ – but their main shortcoming for our perspective is the over-emphasis on community particularism or ethnographic analysis. In short, methodologically they provide weak foundations for policy analysis.

Public policy studies

Public policy approaches to the UPA’s policies on religious minorities have almost, invariably, focused on a critical evaluation of policy implementation.¹⁷¹ As the range of

¹⁶² Ibid., xii, 19.

¹⁶³ Ibid., 34.

¹⁶⁴ Sandeep Shastri, ‘2014 Lok Sabha Elections: Leadership as a Factor in Voter Choice’, oral presentation, ‘Roundtable Discussion on the Indian General Elections and After’, School of Oriental and African Studies, University of London, 10 June 2014. Only 8 per cent of Muslims voted for the BJP.

¹⁶⁵ Iqbal A. Ansari, *Political Representation of Muslims in India: 1952-2004* (New Delhi: Manak Publications, 2006).

¹⁶⁶ Vinod K. Jairath, ed., *Frontiers of Embedded Muslim Communities in India* (New Delhi: Routledge, 2011).

¹⁶⁷ Gayer and Jaffrelot, *Muslims in Indian Cities*.

¹⁶⁸ Abdul Shaban, ed., *Lives of Muslims in India*; Dipankar Gupta, *Justice before Reconciliation: Negotiating a ‘New Normal’ in Post-riot Mumbai and Ahmedabad* (New Delhi: Routledge, 2011).

¹⁶⁹ Alam, ‘Social Exclusion of Muslims in India and Deficient Debates about Affirmative Action’.

¹⁷⁰ Suroor, *India’s Muslim Spring*.

¹⁷¹ See M. A. Kalam, ‘Conditioned Lives?’, *EPW* 42:10 (10 March 2007), 843-45; ‘Pretence of Follow-up Action’, *EPW* 42:39 (29 September 2007), 3895-96; S. Mahendra Dev, ‘Policies and Programmes for Employment’, *EPW* 41:16 (22-28 April 2006), 1511-6.

these outputs is too diverse to cover adequately, we will review four examples:¹⁷² Shariff's *Inclusive Development Paradigm in India: A Post-Sachar Perspective*,¹⁷³ the Centre for Equity Studies' *Promises to Keep: Investigating Government's Response to Sachar Committee Recommendations*,¹⁷⁴ the Centre for Budget and Accountability's *Policy Priorities for Development of Muslims in the 11th Plan: An Assessment*,¹⁷⁵ and the Council for Social Development's *India Social Development Report 2012: Minorities at the Margins* edited by Zoya Hasan and Mushirul Hasan.¹⁷⁶

Inclusive Development Paradigm in India aims to take 'a stock of public policy initiatives and performance of the national government'¹⁷⁷ since the SCR. In the absence of a credible and methodologically sound official study, it aims to 'fill this gap' by comparing SCR's recommendations with the achievements. Although the report borrows from other studies, especially the Centre for Equity Studies (see below), it concentrates on the performance of Muslims in education and publicly funded anti-poverty programmes. Drawing on the National Sample Survey Results for 2004-5 and 2009-10, the report argues that improvement in educational performance among Muslim pupils up to grade 10 in these years was 'lower than improvements amongst the SCs and STs',¹⁷⁸ despite Muslims having a higher rate of urbanisation. Equally disappointing, according to the author, was Muslim participation in the anti-poverty programmes. One major national survey in 2009-10 indicated that in the flagship programme, the National Rural Employment Guarantee Act (NREGA), Muslims were 'hardly present', with only '3 per cent of all job card holders'. Their actual participation should have been in the range of 15-16 per cent.¹⁷⁹ The root cause of these poor outcomes, the report concludes,

¹⁷² The Centre for Equity Studies' *India Exclusion Report 2013-14* (see <http://centreforequitystudies.org/introducing-ixr-2013-14>) is the most recent work examining the 'faulty design of law and policy, institutional bias in the implementation of law and policy, active violence and discrimination by the state, and low and faulty budgetary allocations'. This report does not focus exclusively on the UPA's policies, but covers a longer time period in reviewing the state's duties and responsibilities towards excluded groups. As such this report is excluded from the literature review.

¹⁷³ Abusaleh Shariff, *Inclusive Development Paradigm in India: A Post-Sachar Perspective* (New Delhi: US-India Policy Institute, 2012).

¹⁷⁴ Centre for Equity Studies, *Promises to Keep: Investigating Government Responses to Sachar Committee Recommendations* (New Delhi, 2012).

¹⁷⁵ Jawed Alam Khan, *Policy Priorities for Development of Muslims in the 11th Plan: An Assessment* (New Delhi: Centre for Budget and Governance Accountability, 2012).

¹⁷⁶ Council for Social Development, Zoya Hasan and Mushirul Hasan, eds., *India Social Development Report 2012: Minorities at the Margins* (New Delhi: Oxford University Press, 2013).

¹⁷⁷ Shariff, *Inclusive Development Paradigm in India*, 3.

¹⁷⁸ *Ibid.*, 17.

¹⁷⁹ *Ibid.*, 22.

is ineffective policy formation, inherent religious bias in the state institutions and the failure to fully implement the SCR's recommendations.¹⁸⁰

A more detailed and systematic evaluation on the implementation of the SCR's recommendations was undertaken by the Centre for Equity Studies. *Promises to Keep*, a series of case studies of programme implementation in three Muslim majority districts in Bihar, West Bengal and Haryana, reveals obvious, and not so apparent, shortcomings: poor implementation, institutional bias, poor design and execution, low and ineffective budgetary allocation, weak Muslim civil society engagement, and chaotic and overlapping structures without effective ownership or monitoring of flagship programmes. The report provides a damning indictment:

a) the scale of government interventions is too small to make a major dent into the large numbers and the depth of their economic and educational deprivations, and denials of public services; b) the design of programmes are 'blunt' because they do not often target effectively Muslim settlements and people directly; and c) institutional structures designed to implement these initiatives – right from the Union Ministry of Minority Affairs to implementing officials in districts and below – require strengthening, of personnel, mandate, orientation, training, support and supervision. They also need to plan and monitor programmes for development of Muslims in more participatory ways, consulting with and planning with women, youth and men from poor Muslim communities.¹⁸¹

Despite this negative assessment, *Promises to Keep* recognises that the above initiatives need to be improved and deepened, rather than replaced by new policies that may, or may not, deliver on the ground.

The Centre for Budget and Governance Accountability also drew similar conclusions. By examining the resources made available to minorities during the Eleventh Five-Year Plan, it questioned the 'adequacy of the government's policy initiatives and budgetary provisions for the minority community, more specifically the Muslims'.¹⁸² *Policy Priorities for Development of Muslims in the 11th Plan* reveals major failings in policy design, programme implementation and actual access to programmes directed at Muslims. The MSDP, despite being a flagship measure, for example, was regarded as a 'gap-filling programme': it lacked a 'proper institutional

¹⁸⁰ Ibid., 25-6.

¹⁸¹ Centre for Equity Studies, *Promises to Keep*, viii.

¹⁸² Khan, *Policy Priorities for Development of Muslims in the 11th Plan*, 4.

mechanisms in terms of clarity of planning, implementation channels and coordination among various agencies involved in many States and districts'.¹⁸³ During the Eleventh Plan only 6.66 per cent of the total plan allocation was earmarked for minorities;¹⁸⁴ and the fund allocation for scholarship scheme was 'woefully inadequate'.¹⁸⁵ If Muslims were to be brought up to 'par with other communities in terms of socio-economic development', the report concluded, the Twelfth Five-Year Plan should address these shortcomings to ensure effective implementation.¹⁸⁶

India Social Development Report 2012: Minorities at the Margins by Zoya Hasan and Mushirul Hasan is the most recent account of policy analysis on the socio-economic conditions of minorities. In a bid to explore the impact of policy intervention on social development the report covers both theoretical and empirical studies of policies for minorities. Beginning with the clarification on the concept of 'social development' which is defined as a function of economic growth, social policy, and poverty reduction measures,¹⁸⁷ contributors to this report conduct theoretical as well as empirical policy analysis in a wide range of fields – poverty reduction, health, employment, gender, food security, social security, and education. Particularly noteworthy are detailed case studies of the UPA's policies at the state level on education, madrasas and development programmes. While the report's assessment of the post-Sachar evaluation of policies acknowledges the discriminatory practice of state officials in policy implementation at the state level,¹⁸⁸ it fails to develop a more nuanced and fine-grained understanding of the institutional resistance in the UPA's policy process which has produced these outcomes.

Inclusive Development Paradigm in India, Promises to Keep, Policy Priorities for Development of Muslims in the 11th Plan, and *India Social Development Report 2012* have all filled an important void. But there are major shortcomings with these reports. *Inclusive Development Paradigm in India* can be challenged for its presentation of data, its overtly polemical tone, and the failure to adequately grasp the geographical

¹⁸³ Ibid., 11.

¹⁸⁴ Ibid., 13.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid., 22.

¹⁸⁷ Council for Social Development, Zoya Hasan and Mushirul Hasan, eds., *India Social Development Report 2012*, 1.

¹⁸⁸ Ibid., xiv.

variations in the Muslim communities' experience throughout India, especially between the states in the north and the south. Similarly, *Promises to Keep* is open to the criticism of selection bias for its focus on the weakest examples, where cumulative failures of public policy are already present. While the *Policy Priorities for Development of Muslims in the 11th Plan* provides a critical assessment on the UPA's budget allocation for minorities, there is still much to be understood about the policy process. In a similar vein, *India Social Development Report 2012* overlooks the complex policy process that both shaped and determined the outcome of UPA policies on the minorities, especially Muslims. Thus, recognising these shortcomings is a necessary prerequisite for more comprehensive assessment of the UPA experience.

Conclusion

This chapter has provided an overview of the literature on the UPA, equal opportunities and Muslims. Although the coverage is extensive and complex, in key areas it is wholly inadequate. Thus, the conventional political science approaches emphasise instrumentalism, the electoral incentives for Indian governments to pursue particular policies in terms of payoffs. This perspective has been supplemented by political and social theory in the writings of Bajpai, Verma and Hasan working within the frameworks of social justice and social exclusion. The seminal works of these authors, in varying degrees, have drawn attention to the caste/religion distinction in both the framing of minority rights at Independence and its subsequent institutionalisation in the regime of caste-based reservations that created an unequal playing field between 'competing equalities'. The emerging field of Muslim community studies also offers new insights into the contemporary 'Muslim Question' in India, though it is dominated by ethnographic accounts that make generalisations either difficult or impractical. Nonetheless, authors like Fazal and Alam direct us toward a more fine-grained analysis of both state responses to Muslim demands and the specificities of Muslim deprivation which suggest that neither are state responses uniform and nor are India's Muslims a monolithic community as their leaders sometimes claim. Instead their fortunes have been very much shaped by regional histories and socio-economic conditions that continue to leave an enduring imprint on the community's political and social profile. Finally, the current 'grey' policy studies literature focuses primarily on evaluation –

what the target groups have not gained – but it too suffers from either extreme generality or excessive narrowness.

The literature review demonstrates that there are major shortcomings in understanding of the policy process in UPA policies towards religious minorities. Foremost among these is the need to explain how public policy was formulated, the actors and institutions that influenced the selection of policies, and how policies were implemented, or remained unimplemented. Central to this policy process, as we outlined in the Introduction, is the pervasive institutional resistance that ultimately frustrated UPA policies. It is to an understanding of the policy process in India, and the role of history and institutions in shaping policies on religious minorities, that we turn in the next chapter.

Chapter Two

Towards an institutional policy analysis: analytical approach and methodology

Introduction

As noted in the previous chapter there is a major lacuna in the study of public policy on religious minorities in India. The existing literature, as we have seen, is biased towards either macro or micro explanations that fail to illuminate the ‘black box of public policy’. In order to bridge this gap, and to further advance the understanding of the subject, this chapter outlines the elements of an institutional policy analysis approach by drawing on studies of public policy and institutionalism with special reference to historical institutionalism and path dependence. The first section provides a definition of the discipline of public policy and the stages of the policy process – how it is conceptualised. We then identify the key policy actors and institutions around which our study is located within the Indian political system at the national and states levels. Following this delineation, we then situate our approach to public policy within the framework of historical institutionalism and path dependence in particular, outlining the rationale for this framework. We then, briefly, review some of the publications in the study of public policy in India that address these concerns. Finally, the chapter outlines the research questions which underpinned the study and the methodologies used to collect and analyse the data.

Policy studies

The discipline of policy studies emerged after 1945 with a ‘multi-disciplinary’, ‘problem-solving’ and ‘explicitly normative’ approach in areas traditionally neglected by political science.¹⁸⁹ The father of policy science, Harold Lasswell, hoped that it would adhere ‘strictly to the canon of relevance, orientating itself towards the solution of real-world problems and not engaging in purely academic debates that, for example,

¹⁸⁹ Michael Howlett and M. Ramesh, *Studying Public Policy: Policy Cycles and Policy Subsystems* (Oxford: Oxford University Press, 2003), 3.

characterised interpretation of classical and sometimes obscure political texts'.¹⁹⁰ While some of the key elements of this definition have changed, it remains the starting point for the subject. Perhaps the most concise definition is offered by Dye, for whom public policy is 'whatever governments choose to do or not to do'.¹⁹¹ This definition recognises that the principal 'agent of public policy-making is a government'.¹⁹² It also draws attention to the fact that governments need to act, or maintain, the *status quo* and take negative or 'non-decisions'.¹⁹³ Indeed, decision-making, or non-decisions, involves a range of actors and institutions that need to be engaged at various levels of the political system. In this respect the policy process is a 'relatively stable, purposive course of action followed by government in dealing with some problem or matter of concern'.¹⁹⁴ Clearly, public policy-making thus involves many governmental and societal actors and institutions but this descriptive approach fails to account for why governments take particular decisions.

But before we outline our methodological approach to public policy analysis, it is useful to draw attention to two other dimensions: the 'policy process' and the 'policy sector'.¹⁹⁵

The policy process

As we have seen in the literature review, the UPA policies on Muslims correspond to what analysts have termed the 'policy process'; that is, the various stages from which the policy evolves from inception to execution. In this literature there is an implicit

¹⁹⁰ Ibid.

¹⁹¹ Thomas R. Dye, *Understanding Public Policy* (New Jersey: Pearson Prentice Hall, 2008), 1.

¹⁹² Howlett and Ramesh, *Studying Public Policy*, 5.

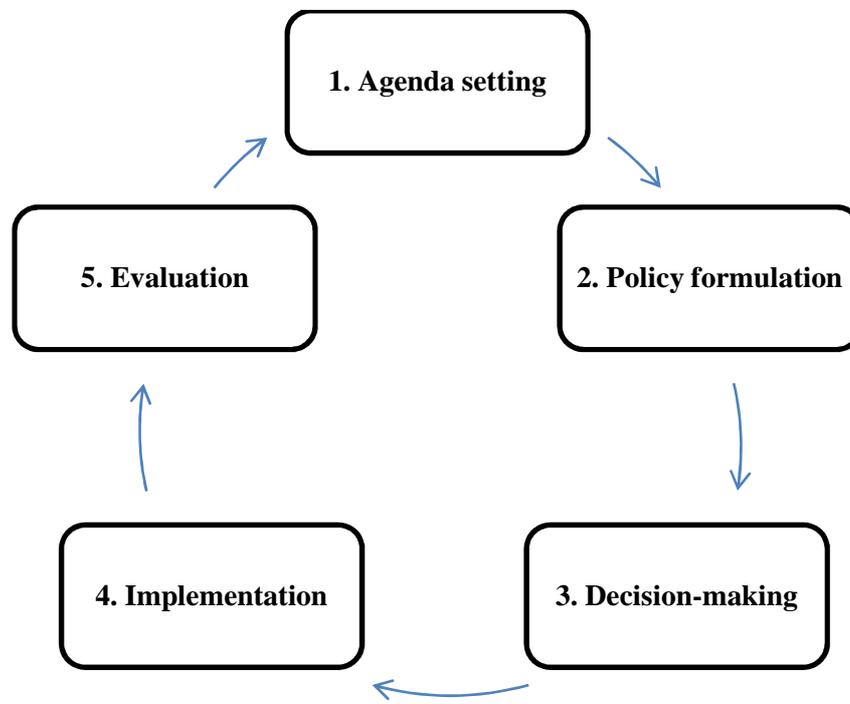
¹⁹³ Ibid.

¹⁹⁴ James E. Anderson, *Public Policy-Making: An Introduction* (Boston: Houghton Mifflin, 2006), 7.

¹⁹⁵ Owing to the limitations of space, it is not possible to discuss policy sectors in detail, suffice to say we focus on the Indian state's policies on minorities and the policy process around it. Benson defines a policy sector as 'an arena in which public policies are decided and implemented. Such arenas are conventionally bounded by substantive policy names – health care, welfare, manpower, natural resources and so on. These units are commonly held typifications that are part of the stock of knowledge held by politicians, bureaucrats, lobbyists, and others', J. Kenneth Benson, 'A Framework for Policy Analysis', in David L. Rogers and David A. Whetten, eds., *Interorganisational Coordination: Theory, Research and Implementation* (Ames: Iowa State University Press 1982), 147. At surface level, policy sectors are composed of administrative arrangements (division of labour), policy paradigms, and interorganisational dependencies while interest-power structures and rules of structure formation exist in deeper level, *ibid*, 149. In this research, our focus instead is on the institutions and structures (see Figure 2.2) within which policy actors operate.

understanding of a ‘policy cycle’ or ‘process’ that unfolds in a set of sequential stages. Figure 2.1 below outlines the core stages of this process.

Figure 2.1
Stages of the policy process



Source: Howlett and Ramesh, *Studying Public Policy*, Chs. 5-9.

The initial stage is identified as ‘agenda-setting’ when a policy issue or a problem is recognised by the government. Agenda-setting for public policy, of course, is highly contentious, driven by, among other things, the politics of pre-election manifestos, the nature of the regime, historical institutional legacies, economic management, ideological differences, and patterns of social mobilisation.¹⁹⁶ Hence, prior to the 2004 elections, the 2002 Gujarat pogroms against Muslims were to have a profound impact on UPA’s policy-making.

Agenda-setting is followed by ‘policy formulation’, a stage in which policy options are produced within government and ‘involves assessing possible solutions to policy problems or...exploring the various options available for addressing a policy problem’.¹⁹⁷ Inevitably the choice of policies determines their outcome. These can be

¹⁹⁶ Howlett and Ramesh, *Studying Public Policy*, 120-41.

¹⁹⁷ *Ibid.*, 143.

heavily influenced by substantive constraints (specific to the problem itself) or procedural constraints (institutional, constitutional, budgetary and organisational). Crucial to policy formation is the role of the state and policy-making actors. Subsystems – ‘federal units’, ‘policy networks’, ‘iron-triangles’ and ‘advocacy coalitions’¹⁹⁸ – are also critical variables in this process. In a developing society such as India, however, although these elements exist, and are increasingly important, the state continues to be the main actor. Well-established mechanisms of ‘top-down’ expert commissions, as we shall see in Chapter Four, were the core of policy formulation. Muslim policy networks as an advocacy coalition became more fully engaged after the agenda-setting stage. Significantly, *how* the policies were formulated would eventually influence their outcome.

Closely associated with policy formulation is ‘decision-making’.¹⁹⁹ This involves ‘authoritative’ and ‘non-authoritative’ actors operating within the framework of governance in a political system. Typically, ‘only those politicians, judges, and government officials actually empowered to make authoritative decisions in the area in question can participate with both “voice” and “vote” at this stage of the policy cycle’.²⁰⁰ Decisions can be ‘negative’ (opposed to the policy), ‘positive’ (supportive of the policy), or ‘non-decisions’ (deliberate inaction).²⁰¹ Whereas negative decisions move through agenda-setting, policy formulation and to decision-making, and terminate at that stage, non-decisions can filter out policy options throughout the policy cycle – agenda-setting, policy formulation, decision-making and implementation. Students of power have drawn our attention to the importance of non-decisions both as indicators of non-action but also, importantly, as examples of agenda-setting power.²⁰² Non-decisions can be pervasive in different models of decision-making (‘rationalist’, ‘incrementalist’ and ‘the garbage can’ model)²⁰³ and different styles but, nonetheless, are determined by the constraints under which key policy actors operate. As Forester argues, public policy operates under a range of institutional (subsystems) and constitutional constraints. What politicians and administrators do:

¹⁹⁸ Ibid., Ch. 6.

¹⁹⁹ Ibid., 165-83.

²⁰⁰ Ibid., 163.

²⁰¹ Ibid., 165.

²⁰² See, Steven Lukes, *Power: A Radical View* (Basingstoke: Palgrave Macmillan, 2005), 39.

²⁰³ Howlett and Ramesh, *Studying Public Policy*, 166-77.

depends on the situations in which they work. Pressed for quick recommendations, they cannot begin long studies. Faced with organisational rivalries, competition and turf struggles, they may justifiably be less than wholly candid about their own plans. What is sensible to do depends on the context one is in, in ordinary life no less than public administration.²⁰⁴

The literature review drew attention to the decision-making process in UPA policies on Muslims. Critical to understanding these decisions as ‘positive’, ‘negative’, and ‘non-decisions’, are the institutional parameters outlined above, and the political constraints of operating within a coalition government. Coalition politics, especially the need for support of national and regional parties, notably caste-based parties like the Bahujan Samaj Party (BSP), the Samajwadi Party (SP), and class-based parties, the Communist Party of India (CPI) and the Communist Party of India (Marxist) (CPI (M)), as we shall see, influenced the decision-making process. And equally significant, if not more important, class, caste and regional groupings within Congress were influential in determining ‘what’ decisions were taken. When policies were targeted specifically at Muslim OBCs and SCs, the decision-making processes in such policies included potential national and state level trade-offs.²⁰⁵

The penultimate stage in the ‘policy’ cycle is ‘implementation’ when decisions are translated into action.²⁰⁶ Here the emphasis is on the effectiveness of implementation, the methods used and the policy instruments drawn upon. Implementation is contingent on administrative structures or, sometimes, quasi-government organisations, and can be ‘top-down’ or ‘bottom-up’. Whatever the approach used, it faces the principal-agent problem; that is, the discretion given to ‘agents’ by decision-makers whom they indirectly control. The relationship is normally defined legally. However, as Howlett and Ramesh observe, ‘the administrators have their own understanding, ambitions, and fiscal and knowledge resources that may come in the way of policies being implemented as originally conceived by decision-makers’.²⁰⁷ And ‘agent’ autonomy might be increased if, as in the case of service delivery of the UPA’s policies, complex inter-organisational coordination is required, or

²⁰⁴ John Forester, ‘Bounded Rationality and the Politics of Muddling Through’, *Public Administration Review* 44:1 (January/February 1984), 23.

²⁰⁵ This was clearly the case in UPA (I) and (II) decision-making when the BSP and SP lent support to the government. See Ch. 5.

²⁰⁶ Howlett and Ramesh, *Studying Public Policy*, 185-204.

²⁰⁷ *Ibid.*, 191.

if the problem needs innovative solutions, or even more so, if the target group is diverse and complex. As a consequence, a great deal of discretion can be placed in the hands of civil servants. In a federal system like India, where the execution of policy takes place mostly at the state level, with political formations opposed to those at the centre, political and administrative discretion between the ‘principal’ and the ‘agents’ can be very wide. It is precisely because of this discretion that the appropriate ‘policy instruments’ (the tools government uses to put policy into effect) need to be employed. These instruments can be substantive (where there is state involvement in the production of goods and service delivery) or procedural/regulatory (where there is an effort to manipulate subsystem behaviour). In reality, most public policy problems utilise a combination of these approaches.²⁰⁸ As Howlett and Ramesh conclude, ‘the choice of policy instruments is shaped by the characteristics of the instruments, the nature of the problem at hand, governments’ past experience in dealing with the same or similar problems, the subjective preference of the decision-makers, and the likely reaction to the choice by affected social groups’.²⁰⁹

The literature review highlighted the problems of ‘implementation’. As Sáez and Singh observe, the gap ‘between policy and implementation, between passing legislation nationally and seeing it executed at the local level, is a little understood black box in Indian public policy’.²¹⁰ However, in some areas of social policy, especially *vis-à-vis* SCs and STs, policy instruments have had a higher degree of effectiveness than policies directed towards religious minorities.²¹¹ Surprisingly, the UPA was reluctant to draw on the rich ‘tool-box’ of public policy instruments used for disadvantaged castes, and in contrast, its policies on Muslims tended to be highly ‘top-down’, ‘overlapping’, ‘confusing’, ‘poorly funded’, and with a great deal of ‘agent discretion’; that is, leeway to local officials to interpret policy implementation according their priorities. Lacking adequate feedback and monitoring mechanisms, moreover, these policies and initiatives had limited accountability both to the target groups (members of the poor Muslim community) and within the administrative structure themselves. The emphasis on

²⁰⁸ Ibid., 201-2.

²⁰⁹ Ibid., 201.

²¹⁰ Lawrence Sáez and Gurharpal Singh, ‘Conclusion’, in Lawrence Sáez and Gurharpal Singh, eds., *New Dimensions of Politics in India: The United Progressive Alliance in Power* (London: Routledge, 2012), 149.

²¹¹ See Zoya Hasan, *Politics of Inclusion: Castes, Minorities, and Affirmative Action* (New Delhi: Oxford University Press, 2009), 41-74.

voluntarism and ‘general initiatives’ rather than targeted redistributionist policies, which are generally acknowledged to have much more impact in improving the ‘development deficit’, according to critics, compounded policy ineffectiveness.²¹² As *Promises to Keep* concludes, the poor operationalisation of development schemes has:

resulted in very dispiriting results on the ground. The picture, on the set up of these flagship interventions for Muslims, and especially on the institutional arrangements, is not pretty. There are serious structural and capacity issues that prevent implementing agencies from effectively delivering on programme and project objectives. *But a more serious concern is the lack of any real engagement with intended beneficiaries and civil society groups around planning, implementation and monitoring of the projects.*²¹³

Critics view these policies as essentially ‘tokenistic’, ‘symbolic’ measure designed to placate the Muslim vote. For others, for example the Muslim policy networks, these shortcomings can be overcome by borrowing from comparative public policy experience in different social sectors in India and the states.

The final stage of the policy process is ‘evaluation’, an assessment of how a policy has fared.²¹⁴ Often this is posed in terms of ‘success’ or ‘failure’ but such evaluations are not readily possible. Modes of evaluation can be administrative, to check for ‘value of money’, technical monitoring of processes, and efficiency-centred. Judicial evaluation often arises as a result of review by courts. In India, for instance, in the last decade the rise of Public Interest Litigation has led to the reassessment of a number of flagship anti-poverty programme.²¹⁵ Policy evaluation, therefore, is a ‘struggle over scarce resources or ideologies’ as much as a ‘part of a process of learning in which policies develop and change on the basis of assessments of past successes and failures and conscious efforts to emulate successes and avoid failures’.²¹⁶

As we shall see in subsequent chapters, one of the striking features of UPA policies on Muslims in the area of employment and service delivery was the absence of

²¹² Centre for Equity Studies, *Promises to Keep: Investigating Government Responses to Sachar Committee Recommendations* (New Delhi, 2012), 39-50.

²¹³ *Ibid.*, 50. Emphasis added.

²¹⁴ Howlett and Ramesh, *Studying Public Policy*, 207-224.

²¹⁵ Given the limitation of space, and our focus on institutional resistance to UPA policies, this thesis does not undertake a systematic evaluation of these policies. Accordingly, the political dimensions of policy evaluation are not addressed.

²¹⁶ Howlett and Ramesh, *Studying Public Policy*, 224.

effective monitoring and evaluation. This shortcoming was apparent in the reluctance to develop effective monitoring mechanisms within the programmes themselves and the unwillingness to establish legislative scrutiny through Parliament. The MoMA, which had general oversight of these programmes, was found wanting in being able to undertake such regular evaluation and to provide feedback into the policy process. In short, effective evaluation of policies was sorely missing. Such was the criticism from NGOs and advocacy coalitions about these shortcomings that in February 2013 the Minister of Minority Affairs, K. Rahman Khan, was compelled to announce that UPA government would appoint a ‘high-power committee to review and assess the implementation of Justice Rajinder Sachar Committee’s recommendations and Prime Minister’s Fifteen-Point Programme’.²¹⁷

To sum up: the policy process, or cycle, is a useful heuristic device for understanding UPA policies on religious minorities and Muslims in particular because almost a decade after the process began, with the election of the first UPA government in 2004, the cycle reached its final stage. This stage is an appropriate point of departure to critically examine the policies that made the agenda, why and how they are formulated, the critical decision taken to implement and not implement some of the policies, and the process of implementation itself. As we have noted above, a comprehensive evaluation of these policies is outside the remit of this thesis which is focused primarily on understanding the institutional resistance to these initiatives. However, to demonstrate the coherence of the policy process in the field of employment and service delivery a limited assessment of evaluation is undertaken using available data. But before we proceed to examine these dimensions, it is necessary to outline the institutions and actors involved in this process, and our methodology for understanding the policy process.

Policy actors and institutions

The policy process outlined above operates within the context of key policy actors and institutions. Although there are major debates within public policy studies on whether

²¹⁷ ‘High-power Panel to Review Sachar Panel Report, Fifteen-Point Programme’, *The Hindu*, 18 February 2013 (electronic edition). The findings of the committee are reviewed in the Conclusion.

actors and institutions are independent variables, or mutually dependent on each other, here we want to outline the key actors and institutions within the Indian political system. Key actors operate within an institutional context in which there are ‘formal or informal rules, and conventions, as well as ethical, ideological, and epistemic concerns [that] help to shape actors’ behaviour by conditioning their perception of their interests and the probability of these interests being realised’.²¹⁸ The actors’ ‘assumptive worlds’, the ‘mental models’ that ‘provide both an interpretation of the environment and a prescription as to how that environment should be structured’,²¹⁹ are critical in shaping appropriate solutions and are influenced by the normative views about ‘the nature of society and the proper role of government’.²²⁰ If institutions are heavily biased towards a particular policy path, key actors are likely to adopt a conservative, gradual and instrumentalist approach, or seek to operate within the ‘rules of the game’.²²¹ As we shall see in subsequent chapters, UPA policy implementation, especially by the national and state administrations, was heavily compromised by the institutional actors’ beliefs about policies and attitudes towards Muslims.

Whilst this thesis adopts a historically informed institutionalist approach, for a detailed focus on institutional policy analysis during the UPA’s tenure the interaction between institutions and actors considered here are limited to the key political actors, pressure groups and ‘the constitutional arrangements within which governments operate, the rules of the game, and the bureaucratic machinery at their disposal’.²²² Thus, in India these key actors are the elected officials of the executive (government), the Opposition (legislature), appointed officials (bureaucrats), the judiciary, interested groups, NGOs, and the media. These actors operate, moreover, within an institutional context, or a subsystem that is vertically divided between the structure of governance at levels of the Union and the states. While the quality of governance and policy implementation – at the national and state level – varies enormously across the Indian

²¹⁸ Howlett and Ramesh, *Studying Public Policy*, 53.

²¹⁹ Arthur. T. Denzau and Douglass C. North, ‘Shared Mental Models: Ideologies and Institutions’, *Kyklos* 47:1 (February 1994), 4.

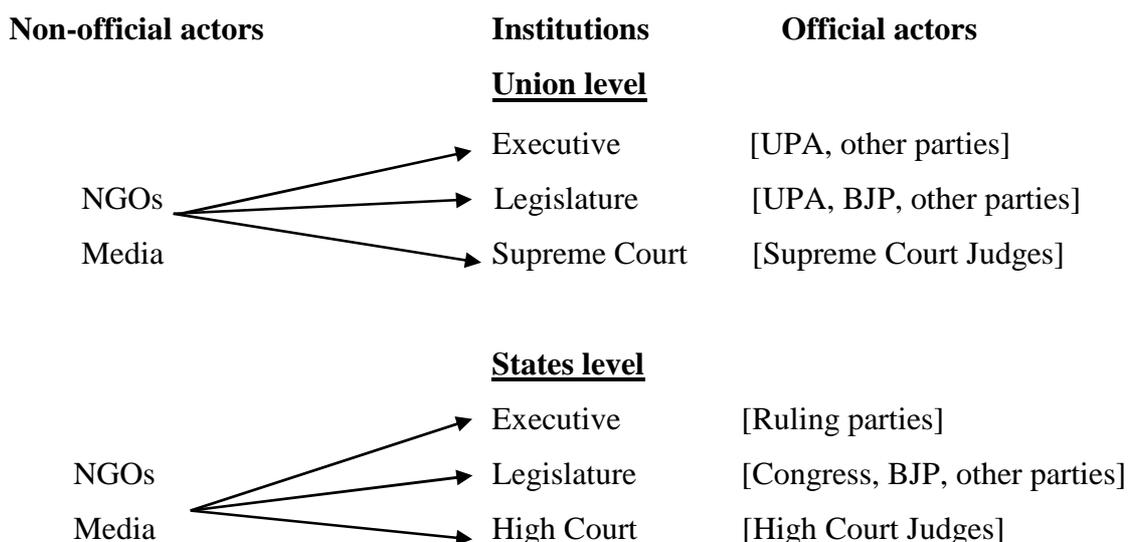
²²⁰ Rudolf Klein and Theodore R. Marmor, ‘Reflections on Policy Analysis: Putting it Together again’, in Michael Moran, Martin Rein and Robert E. Goodin, eds., *The Oxford Handbook of Public Policy* (Oxford: Oxford University Press, 2006), 893.

²²¹ *Ibid.*

²²² *Ibid.*

states,²²³ the national and state level institutions are remarkably uniform in their structure and operational practices. This uniformity, furthermore, is reinforced by the existence of all Indian services (such as the Indian Administrative Service (IAS), Indian Police Service (IPS), and Indian Foreign Service (IFS)) that provide the country with its ‘steel-frame’. Figure 2.2 below illustrates this policy context:

Figure 2.2
UPA and Muslims: actors and institutions



Source: produced by author.

The interaction between institutions and actors took place within the formal system of governance, but the media and some NGOs were to play a key role in shaping policy. Also important was the role of two other institutions. The judiciary, for instance, both at the national and regional levels, played a critical role because some of the policy initiatives of the UPA on religious minorities were challenged in the courts. Finally, the UPA as a coalition government had to engage in a ‘complex process of bargaining, negotiation, and political calculations’ before investing ‘administrative capacity and political capital’²²⁴ in some of the policies. This bargaining included important calculations at the national and state levels about the potential loss of support from other disadvantaged groups such as the SCs, STs and OBCs. The ever-present threat, and

²²³ See Atul Kohli, *The State and Poverty in India: Politics of Reform* (Cambridge: Cambridge University Press, 1987).

²²⁴ Klein and Marmor, ‘Reflections on Policy Analysis’, in Moran et al., *The Oxford Handbook of Public Policy*, 899.

capacity of the BJP, to mobilise against pro-Muslim policies, was to prove a powerful constraint on UPA's capacity for action.

Public policy: methodology

Thus far we have provided largely a descriptive account of the policy process but it is necessary to outline our analytical approach. Our concern is to develop a historical sense of how policy on religious minorities, especially Muslims, became institutionalised after 1947, and has proven difficult to change, and how it aligns with the formal policy process during the UPA administration. Consequently, our emphasis is on institutional policy analysis, in which 'institutions' are, in a narrow sense as defined above, structures around which actors (agents) act, but also the embodiments of historical institutionalism – a methodological orientation that privileges institutions over individuals in shaping behaviour and outcomes.

Approaches to public policy divide along familiar methodological lines:²²⁵ deductive (e.g. rational choice theories, class analysis and actor-centred neo-Institutionalism) that 'developed largely on the basis of the application of general presuppositions, concepts, or principles to specific phenomena',²²⁶ and inductive (e.g. sociological individualism, group theories and socio-historical neo-Institutionalism) that developed 'generalisations only on the basis of careful observation of empirical phenomena and subsequent testing of these generalisations against other cases'.²²⁷ In the review of literature we have highlighted the limitations of these methodological approaches, but given our focus on UPA's performance against historically embedded constraints framed during constitution-making, historical institutionalism provides an appropriate point of departure.

Peters has characterised the institutionalist approach as one in which:

Institutions are the variable that explain political life in the most direct and parsimonious manner, and they are also the factors that themselves require explanation. The basic argument is that institutions *do* matter, and

²²⁵ Howlett and Ramesh, *Studying Public Policy*, 20-48.

²²⁶ *Ibid.*, 20-1.

²²⁷ *Ibid.*, 21.

that they matter more than anything else that could be used to explain political decisions.²²⁸

By ‘institutions’, Peters refers to both structural features such as formal institutions, for example the bureaucracy, executive, legislature and legal framework, and informally shared norms that ensure stability over time.²²⁹ Krasner, on the other hand, offers a much broader definition. ‘An institutional perspective’, according to him, ‘regards enduring institutional structures as the building blocks of social and political life. The preferences, capabilities, and basic self-identities of individuals are conditioned by these institutional structures.’²³⁰ Despite these differences most institutionalists view institutions as an independent variable with public policy as the dependent variable. Or in other words, public policy and the policy process are determined by institutions rather than vice versa.²³¹ Although Peters acknowledges that some schools of institutionalism consider institutions as a dependent variable, or both dependent and independent variables, nonetheless most species of institutionalism ‘have at their centre a more or less clear conception of institutions acting rather autonomously in making policy’.²³² In this thesis we concur with Peters that institutions are an independent variable and the policy process a dependent variable. However, our understanding of institutionalism is historically located and tied to the policy process to develop a new framework of institutional policy analysis.

²²⁸ B. Guy Peters, *Institutional Theory in Political Science: The New Institutionalism* (London: Continuum, 2005), 164. Emphasis original.

²²⁹ *Ibid.*, 8.

²³⁰ Stephen D. Krasner, ‘Sovereignty: An Institutional Perspective’, *Comparative Political Studies* 21:1 (April 1988), 67.

²³¹ Institutionalism comes in many forms, but common to all its sub-schools is that it ‘purports to explain human behavior – be it of individuals, small groups, organisations, nation-states or international federations – in terms of institutions. Institutionalists believe that orderly behavior is extraordinary, because so many factors (biological and social) would seem to predict selfish behaviour that would result in chaos... This relationship can be *constraining* in nature, as an institution defines parameters of (in)action and labels alternative forms of behaviour as deviant. But an institution also has an *enabling* effect. It helps to make sense of a situation, providing guidance in deciding between various courses of action. An institution aligns task perceptions and partially determines the way in which employees use their discretion.’ Arjen Boin and Sanneke Kuipers, ‘Institutional Theory and the Public Policy Field: A Promising Perspective for Perennial Problems’, in John Pierre, B. Guy Peters and Gerry Stoker, eds., *Debating Institutionalism* (Manchester: Manchester University Press, 2013), 46-47. Emphasis original.

²³² B. Guy Peters, ‘Institutional Theory: Problems and Prospects’, in John Pierre, B. Guy Peters and Gerry Stoker, eds., *Debating Institutionalism* (Manchester: Manchester University Press, 2013), 16.

Historical institutionalism: path dependence

Historically, institutions can have an enduring impact on political behaviour. Recently, Acemoglu and Robinson's *Why Nations Fail*²³³ has provided a seminal account of how decisions taken over time by almost identical polities have led to very contrasting patterns of institutional evolution and path dependence; that is, the self-reinforcing reproduction of institutions and institutional behaviour. In seeking to address the question why nations fail, Acemoglu and Robinson claim it is the quality of the institutions which 'influence behaviour and incentives in real life'.²³⁴ Political institutions, according to the authors, 'are a key determinant of the outcome of this game'.²³⁵ By political institutions Acemoglu and Robinson mean both the constitutional framework of governance, and the 'power and capacity of the state to regulate and govern society'.²³⁶ They also include in this definition how 'political power is distributed in society, particularly the ability of different groups to act collectively to pursue their objectives or to stop other people from pursuing theirs'.²³⁷

For Acemoglu and Robinson, there are two ideal types of political and economic institutions: those that are inclusive, plural and based on a degree of political centralisation, and those that are exclusive, extractive and limited. The former, they maintain, have led to the emergence of democratic and pluralist nation and state-building in the West. The latter, on the other hand, have created extractive and exclusive political and economic polities in Asia and Africa. These outcomes were determined by different decisions and choices made by political leaders at a critical juncture when the existing relations between political and economic institutions were realigned. A critical juncture is a major historical turning point that accentuates 'institutional drift' between polities because the small difference that sometimes exists between them can lead to path dependence that can become self-reinforcing through a feedback loop, or 'increasing returns'.

²³³ Daron Acemoglu and James A. Robinson, *Why Nations Fail: The Origin of Power, Prosperity and Poverty* (London: Profile, 2012).

²³⁴ *Ibid.*, 43.

²³⁵ *Ibid.*, 79.

²³⁶ *Ibid.*, 42.

²³⁷ *Ibid.*, 42-3.

Why Nations Fail neatly encapsulates the essence of historical institutionalism and path dependence which holds that particular policies and choices made at a critical juncture can have a persistent and enduring impact over time. The idea of path dependence has been expounded at length by Pierson:

The notion of path dependence is generally used to support a few key claims: Specific patterns of timing and sequence matter; starting from similar conditions, a wide range of social outcomes may be possible; large consequences may result from relatively 'small' or contingent events; particular courses of action, once introduced, can be virtually impossible to reverse; and consequently, political development is often punctuated by critical moments or junctures that shape the basic contours of social life.²³⁸

Path dependence theorists, thus, emphasise the long-term impact of decision-making and institution building. The creation of institutions at India's independence dedicated to tackling caste disadvantage, for example, maintains a form of path dependence dedicated to reservations for these groups into which institutions and actors have become 'locked-in', producing a positive 'feedback loop' of 'increasing returns' that have subsequently been reinforced by the initial direction of change and are increasingly difficult for any government to reverse. Path dependence, in other words, is reproduced by increasing returns to actors and institutions established during the critical juncture and the high costs of switching to alternative paths. As Pierson notes, 'the probability of further steps along the same path increases with each move down that path...[because] the costs of exit – of switching to some previously plausible alternative – rise'.²³⁹

Path dependence has been criticised for being over-deterministic. The idea of 'increasing returns' over time also begs the question of 'diminishing' or 'constant returns'. In response, Mahoney and Schensul have drawn attention to reactive sequences in which the emergence of particular institutions can influence actions by triggering responses, sometimes unintended.²⁴⁰ Reactive sequences are characterised by 'backlash processes that *transform* and perhaps *reverse* early events...[in] a chain of tightly linked

²³⁸ Paul Pierson, 'Increasing Returns, Path Dependence, and the Study of Politics', *The American Political Science Review* 94:2 (June 2000), 251.

²³⁹ *Ibid.*, 252.

²⁴⁰ James Mahoney and Daniel Schensul, 'Historical Context and Path Dependence', in Robert E. Goodin and Charles Tilly, eds., *The Oxford Handbook of Contextual Political Analysis* (Oxford: Oxford University Press, 2006), 454-471.

reactions and counter-reactions'.²⁴¹ Similarly, Thelen²⁴² suggests that if institutions are locked into a particular trajectory, this often overlooks the degree to which they are contested, notwithstanding the costs involved in such contestation.

Path dependence theorists have sought to address some of these concerns related to agency, structure and choice.²⁴³ First, they identify a critical juncture as 'a major event or confluence of factors [disrupting] the existing balance of political or economic power in a nation'. Often these distinct legacies affect 'a whole set of societies'.²⁴⁴ Critical junctures arise as a result of pre-existing cleavages, but mark a radical transformation to new institutional arrangements. This transition is not pre-determined but is characterised by a range of possible options, the choice of which is impossible to predict; whilst the duration of critical junctures can vary, their end point is marked by the creation of new stable institutional arrangements.

The constitution-making process in India (1946-49) is, thus, an ideal exemplar of a critical juncture. At the time of the formation of the Constituent Assembly in 1946, few would have anticipated the final draft of the Constitution. Even allowing for the official policies of the Indian National Congress (INC) and the Muslim League, in 1946 it would have been difficult to anticipate the Partition, let alone the permanent removal of the long-established rights of religious minorities that were seen as the cornerstone of the constitution-making process. Nor would it have been possible to anticipate in 1946 that social justice would be defined primarily within the framework of reservations for socially disadvantaged castes. In this sense, Partition was a game changer, and the constitution-making process was not only a critical juncture, but a foundational juncture for the Indian state that set the template for post-Independence India.

Second, in addition to critical or foundational junctures, path dependence scholars recognise contestational junctures. Whereas the former 'give rise to particular paths of institutional development', the latter represent major challenges to the

²⁴¹ James Mahoney, 'Path Dependence in Historical Sociology', *Theory and Society* 29:4 (August 2000), 526-7. Emphasis original.

²⁴² Kathleen Thelen, 'Historical Institutionalism in Comparative Politics', *Annual Review of Political Science* 2 (1999), 369-404.

²⁴³ See James Mahony and Dietrich Rueschemeyer, eds., *Comparative Historical Analysis in the Social Sciences* (Cambridge: Cambridge University Press, 2003).

²⁴⁴ Acemoglu and Robinson, *Why Nations Fail*, 106.

system.²⁴⁵ Whereas the former are exceptional events, contestational junctures arise as a result of mobilisation by new actors and institutions, and have the potential to be transformed into critical junctures, but more often than not, in the short-term result in reinforcing the existing institutional arrangements.

As we shall see in Chapter Three, India's constitutional settlement around caste has been contested at number of junctures, principally by the Mandal debate (1990), and the gradual mobilisation of religious minorities, initially in the south, but increasingly in the north. This mobilisation culminated in UPA's promise in the 2004 general elections to provide better equality of opportunity to religious minorities, including affirmative action.

Studying public policy in India

The discipline of public policy in India is still in its infancy. Despite the impressive array of institutions dedicated to the study of public administration, public policy has only recently emerged as a distinctive area of study. Three works which exemplify these developments are Mathur's *Public Policy and Politics in India: How Institutions Matter*,²⁴⁶ Mathur and Björkman's *Policy-Making in India: Who Speaks? Who Listens?*,²⁴⁷ and Kapur and Mehta's *Public Institutions in India: Performance and Design*.²⁴⁸

Understanding the policy process and how institutions function in post-Independence India is a seriously under-researched area. In *Public Policy and Politics in India*, Mathur attributes this failing to centralised planning in which policies framed by the state institutions were rarely challenged.²⁴⁹ Planned economic development designed by technocrats precluded policy as an arena of contestation – of bargaining

²⁴⁵ Hassan Javid, 'Class, Power, and Patronage: the Landed Elite and Politics in Pakistani Punjab' (London School of Economics and Political Science, Unpublished PhD thesis, 2012), 51.

²⁴⁶ Kuldeep Mathur, *Public Policy and Politics in India: How Institutions Matter* (New Delhi: Oxford University Press, 2013).

²⁴⁷ Kuldeep Mathur and James Warner Björkman, *Policy-Making in India: Who Speaks? Who Listens?* (New Delhi: Har-Anand Publications, 2009).

²⁴⁸ Devesh Kapur and Pratap Bhanu Mehta, eds., *Public Institutions in India: Performance and Design* (New Delhi: Oxford University Press, 2005).

²⁴⁹ Mathur, *Public Policy and Politics in India*, 9.

and compromises – of politics. Rooted in the cult of experts, the Nehruvian consensus on the developmental paradigm privileged technical and bureaucratic rationality. More often than not, policy failure and non-implementation were ascribed to irrational impediments than shortcomings in policy itself.²⁵⁰ In such circumstances, the ‘top-down’ approach to policy-making generated a lack of understanding that policy is a complex process of bargaining.

However, the economic downturn in the 1970s and the Emergency (1975-77) created a groundswell for reassessing policies. This trend was further strengthened by economic liberalisation and loosening of economic control under the second Indira Gandhi administration in the 1980s. The economic reforms of 1991 finally prompted the emergence of new research institutions on public policy, thereby creating an enabling environment for open debate over state policy. As interaction between the state and the civil organisations increased, the objectives of policy began to be interrogated much more widely.²⁵¹ The growth of independent research institutions and NGOs redefined ‘public problems’, with special attention paid to policy impact, and the appropriateness of state action.²⁵² Increasingly government institutions and technocrats began to address policy failure through external reviews and civil society networks. As a result, what was considered to be in the traditional domain of the state was extended to policy researchers ‘both within and outside the bound of state institutions’.²⁵³

While *Public Policy and Politics in India* covers the historical background of public policy-making in post-Independence India, Mathur and Björkman’s *Policy-Making in India* explores the roles and interactions of policy actors – Cabinet, Prime Minister, political parties, civil servants, and Planning Commission – in the policy process. Located in the understanding that ‘the policy process in India is shaped by the way in which a web of institutions created by the Constitution functions’,²⁵⁴ the volume provides a concise account on the role of policy actors within the institutional framework and organisation of Indian government in reference to policy-making. The analysis is based on the understanding that the ‘characteristic feature of policy-making

²⁵⁰ Ibid., 18.

²⁵¹ Ibid., 9-10, 15.

²⁵² Ibid., 54.

²⁵³ Ibid., 55.

²⁵⁴ Mathur and Björkman, *Policy-Making in India*, 26.

in India is the predominance of political over administrative inputs'.²⁵⁵ Individuals (i.e. cabinet ministers and civil servants) within the institutional framework matter. The authors argue that the structure and method of working of the Congress party has greatly influenced the way in which cabinet and party functions in India. Particularly under Indira Gandhi's governments decision-making became centralised. After 1971, Mrs. Gandhi chose only loyalists and those who posed a potential threat to her supremacy were excluded or marginalised from the policy process. The 1972 state elections further emboldened her to shuffle portfolios to demonstrate her power, and produced 'a pyramidal decision-making structure in party and government',²⁵⁶ in which government officials and politicians were interested in controlling resource allocation, not policy-making.

However, the Congress minority government in 1991, and the subsequent coalition governments (BJP-led NDA and Congress-led UPA), which needed support from its coalition partners, have transformed this system of decision-making.²⁵⁷ In a multi-party system, individual ministers have been given more autonomy to pursue party interests and coalition agreements have become formalised in common programmes for governments.²⁵⁸ Therefore, unlike single-party (or personal) government, the policy process in coalition government has become complex and multi-layered, further diffusing executive authority to new innovations such as the Group of Ministers or Empowered Group of Ministers.²⁵⁹ With the power of the Prime Minister to appoint ministers in coalition governments becoming increasingly circumscribed,²⁶⁰ the policy-making process has become more complex and increasingly fragmented, resulting in civil servants having to exercise 'tremendous understanding of administrative and political nuances in policy-making'.²⁶¹

²⁵⁵ Ibid., 20.

²⁵⁶ Ibid., 52.

²⁵⁷ Ibid., 56-61.

²⁵⁸ Ibid., 57.

²⁵⁹ 'Coalition cabinets since 1999 have depended heavily on groups of ministers to examine issues and make recommendations to Cabinet for decisions', *ibid.*, 61; Sanjaya Baru, *The Accidental Prime Minister: The Making and Unmaking of Manmohan Singh* (New Delhi: Penguin, 2014), 94. But soon after the BJP-led NDA government came to power, the Group of Ministers or Empowered Group of Ministers were abolished for faster decision-making. 'Prime Minister Modi Abolishes All Group of Ministers and Empowered Group of Ministers from the UPA Era', *India Today*, 31 May 2014 (electronic edition).

²⁶⁰ Mathur and Björkman, *Policy-Making in India*, 75.

²⁶¹ Ibid., 98-99.

Public Institutions in India examines the role of India's public institutions, such as Parliament, the judiciary, the police, civil service, Reserve Bank of India (RBI), and the new regulatory institutions. Set against the backdrop of institutional reform introduced by economic liberalisation, the collection offers a rounded assessment of the capacity for institutional reform. Theoretically the work is anchored in historical institutionalism which emphasises the central role of institutions and how and why they matter.²⁶² Going against the grain, the authors refute the mainstream explanations of the Indian state's poor development record – that it is ideologically driven, state institutions are captured by social forces, or still, social mobilisation is to blame²⁶³ – in favour of institutional design. For Kapur and Mehta the main factor explaining India's modest record in governance and development is the limited effectiveness of its public institutions. Paradoxically, according to the authors, the 'Indian state is not only excessively procedural and rule bound, but that these procedures and rules place tangible limits on the capacity of social forces to manipulate the state in their discretion'.²⁶⁴ The labyrinthine character of the Indian state, they contend, operates to frustrate agendas for change. The enduring stability of Indian public institutions, it is suggested, prevents sudden change and reversals and makes innovation difficult.²⁶⁵ In discussing policy formulation and implementation, the authors explain that while citizens and social scientists judge the state by its outcomes, the Indian state does not take outcomes seriously, leading the authors to argue that the only reasonable measure of assessment is 'whether it has developed any criteria to assess its own performance'.²⁶⁶

Interest in public policy reform in India has also been stimulated by the good governance agenda and the need to improve service delivery. Although this literature does not directly address the shortcomings in service delivery for religious groups, its focus on improving the quality of service delivery has much broader implications for public policy in India. Hence, Vikram K. Chand's two volumes, *Reinventing Public*

²⁶² Kapur and Mehta, eds., *Public Institutions in India*, 2.

²⁶³ *Ibid.*, 5.

²⁶⁴ *Ibid.*, 12.

²⁶⁵ See Devesh Kapur, 'Explaining Democratic Durability and Economic Performance: The Role of India's Institutions', in Devesh Kapur and Pratap Bhanu Mehta, eds., *Public Institutions in India: Performance and Design* (New Delhi: Oxford University Press, 2005), 28-76.

²⁶⁶ *Ibid.*, 13.

*Service Delivery in India: Selected Case Studies*²⁶⁷ and *Public Service Delivery in India: Understanding the Reform Process*,²⁶⁸ raise questions about improving the quality and effectiveness of public sector service provision. Both works examine in detail selected case studies in states and sectors where new innovations are taking place such as the creation of new executive agencies to implement policy. The key concern which defines these works is to explain why in these case studies such innovations have ‘worked’. Both volumes are important in demonstrating the range of new initiatives, particularly the use of new agencies to deliver services. They also draw attention to how the ‘reforms depend critically on contextual factors, such as the history of reform ideas, the capacity of the state to execute reform, and the nature of the state itself including its relationships with key actors, such as the private sector and unions’.²⁶⁹ This context, as we shall see in subsequent chapters, is important in providing ‘a set of opportunities and constraints that policymakers cannot ignore in formulating policy options’, and in determining the success of policies themselves.²⁷⁰

Analytical approach: a summary

This thesis addresses the puzzle of the UPA which came to power on an agenda of promoting better equality of opportunity for religious minorities, particularly Muslims, but was frustrated in its objective. It seeks to examine why given the level of political support for these policies they still generated such opposition and resistance. Why, in other words, notwithstanding the UPA’s manifesto commitments, did the UPA struggle to deliver on some of the key promises?

This thesis does not seek to evaluate UPA policies in the field *per se* through assessing their impact. Such an undertaking, as we have noted above, is beyond the scope of this work. Rather its core objective is limited: to uncover the underlying modes of institutional resistance that ultimately determined the fate of UPA policies on religious minorities.

²⁶⁷ Vikram K. Chand, ed., *Reinventing Public Service Delivery in India: Selected Case Studies* (New Delhi: Sage, 2006).

²⁶⁸ Vikram K. Chand, ed., *Public Service Delivery in India: Understanding the Reform Process* (Oxford: Oxford University Press, 2010).

²⁶⁹ *Ibid.*, 28.

²⁷⁰ *Ibid.*

Indeed, empirically, there is still an urgent need to ‘pry open the black box of policy change’²⁷¹ by actually examining the policy process on the subject – of how the issue came on the agenda, policy formulations, decision-making, (non) implementation and evaluation. This essentially descriptive approach needs to be tethered to a theoretical approach that elucidates the role of actors and institutions in order to account for recurring patterns of behaviour and outcomes. Thus, institutionalism, which privileges the role of institutions in explaining these outcomes, provides a necessary bridge in our research because the relevant policy process on the subject appears to be heavily shaped by bureaucratic design, incremental change and historical legacies. Institutional structures in India, both at the national and state levels, appear to have played an independent role in determining the fortunes of UPA policies on religious minorities.

Our institutional-based policy analysis approach focuses primarily on the performance of the UPA governments from 2004-14. Yet, in order to understand this experience historically, it is also necessary to draw on historical institutionalism and path dependence. These perspectives, we argue, enable us to make better sense of recurring patterns of government performance, and explain why the framework for minority rights established at Independence remains firmly in place.

Finally, our historically informed institutional-based policy analysis approach recognises that in understanding UPA policies on religious minorities that history casts a permanent shadow over the present. Consequently, historical institutionalism and path dependence have defined the parameters within which the policy process can operate, shape, influence and ultimately determine policy outcomes. In concurrence with writings of institutionalists, therefore, we acknowledge that historical institutionalism is the independent variable and the policy process the dependent variable.

²⁷¹ Boin and Kuipers, ‘Institutional Theory and the Public Policy Field’, in Pierre et al., *Debating Institutionalism*, 43.

Research questions

The analysis so far has outlined the research context within which this thesis is framed: the difficult area of public policy on religious minorities. While locating this debate in a historical context, our focus is primarily on UPA (2004-14) policies on the Muslim minority. The policy process under UPA identified a range of policy areas on which action was needed to address the ‘development deficit’. In particular, we focus on three areas that were identified by the SCR as requiring special attention: public sector employment, service delivery and security.

Public sector employment has been selected because experience of quotas and affirmative action policies, both in India and elsewhere, demonstrates that under-representation of minorities in the public sector is often associated with direct and indirect institutional discrimination.²⁷² Overcoming this under-representation is a necessary condition of creating effective equality of opportunity. Surveys have regularly highlighted the under-representation of Muslims in public sector posts and undertakings at all levels.²⁷³ This status has remained unchanged since independence, a finding confirmed further by the SCR and the RMCR.²⁷⁴ Comparative and Indian experiences indicate that these policies, if appropriately designed, implemented and monitored, can have a transformative impact.

Similarly, in service delivery the issue is whether all citizens are treated equally or suffer unequal outcomes in the provision of public sector goods, such as housing, education, social services, and basic infrastructure facilities. Studies in the West and India have demonstrated that excluded cultural, ethnic, racial and religious minorities often suffer from unequal outcomes.²⁷⁵ The need for public services to cater for all, including minorities and excluded public groups, has led to a re-design of public policy, for instance, in special provisions for SCs and STs. The UPA, as we shall see, was committed to a raft of new initiatives to improve service delivery for India’s Muslims.

²⁷² See John Solomos and Wendy Ball, eds., *Race and Local Politics* (London: Palgrave Macmillan, 1990); Thomas E. Weisskopf, *Affirmative Action in the United States and India: A Comparative Perspective* (London: Routledge, 2004).

²⁷³ See Steven I. Wilkinson, ‘The UPA and Muslims’, in Sáez and Singh, eds., *New Dimensions of Politics in India*, 71-2.

²⁷⁴ The findings of the report and the commissions are discussed in more detail in Ch. 3.

²⁷⁵ See Richard Jenkins and John Solomos, eds., *Racism and Equal Opportunity Policies in the 1980s* (Cambridge: Cambridge University Press, 1987).

For minorities subject to discrimination and victimisation, the provision of effective anti-violence and discrimination legislation is a necessary pre-requisite of civil engagement.²⁷⁶ Most states have generic legislation against such violence and discrimination, but since the multicultural turn in public policy this has been accompanied by legislation that both outlaws particular types of discrimination – based on religion, caste, race, and ethnicity – and prohibits hate crimes against such ‘protected categories’. In India, specific legislation exists for acts of violence against SCs and STs (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989)). But despite the high levels of communal violence against religious minorities, notably Muslims, the state has been reluctant to create a specific legislative framework that tackles communal violence, or inaction and non-compliance during such violence by official functionaries. The UPA’s commitment to introduce such model legislation, therefore, marked a distinctive break.

The evaluation of UPA’s performance on these three fronts is undertaken within a set of seven inter-linked research questions:

- (i) What were the political considerations that led the UPA to adopt policies to promote substantive equality of opportunity for religious minorities, especially Muslims?
- (ii) How were these policies formulated? Did they mark a radical break with previous experience of the Indian state? To what extent, if at all, did they represent a ‘paradigm shift’?
- (iii) What were the institutional innovations introduced to facilitate the new policies?
- (iv) Why was the second half of the UPA’s first administration (2004-09) characterised by the increasing marginalisation of these policies in the government’s priorities?

²⁷⁶ The example of the United Kingdom is instructive. For an overview of the developments since 1945, see John Solomos, *Race and Racism in Britain* (Basingstoke: Palgrave Macmillan, 2003).

- (v) What factors frustrated UPA administrations' efforts to improve the representation of Muslims in public sector employment in national administration and public sector undertakings?
- (vi) What factors thwarted the UPA administrations' efforts to improve service delivery for Muslim communities identified as suffering a significant 'development deficit'?
- (vii) Why did the UPA struggle to provide a new model legislative framework against communal violence?

Although these research questions are very broad, they are addressed more specifically in Chapters Five, Six and Seven which focus on employment, service delivery and the anti-communal violence bills.

Methodology

Comparatively, the use of systematic interdisciplinary methodologies and new forms of data that have previously been unavailable to study religious communities have advanced noticeably in the last decade.²⁷⁷ Hence, some of the major recommendations of the UPA committees and commissions in the process of policy required new forms of data collection, monitoring and evaluation to ensure that sound analysis of the status of religious minorities could be undertaken. Establishing base-line data is a necessary pre-requisite for a systematic evaluation of communities which are under-represented or discriminated against in public policy.

However, accessing data on Muslims in employment or service delivery remains problematic. Traditionally, there has been hyper-sensitivity about such information. In 2006, for instance, efforts to ascertain Muslim representation in the armed services led to a major controversy.²⁷⁸ Indeed, the 'control' of this data, and at times its deliberate misrepresentation on grounds of confidentiality, or breach of state secularism, has created major difficulties for a comparative assessment of public policy. In the absence

²⁷⁷ For insights into these developments, see Linda Woodhead, Hiroko Kawanami and Christopher Partridge, *Religions in the Modern World: Traditions and Transformations* (London: Routledge, 2009).

²⁷⁸ Aarti Dhar and Sandeep Dikshit, 'Army Gives Data but Does Not Want it Passed on to Panel', *The Hindu*, 15 February 2006 (electronic edition).

of readily available data on religious minorities in the policy-making process, we have drawn on interviews with informed policymakers, grey literature and the data currently available in the public domain.

Given the subject matter, therefore, this thesis uses the mixed methods approach. It draws heavily on the qualitative methodologies (documentary analysis of a broad range of official publications such as government and judicial records, secondary studies, and interviews and historical analysis that are central to policy studies), but where relevant, also borrows judiciously from available quantitative data.

Qualitatively, it draws primarily on official documents produced by committees and commissions.²⁷⁹ This output has also generated a large volume of specialist commissioned studies which have been drawn upon, and have sometimes been published separately. Another rich source of information was the annual reports of India's national commissions (e.g. National Commission for Minorities, National Commission for Scheduled Castes (NCSC), National Commission for Scheduled Tribes (NCST), and National Commission for Backward Classes (NCBC)), judicial cases, and Lok Sabha and Rajya Sabha debates. The latter have provided invaluable insights into how the policy proposals were discussed and managed in terms of parliamentary procedures. As we shall see in Chapters Five, Six and Seven, how parliamentary procedures were managed was central to determining the fortunes of some of the policies.

To overcome the gaps in publicly available data, and to obtain informed insights into policy formation and implementation, in-depth interviews were conducted in Delhi with 39 'key' informants. These were individuals identified for having played a major role in the conception, formulation and implementation (and non-implementation) of the core policies under consideration. They comprised politicians, civil servants, academics, journalists and public intellectuals. Interviewees were identified from a preliminary analysis of official documentation and reputational analysis for engagement with this subject area. Further interviewees were identified through snowballing during fieldwork. Efforts were made to ensure the interviewees were representative and did not

²⁷⁹ The documentation includes the Sachar Committee Report, the Ranganath Misra Commission Report, the Equal Opportunity Commission Report, and the report by expert group on Diversity Index, see Ch. 3.

constitute a skewed sample. The definition of ‘key’ policy informants includes individuals from a cross-section of the Indian political spectrum (Congress, BJP, CPI and SP) as well as all religious groups. All interviewees are listed in the Bibliography.

Interviews were conducted at the interviewee’s place of work or residence during the initial fieldwork in New Delhi between January and April 2013. Prior to the interview, based on the interviewee’s biographical material, a semi-structured questionnaire was prepared. In the main, interviews were in-depth, and on several occasions, the respondents agreed to follow-up interviews. Owing to the unexpected, premature termination of the first fieldwork trip, some of the planned interviews could not take place.²⁸⁰ Outstanding interviews were then completed via Skype, telephone, email exchanges, and during the second fieldwork in New Delhi in April 2014. Prior to the beginning of the interview, all interviewees were asked whether they consented to both the interview and to being quoted. Where possible, it was decided to tape-record the interview, but notes were also taken. Some of the interviewees requested that certain sections of the interview be excluded; hence those parts have been omitted. Following interviews, where possible, the transcriptions were cross-checked with the respondents.

A number of measures were taken to control for bias both in the respondents’ accounts and data collected. Triangulation, a ‘vehicle for cross-validation when two or more distinct methods are found to be congruent and yield comparable data’, was particularly useful.²⁸¹ Where possible, triangulation was used to cross-check with other sources. Also, the combination of multiple methods (documentary analysis, interview, historical institutionalism, policy analysis) enabled multiple triangulations to be conducted where necessary. Similarly, to control against bias in the interviewee’s account, where relevant, the data have been triangulated with other sources, including other interviewees who could corroborate the claims.²⁸²

²⁸⁰ Due to an unexpected incident, the first round of fieldwork on which this research is based was terminated prematurely.

²⁸¹ Denzin categorised types of triangulation into four: data triangulation (gathering observations with multiple sampling strategies), investigator triangulation (using more than one observer in the field), theoretical triangulation (employing several different theories with the same set of data), and methodological triangulation (this method is two-fold: ‘with-in’ method is to employ varieties of the same method and ‘between-method’ involves contrasting research methods). See Norman K. Denzin, *Sociological Methods: A Sourcebook* (New Brunswick: Aldine Transaction, 2006), 472.

²⁸² For triangulation, see Sotiros Sarantakos, *Social Science Research Methods* (Basingstoke: Macmillan, 2005), 145-7.

For analysis of qualitative data, content analysis of ‘written documents or transcriptions of recorded verbal communications’ can help to reveal ‘artefacts of social communication’.²⁸³ This method is particularly useful when examining in-depth interview data for ‘objectively and systematically identifying special characteristics of the message’.²⁸⁴ Content analysis also enables the researcher to better understand the perspectives of the producer of the words, and it is possible to identify themes and categories that emerge from the data. Any material such as videotapes or photographs that can be textualised is amenable to content analysis. Hence the interview notes and reports of commissions and committees were potential subjects for content analysis.

Although the author is experienced in computer-assisted data analysis with NVivo and ATLAS.ti,²⁸⁵ and aware of the strengths of using content analysis, it was decided to forgo such an exercise for two reasons. First, in order to use content analysis the recorded messages must be reproduced in the same manner, reorganised and categorised into coded and uncoded words for analysis. Because of the emphasis on semi-structured interviews (and incomplete recording of all interviews), this mode of analysis was deemed inappropriate. Second, content analysis was also considered unsuitable because, though the analysis is useful in identifying patterns, it was too restrictive to explore sensitive dimensions of decisions about policy-making which still remain shrouded in controversy. This, however, is not to suggest that content analysis lacks utility in Indian public policy analysis: the technique is clearly in its formative stage, and as more consistent data and interview protocols are established, such analysis is likely to become a more regular feature of research on Indian politics. At this juncture, therefore, this thesis attempts to provide a bridge between existing modes of public policy analysis and, new and more methodologically sophisticated approaches, which are likely to dominate the field in the future.

²⁸³ Bruce L. Berg, *Qualitative Research Methods for the Social Science* (Boston: Allyn and Bacon, 2001), 240.

²⁸⁴ Ole. R. Holsti, *Content Analysis for the Social Science and Humanities* (Reading: Addison-Wesley Publishing Co., 1969), 14.

²⁸⁵ I am experienced in content analysis and well aware of how to sort and organise large volumes of qualitative data, store, retrieve text (coding/uncoding), locate words, phrases of data, and extract quotes. Prior to my doctoral research, I utilised this methodology in my POSCO research project for analysing and evaluating the company’s management philosophy and strategy by textualising record tapes of board meetings, minutes of meetings, annual reports, and relevant documents, covering a period of 40 years. Subsequently, this experience helped me to translate Rajesh Kumar and Anand Kumar Sethi, *Doing Business in India: A Guide for Western Managers* (London: Palgrave Macmillan, 2005) into Korean (Samsung Books, 2008). It was because of my experience with this methodology that it was decided not to use content analysis.

Conclusion

This chapter has outlined the analytical approaches and methodologies used in this thesis. The review of literature in Chapter One suggests that conventional explanations of UPA policies on religious minorities offer only a partial account of the policy process during the administration. In contrast, institutional-based policy analysis, with a historically informed understanding of path dependence, offers a more analytically relevant approach. Thus, institutional policy analysis provides new insights into policy-making during the UPA's tenure, but its performance becomes meaningful if it is situated within the historical pattern of the Indian state's policies on religious minorities, especially Muslims. For this reason we need to extend the temporal scope of the work to include the institutional framing of religious minorities since 1947. In sum, the core argument of the thesis is that historical institutionalism and path dependence defined, shaped and outlined the parameters of the UPA's policy process from which the UPA found it difficult to escape. Accordingly, in line with institutional analysis within our framework the former is the independent variable and the latter the dependent variable in understanding policy outcomes.

Viewed in this broad perspective, the UPA administrations thus marked a major contestational juncture in the pursuit of better equality of opportunity for religious minorities. Ostensibly, this juncture had the potential to establish a new pattern of path dependence for religious minority rights in India. However, as we shall see in subsequent chapters, institutional resistance to such change frustrated such a development. To understand this result, we have adopted research methodologies that focus both on documentary analysis but also include extensive in-depth interviews with the principal *dramatis personae*, the 'key' policy-informants at the heart of the policy process; and in the absence of readily available and verifiable data, we have primarily used qualitative research methods.

Chapter Three

Equality of opportunity, the Indian state and religious minorities: an overview

Introduction

Before examining UPA's policies it is necessary to understand how the rights of religious minorities have been historically framed. Constitution-making between 1946 and 1949 marked a fundamental rupture with the rights of religious minorities under the colonial state: it was a critical juncture which created a template for how these rights were to be defined within a new framework of equality of opportunity. Unsurprisingly, India's minorities have struggled to operate within a secular framework that has denied political claims to religious identities, with the result that some minorities, especially Christians, Muslims and Sikhs have, arguably, suffered systematic disadvantage and discrimination clustered around issues of security, identity and under-development. In this chapter, working within the framework of historical institutionalism and path dependence, we provide an overview of how this settlement has evolved since 1947. It, first, outlines the framework of equality of opportunity established at Independence and reviews the institutional framework that has emerged to support 'competing equalities' among caste and non-caste groups. We then, briefly, review some of the contestational junctures – the early 1980s, 1990s, and 2000s – when some of the minorities mobilised and challenged this settlement. Finally, with reference to the findings of the SCR that some religious minorities, particularly poor Muslims, suffer systematic discrimination and disadvantage, we discuss the official recognition by the UPA that a new approach was required to redefine equality of opportunity in twenty-first century India.

Constitution-making as a critical juncture: redefining minority rights

India is a religiously and ethnically diverse society and home to major world traditions: Hindus (80.5 per cent), Muslims (13.4 per cent), Christians (2.3 per cent), Sikhs (1.8 per cent), Buddhists (0.8 per cent), Jains (0.4 per cent) and Zoroastrians.²⁸⁶ Hindus

²⁸⁶ Ministry of Home Affairs, *Census of India 2001* (New Delhi: GoI, 2001).

constitute the overwhelming majority, with 138 million Muslims the second largest faith tradition. This religious diversity is coupled with enormous linguistic and cultural diversity. Politically, accommodating such diversity was a major challenge that faced the framers of the Constitution.

The dominant view articulated by the Congress during the nationalist struggle was that separate political representation of religious communities under British colonial rule had resulted in the partition of the country and the creation of Pakistan.²⁸⁷ Although many more Muslims chose to remain in India than join the new state of Pakistan, anxieties persisted about their future in a Hindu dominated society. Uppermost among these were guarantees of religious liberty and protection against the fear of cultural homogenisation. If equality was to be realised, then minority communities needed assurances about their cultural practices, and though the principle of equality before the law was extremely important, by itself it was insufficient to ensure access to social and public goods.

‘From the late nineteenth century onwards’, notes Bajpai, ‘a range of special provisions were introduced by the British colonial state as well as native Princely states, chiefly for groups designated as minorities or “backward”.’²⁸⁸ These included provisions for special representation in the legislatures and quotas in the public services. Over time, these provisions were extended to include Christians, Muslims, Sikhs, SCs, and STs. In the constitution-making process, events and, as Bajpai notes,²⁸⁹ the hegemonic nationalist discourse were to play a major role in shaping minority rights. Indeed, the provincial legislative elections (1945) and the Partition resulted in an overwhelming majority of Congress members in the Constituent Assembly;²⁹⁰ many were upper caste, accounting for a quarter of the assembly while constituting only five per cent of the population.²⁹¹ As Austin argues, ‘the Constituent Assembly was a one-

²⁸⁷ Rochana Bajpai, *Debating Difference: Group rights and Liberal Democracy in India* (New Delhi: Oxford University Press, 2011), 77.

²⁸⁸ *Ibid.*, 29.

²⁸⁹ *Ibid.*, 70-5.

²⁹⁰ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford: Clarendon Press, 1966), 9; Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford: Oxford University Press, 1999), 5.

²⁹¹ James Chiriyankandath, ‘Creating a Secular State in a Religious Country: The Debate in the Indian Constituent Assembly’, *Commonwealth & Comparative Politics* 38:2 (2000), 5.

party body in an essentially one-party country. The Assembly was the Congress and the Congress was India.’²⁹²

The discourse on minorities in the Constituent Assembly changed dramatically after Partition. The Minority Rights Sub-Committee Report tabled by Sardar Patel in August 1947 proposed legislative reservations for Christians, Muslims, and SCs, for an initial period of ten years. But against the backdrop of communal violence, mass migration and unparalleled human suffering, the dominant mood in the Constituent Assembly rejected political safeguards for minorities on the basis of religion because these were seen as a potential threat to the political unity and integrity of the country.²⁹³ Nationalists claimed that group identities, such as caste, creed, and religion, would continue to divide society. As such, they were determined to privilege individual citizenship over these identities because religion-based representation was considered both antithetical to the ideal of a secular state and the separation between state and religion. It would, moreover, ultimately lead to the isolation of minorities and sharpen communal differences in which citizens would remain permanently alienated from one another.²⁹⁴ Accordingly, efforts were made to persuade minority representatives to forego the claim for separate representation;²⁹⁵ and as Chiriyankandath notes, ‘Sardar Patel and K.M. Munshi were instrumental in getting rid of separate electorates and reserved seats for religious minorities.’²⁹⁶ Austin is also adamant that the Assembly’s Hindu majoritarian outlook dissuaded the minorities from their position: ‘there can be little doubt’, concludes Austin, ‘that Patel, despite his belief that the minorities must make their own decisions on such issues and not be simply out-voted by caste Hindus, quietly and privately put a great deal of pressure on the minorities to relinquish special privilege’.²⁹⁷

For the political leadership of the minority communities a combination of factors persuaded them to accept the *fait accompli*. Demoralised by the leadership of Jinnah and partition violence, Muslim leaders had little choice but to accept the new reality in

²⁹² Austin, *The Indian Constitution*, 8-9.

²⁹³ Bajpai, *Debating Difference*, 76-80.

²⁹⁴ Rajeev Bhargava, ‘India’s Secular Constitution’, in Zoya Hasan, E. Sridharan, and R. Sudarshan, eds., *India’s Living Constitution: Ideas, Practices and Controversies* (New Delhi: Permanent Black, 2002), 105-33.

²⁹⁵ Chiriyankandath, ‘Creating a Secular State in a Religious Country’, 13.

²⁹⁶ *Ibid.*, 10.

²⁹⁷ Austin, *The Indian Constitution*, 151.

which the ‘secular democratic state’ promised the best chance of security.²⁹⁸ The pressure to ‘disavow reservation’ was also imposed on Christian leaders ‘from Patel, [and] exercised by K. M. Munshi’.²⁹⁹ Equally, Sikh political representatives came under similar pressure but ultimately refused to sign the Constitution.³⁰⁰ Indeed, in the final report of the Advisory Committee on Minorities (1949), the abolition of reservation on religious lines was justified in terms of ‘the foundations of a true secular democratic State’.³⁰¹ Nehru welcomed the report as ‘a historic turn in our destiny’.³⁰² The only exception was reservations for SCs and STs which were considered necessary to compensate for past discrimination and included quota of seats for SCs and STs in education, government jobs and legislatures.³⁰³

Despite this agreement, the Hindu majoritarian sentiment in the Constituent Assembly was not a negligible force. Early drafts of the Minority Rights Report wanted to ‘explicitly [refer] to the SCs, as a “section of the Hindu community”’.³⁰⁴ Leading figures, such as Sardar Patel and K. M. Munshi, furthermore, who ‘were instrumental in getting rid of separate electorates and reserved seats for religious minorities’, were deeply concerned about the ‘lack of reference in the Constitution to a distinctly Hindu identity or to central tenets of Brahminical Hinduism such as the notion of *dharma*, [which] left the majoritarians dissatisfied’.³⁰⁵ Although Hindu majoritarians were a powerful lobby, ultimately they had to compromise with secularists led by Nehru. These innate but enduring tensions within the Constituent Assembly, argues Chiriyankandath, led to the ambiguous accommodation of secular and majoritarian sentiments as well as special group rights for SCs and STs³⁰⁶ – tensions that would subsequently be exploited by the Hindu Right and the BJP.

²⁹⁸ Chiriyankandath, ‘Creating a Secular State in a Religious Country’, 13.

²⁹⁹ Austin, *The Indian Constitution*, 149.

³⁰⁰ Chiriyankandath, ‘Creating a Secular State in a Religious Country’, 12; Bajpai, *Debating Difference*, 53-4.

³⁰¹ (Chiriyankandath) *ibid.*, 13.

³⁰² Constituent Assembly Debates Proceedings, Volume VIII (26 May 1949).

³⁰³ Rochana Bajpai, ‘Constituent Assembly Debates and Minority Rights’, *EPW*, 35:21/22 (27 May 2000), 1837.

³⁰⁴ Chiriyankandath, ‘Creating a Secular State in a Religious Country’, 16.

³⁰⁵ *Ibid.*, 10.

³⁰⁶ ‘It was not surprising that the form of secularism that found expression in the Constitution was ambiguous. Leaders like Sardar Patel, Rajendra Prasad and K.M.Munshi were sensitive, if not openly sympathetic, to the majoritarian sentiments voiced by a number of Congressmen in the Constituent Assembly. They knew that these predilections were widely shared, especially among the upper caste Hindi-speaking members...The result was that the Constitution sought to do several things. It made some allowance for the role played by religion, especially Hinduism, in Indian life. It also gave statutory

Religious minorities, equality of opportunity and the Constitution

The starting point for an understanding of the framing of equality of opportunity is the making of the Constitution of India. In essence the Constitution embraces a dual conception of equality: one based on the generic principle of non-discrimination, and another rooted in protective equality for seriously disadvantaged groups. These two approaches represent ‘competing equalities’, ones that are historically rooted in the Indian social formation and are products of historical evolution.³⁰⁷

As a secular, modern text, the Indian Constitution recognises individual rights associated with liberal democracy. As a corollary, it established a strong principle of non-discrimination: Articles 15 and 16 prohibit the state from discriminating on the grounds of religion, race, caste, descent, place of birth, or any of them generally in the state’s actions. More specifically, they prohibit discrimination ‘relating to employment or appointment to any office under the State’.³⁰⁸ The principle of non-discrimination is further enshrined in procedural equality embedded in Articles 14-16 that commit the state to combat discrimination. Non-discrimination was thus one of the ‘core principles guiding the development of a democratic nation state in India’.³⁰⁹ Articles 15 and 16 extend the equality guarantee by providing for redress against discrimination. The slight difference between the two is that the former prohibits discrimination by the state against citizens, while the latter is restricted to public employment. Article 15 concentrates on the process through which a burden is imposed on an individual; it assumes a finite list of disfavoured criteria – race, religion, sex – and prohibits making allocations to or decisions about individuals based on those criteria.³¹⁰ As an extension of the non-discrimination clause, Article 16³¹¹ guarantees equal opportunity for all

recognition to minorities, thereby implicitly accepting the existence of a majority. It sought to foster a common civic identity but then compromised this by the provision of reserved seats in legislatures to Scheduled Castes and Scheduled Tribes.’ Chiriyankandath, ‘Creating a Secular State in a Religious Country’, 20.

³⁰⁷ See Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (Berkeley: University of California Press, 1984), especially Chs. 2 and 3.

³⁰⁸ Ministry of Minority Affairs, *Report of the National Commission for Religious and Linguistic Minorities* (New Delhi: GoI, 2007). Hereafter Ranganath Misra Commission Report (RMCR), after its chairman, 4-5.

³⁰⁹ Vidhu Verma, *Non-Discrimination and Equality in India: Contesting Boundaries of Social Justice* (London: Routledge, 2012), 69.

³¹⁰ Article 15 states: (1) The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

³¹¹ Article 16 states: (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state; (2) No citizen shall, on grounds only of religion,

citizens in employment under the state: it implies that all public offices and resources are available to all on the basis of the principle of non-discrimination.

Alongside the principle of non-discrimination, which is an essential requirement of liberal democracy, the Constitution also recognises the need for positive discrimination for disadvantaged groups. Article 15 permits the state to make 'any special provisions for women, children [and] any socially, educationally backward class of citizens' and SCs and STs. Article 16 further enables the state to make provisions for reservations in appointments of posts in favour of 'any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the State'.³¹² Whereas the former provision has become the bedrock of affirmative action in employment and education (and reservation of seats in the legislatures) for SCs and STs, since 1950 the latter article, especially at the level of states, has justified the extension of reservations (employment and education) to OBCs. Proportional representation in legislatures and public employment for the SCs and STs were intended to protect them from the practices of exclusion and discrimination. In addition to providing social, educational, economic and political safeguards for the amelioration of their conditions, the state also undertook development initiatives to bridge the gulf between the SCs and STs and the rest of society. Over the years, the scope of these policies has been expanded to cover an ever wide range of governmental schemes and programmes, for example, the Special Component Plan (of the regular five-year plans).³¹³

Despite these articles, the concept of equality of opportunity for minorities has been a controversial one. In the Constitution the term 'minority', or its plural form, is not defined.³¹⁴ As can be seen from some of its provisions, such as in Articles 29³¹⁵ and

race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.

³¹² RMCR, 5.

³¹³ Zoya Hasan, *Politics of Inclusion: Castes, Minorities, and Affirmative Action* (New Delhi: Oxford University Press, 2009), 42-47.

³¹⁴ The absence of definition of minority or minorities in the Indian Constitution was reaffirmed by the minister of state for minority affairs. See *Rajya Sabha Debate (RSD)*, 13 August 2013.

³¹⁵ Article 29 states: (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same; (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

30,³¹⁶ minorities are recognised as groups who are culturally, linguistically and scripturally different from the ‘majority’. The scope of Articles 29 and 30 has been interpreted as absolute by the Supreme Court of India.³¹⁷ Their provisions further the ideals of the Constitution as envisaged by the Preamble, which guarantees all citizens liberty of thought, expression, belief, faith and worship. Furthermore, Part III of the Constitution cements these ideals through the Fundamental Rights under Articles 14, 15, 16, 25, 26, 27, and 28. The Directive Principles of State Policy also enumerate certain rights of minorities, but these are not enforceable in the courts of law. Other articles, such as 330, 332, 334, 335 and 338 on SCs and STs also refer to the minority groups and bring under their purview issues such as admission into educational institutions maintained by the state, and access to state funds on the grounds of race, religion, caste or language. The minority groups are also permitted under law to set up their own educational institutions.

To sum up: Indian constitution-making was a new critical juncture that redefined the template of minority rights, and established a pattern of institutional path dependence which ‘locked in’ minority rights into a secular, universalistic, and nationalist discourses in which communitarian representation was considered anathema in a modern liberal democracy. The presence of diverse and historically distinct religious, linguistic and cultural communities within the polity was fulsomely recognised with assurances that minority cultures and identities would be protected and treated equally. Yet, while the dominant nationalist discourse was opposed to political rights for religious minorities, it accepted that reservations were necessary to address the ‘backwardness’ of lower castes and tribes.³¹⁸ It is also important to acknowledge that provision for affirmative action was constructed largely in response to the political claims of former untouchable castes.

³¹⁶ Article 30 states: (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice; (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause; (2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

³¹⁷ *Jagdev Singh Sidhanti vs Pratap Singh Daulta* on 12 February 1964 (1965 AIR 183, 1964 SCR (6) 750).

³¹⁸ Bajpai, *Debating Difference*, 168.

Partition and the creation of Pakistan severely circumscribed the claims of minority rights which were limited to the cultural and linguistic sphere.³¹⁹ The project of democratising Hindu society resulted in the re-designation of SCs and STs, who before the Government of India Act (1935) were loosely defined as ‘Depressed Classes’, as a part of the majority (Hindu) community. Affirmative action provisions for these groups, as outlined above, were justified on the grounds that they were necessary to rectify their historic exclusion and victimisation within Hindu society. Poor religious minorities, on the other hand, were excluded from these provisions as the criteria for reservations were defined primarily with reference to caste, tribe and backwardness. Poor Buddhists, Christians, Muslims and Sikhs were deemed to be outside the remit of these provisions because of the egalitarian precepts of these faiths. The Constitution in taking an ideological construction of caste that identified it with Hinduism – as opposed to a sociological one – created a sharp new boundary between Hindus and non-Hindus while excluding equally disadvantaged groups (socio-economically disadvantaged sections of Buddhists, Christians, Muslims, and Sikhs) because such claims were seen to reinforce religious group rights. In short, the Constitution in rejecting the political claims of religious minorities, recognising the cultural and linguistic rights of all minorities, and in introducing affirmative action provisions for SCs and STs, set up the project of democratising Hindu society. The last measure did not just create a structural imbalance in the equality of opportunity for disadvantaged minorities. As Weiner has noted, the Government of India would consistently refuse ‘to extend reservations to religious groups on the grounds that it would be divisive’. Such opposition, however, would strike religious minorities as discriminatory, given the government’s ‘willingness to grant benefits to caste, tribal, and linguistic groups’.³²⁰

Institutionalisation of caste and ‘competing’ equalities of opportunity after constitution-making

The constitution-making process thus signalled a fundamental rupture with colonial governance: as Bajpai observes, it ‘marked a moment of containment of group

³¹⁹ These included, amongst other things, personal law (Muslims / Zoroastrians), language rights, and right to set up educational institutions.

³²⁰ Myron Weiner, ‘India’s Minorities: Who Are They? What Do They Want?’, in Ashutosh Varshney, ed., *The Indian Paradox: Essays in Indian Politics* (New Delhi: Sage, 1989), 67.

rights'.³²¹ At the same time, however, a new cleavage, defined by caste, was created between the 'majority' and the 'minorities'. Henceforth group rights and affirmative action provisions attached to them would be defined primarily with reference to victimised socio-economically disadvantaged Hindu caste groups. This difference would subsequently become further institutionalised as the scope of reservations was extended to include OBCs, and national and state level institutions emerged to oversee the executive administration of these policies.

In the period after Independence, this structural imbalance would manifest itself, on the one hand, in the demands from SCs, STs and OBCs to increase the scope of reservations, and demands from the socio-economically disadvantaged religious minorities, on the other, that their exclusions from these provisions on grounds of religion was a form of discrimination. The criteria for SCs and OBCs were clearly defined by the overarching emphasis on caste within the Hindu tradition; and when this was challenged, the courts continued to err in favour of the hegemonic understanding of these categories.³²² One notable variation from this norm was the practice of reservation for OBCs at national and state levels. At the national level the criteria for OBCs were only established by the Mandal Commission (1978), which conceded that religious communities like Muslims had 'backward classes' that should be given reservation. But in the pre-Mandal period, states' interpretation of the OBCs criteria was largely influenced by history, tradition and regional peculiarities, so that some states like Karnataka and Kerala included Muslims under this category (See Chapter One). However, even these breakthroughs were unable to make significant progress in changing the hegemonic discourse: the rise of the Hindu Right in the 1980s and 1990s, together with mobilisation of Dalit communities after the implementation of the Mandal Commission recommendations (1990),³²³ further weakened the case for considering socio-economically disadvantaged religious minorities.³²⁴ In fact, as Dalitisation of Indian politics in the 1990s and 2000s occurred at an increasing pace, the need to

³²¹ Bajpai, *Debating Difference*, 15.

³²² The Supreme Court held that 'the caste to which a Hindu belongs, is essentially determined by birth and that if a Hindu is converted to Christianity or another religion, which does not recognise caste, the conversion amounts to a loss of the said caste'. *Mrs. S. Yasmine vs The Secretary* on 13 June 2013.

³²³ In 1990, the Prime Minister V. P. Singh issued an order to implement the recommendations of the Mandal Commission Report (provision of 27 per cent quotas in government employment for OBCs) but due to severe opposition, the recommendation was not implemented until after 1992. See Bajpai, *Debating Difference*, 227-31.

³²⁴ See Laura Dudley Jenkins, *Identity and Identification in India: Defining the Disadvantage* (London: Routledge Curzon, 2003), Ch. 6.

address the framework of equality of opportunity for religious minorities, especially India's Muslims, was dramatically illustrated by 9/11 and the riots in Gujarat.

Institutionalised regimes of 'competing equalities'

Before reviewing the religious minorities' mobilisations against the foundational settlement, it is necessary to outline the institutional framework that has evolved to administer these policies and which reinforces patterns of path dependence. Table 3.1 below compares the relative position of SCs, STs, OBCs and religious minorities. It contrasts the national provision for these groups of reservations in legislatures (and local bodies after 1993), employment, education, specific provisions for service delivery, group-specific anti-discrimination legislation, parliamentary oversight (e.g. committees), and executive oversight (Ministries/National Commissions). To appreciate this process of institutionalisation of different regimes, we need to keep four developments in mind.

Table 3.1
‘Competing equalities’: SCs, STs, OBCs and religious minorities

Nature of provision at the national level	Scheduled Castes and Scheduled Tribes	Other Backward Classes	Religious Minorities
Reservations in employment, education, legislatures	<ul style="list-style-type: none"> • SCs and STs get 15% and 7.5% reservation in case of direct recruitment • Reservations in national and state legislatures and local bodies • Reservation in promotion • In government-funded higher educational institutes, reservation available at the same rate 	<ul style="list-style-type: none"> • 27% reservation in case of direct recruitment on all India basis • 27% reservation in central government-funded higher education institutions • No reservations in promotion • No reservations on the legislatures or local bodies 	Sikh Dalits (1956), Buddhist Dalits (1990) included within scope of SC reservations for employment
Specific provisions for service delivery	Planning Commission: from the 1 st Five-Year Plan (1951-56) to 12 th Five-Year Plan (2012-17); National Scheduled Castes and Scheduled Tribes Finance and Development Corporation (1989)	Planning Commission (Backward Classes Division); National Backward Classes Finance and Development Corporation (1992)	Planning Commission (Minorities Division); Maulana Azad Education Foundation (1989); National Minorities Development & Finance Corporation (1994); National Commission for Minority Educational Institutions (2004); Prime Minister’s 15-Point Programme (2006)
Group specific anti-discrimination measures	Protection of Civil Rights Act (1955), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) (1989)	No equivalent legislation	No equivalent legislation (except for protection for Buddhist and Sikh SCs)
Legislative Oversight	Committee on Social Justice and Empowerment; Committee on Welfare of SC/ST; Consultative Committee on Social Justice and Empowerment	Committee on Social Justice and Empowerment; Consultative Committee on Social Justice and Empowerment	Committee on Social Justice and Empowerment; Consultative Committee on Minority Affairs*
Executive Oversight	Ministry of Social Justice and Empowerment; Ministry of Tribal Affairs; National Commission for Scheduled Castes (1978); National Commission for Scheduled Tribes (2003)	Ministry of Social Justice and Empowerment ; National Commission for Backward Classes (1993)	Ministry of Minority Affairs (2006); National Commission for Minorities (1992)

* Not a permanent, standing parliamentary oversight committee.

Source: Derived from Hasan, *Politics of Inclusion*, 41-74; MoMA website; National Common Minimum Programme; RMCR, 74-76, 120-26, 140-41.

First, the constitutional consensus on special measures for SCs and STs is reflected in the clear institutionalisation of these provisions. Although reservations for these groups had a ten-year sunset clause, they have been renewed every decade. In fact the scope and meaning of reservations have been extended to include promotions,³²⁵ service delivery specifically targeted at SCs and STs, and pro-active legislation against caste violence. These provisions have also been backed by strong executive and legislative overview, both nationally and in the states. Whilst this process of institutionalisation has taken several decades, and has been re-enforced by path dependence, which has brought ‘increasing returns’ to political formations supporting it (Congress in 1950s and 1960s, Dalit parties in the 1990s), it has created the normative ideal to which all reservation-seeking groups aspire.³²⁶ In short, the SCs and STs are the benchmark of protective equality in the Indian political system.

Second, the Mandal Commission extended reservations and service delivery at the national level to OBCs. The commission, which reported in 1980, identified 3,743 backward castes/classes and estimated that these groups as a whole constituted 54 per cent of India’s total population. As a result, it recommended a reservation of 27 per cent in both the government and the education sector for the OBCs listed³²⁷ – in addition to 22.5 per cent already reserved for SCs and STs. In the absence of a national directive many states in the south had enacted legislation providing reservations for backward classes in education and in government,³²⁸ but the decision of the V. P. Singh

³²⁵ See Rudolf C. Heredia, *Taking Sides: Reservations and Minority Rights* (New Delhi: Penguin, 2012), 182-3; Rajeev Dhavan, *Reserved!: How Parliament Debated Reservations 1995-2007* (New Delhi: Rupa and Company, 2008), xvii.

³²⁶ Thus in 1992, in the *Indra Sawhney Etc. Etc vs Union of India and others, Etc* judgment, the Supreme Court placed a ceiling of 50 per cent on reservations ((AIR 1993 SC 477, 1992 Supp 2 SCR 454)). However, Tamil Nadu, which had 69 per cent reservations, persuaded the national government to pass the seventy-sixth Constitutional Amendment so as to place the state beyond legal challenge. Since then at least four other Constitutional Amendments have been passed to protect or enhance rights of SCs and STs. See (Heredia) *ibid*, 181-2.

³²⁷ Backward Classes Commission, *Reservations for Backward Classes: Mandal Commission Report of the Backward Classes Commission, 1980, along with [sic] Introduction* (Delhi: Akalank Publications, 1991).

³²⁸ S. S. Gill, ‘What the Mandal Commission Wanted’, *Indian Express*, 13 April 2006 (electronic edition). While the Mandal Commission recognised the Muslim OBCs, there was limited recognition of Muslim OBCs at the national level. In contrast, reservations in states in the south have a longer history: in Kerala, religion-based reservations were introduced in the British colonial era (1936) and it was replaced in 1952 with communal reservation of 45 per cent (35 per cent to OBCs including Muslim OBCs and 10 per cent for SCs and STs). The share has increased to 50 per cent, with earmarking of 10 per cent for Muslims in the OBC sub-quota (1956). Now Muslims in Kerala are entitled to benefit from reservation in state government jobs (12 per cent) and educational institutions (8 per cent). In Karnataka, even before the Mandal Commission was set up, the state government categorised Muslims as backward castes, and began to provide an exclusive quota of 4 per cent for Muslims in government jobs and educational

government in 1990 to implement the Mandal Commission's recommendations nationally had widespread ramifications. At once, it crystallised the process of Dalitisation of Indian politics, and further institutionalised a form of path dependence around caste-based vote-bank politics that would transform the politics of the states in the north (Uttar Pradesh, Bihar).³²⁹ The rise of the OBCs in the states, and then nationally, has increasingly sidelined the upper-caste, upper-class elites who dominated Congress party politics.³³⁰

Third, the emergence of OBCs as a distinct socio-economic category that is politically mobilised has created new forms of institutionalisation and path dependence in which 'increasing returns' arise and generate further demands for extending the scope of reservations. Regionally, Chandra has described this phenomenon as 'patronage politics'.³³¹ Thus, the initial implementation of the Mandal Commission recommendations (termed Mandal I) included employment, but the UPA government widened this scope to embrace higher education (termed Mandal II), with increasing demands for group-specific service delivery.³³² As Table 3.1 indicates, the Indian state's response to 'competing equalities' – among SCs, STs, OBCs and religious minorities – is to keep them separate but respond differentially to group-specific demands.

Fourth, both nationally and provincially, definitional disagreements about what constitutes an OBC have led to interminable judicial disputes. These cases are important for they determine who is represented on the OBCs reservations list. While the Supreme Court has erred toward including 'caste' and 'class' in the definition, including a rejection of reservations for the 'creamy layer' (the socially and economically advanced

institutions since 1986. It is notable that among the 16 backward castes recognised by the state government in 1977, Muslims were recognised broadly as one of the backward castes but the quota was provided exclusively for Muslims. Muslims in the states in the south are also entitled to reservation in Centrally Sponsored Scheme in addition to state level reservation. The combination of path dependent reservation policy of the states in the south, which can be traced back to the British colonial period and the reservations in Centrally Sponsored Scheme, are a distinctive feature of the southern states' approach to the issue. See Robert L. Hardgrave, *The Dravidian Movement* (Bombay: Popular Prakashan, 1965).

³²⁹ Ashutosh Varshney, 'Is India Becoming More Democratic?', *The Journal of Asian Studies* 59:1 (February 2000), 18-20.

³³⁰ See Christophe Jaffrelot, *India's Silent Revolution: The Rise of Lower Castes* (London: Hurst, 2003).

³³¹ Kanchan Chandra, *Why Ethnic Parties Succeed: Patronage and Ethnic Headcounts in India* (Cambridge: Cambridge University Press, 2004).

³³² Interestingly, in response to a judicial judgment (*P. A. Inamdar & Ors vs State of Maharashtra & Ors* on 12 August 2005), under pressure from OBC parties in the coalition, the UPA passed the 93rd Constitutional Amendment to extend reservations in higher education. At the same time it rejected the Supreme Court verdict that the more advanced sections among the OBCs (creamy layer) should be excluded. See Hasan, *Politics of Inclusion*, 96-113.

OBCs), nationally and at the state level governments are more comfortable with the familiar category of caste. This modularity of caste with class in everyday public policy reinforces the normative ideal of ‘caste’ as a Hindu category that remains the ‘most important unit of identification’.³³³ At the same time, it places religious minorities in a difficult predicament: despite the existence of the criteria of ‘class’ their inclusion is more likely to be entertained if they articulate their case in the language of caste.³³⁴

In contrast to the protective provisions for SCs, STs and OBCs, therefore, the position of religious minorities is somewhat anomalous, and reinforces a form of path dependence that aims to restrict religious minorities’ claims to the cultural sphere, even for some of their socially and economically disadvantaged sections. As we have seen above, during constitution-making, religious minorities’ claims for political reservations were relegated to recognition of cultural difference within a multicultural polity; politically, their exercise of collective identity was restricted to the framework of individual rights. Given the national trauma over Partition and the construction of minorities in the nationalist discourse, the claims of minorities to special treatment, poor or otherwise, have not received a receptive political audience.

However, there has been some pragmatic accommodation. Sikhs and Buddhist were included as communities within the SCs (Sikhs in 1956, Buddhists in 1990), with the right to reservations in employment and education, in addition to protection by the Protection of Civil Rights Act (as amended in 1976) and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) (1989). But extending this logic to similar caste groups among Christians and Muslims has been firmly resisted.³³⁵ Similarly, the national legislative and executive institutions that oversee the interests of religious minorities have been poorly institutionalised, or sometime have emerged as a result of external pressure.³³⁶ The NCM, for instance, established in 1992 to monitor minority rights, still lacks a constitutional status.³³⁷ Its remit to protect minority rights,

³³³ Ibid., 113.

³³⁴ As we shall see in Ch. 5, this is precisely the case in West Bengal under Mamata Banerjee’s Chief Ministership.

³³⁵ RMCR, 132-33.

³³⁶ Historically, India has been reluctant to recognise national minorities. India’s NCM (1992) was formed when the United Nations adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992).

³³⁷ Providing constitutional status for the NCM was one of the UPA’s promises. However, the government failed to fulfil this pledge.

monitor their representation in public employment and safeguard cultural rights has not been adequately fulfilled, with some of the annual reports still to be tabled or discussed in Parliament.³³⁸ It is regularly criticised by minorities as being a ‘toothless tiger’ for its inactivity, despite mounting evidence of violence against minorities and increasing discrimination and disadvantage among some minority sections (e.g. Christians and Muslims).³³⁹

To recapitulate: the post-1947 institutionalisation of the constitution-making settlement has produced a form of path dependence that has accentuated the difference in minority and non-minority rights, especially for socio-economically disadvantaged castes. Whereas the nature and scope of reservations for SCs, STs and OBCs have been continuously extended, producing ‘increasing returns’ for political formations supporting such policies, most notably after Mandal I and Mandal II, similar demands from minorities remain constitutionally and politically difficult to negotiate. For minority rights, in contrast, the pattern of institutionalisation and path dependence are to restrict the extension of cultural rights into socio-economic or political rights. In light of this trajectory, the assertion of minorities’ citizenship rights has proved doubly problematic because minority rights are also often mediated by high levels of communal violence against minorities. Ironically, counter-violence is one way in which minorities have attempted to challenge the constitutional settlement.

Minorities, communal violence and contestational juncture: the 1980s, 1990s and 2000s

If racial, ethnic and religious violence against minorities is one indicator of their political and social integration, then some of India’s religious minorities remain poorly integrated.³⁴⁰ Violence against religious minorities since Independence, particularly

³³⁸ This fact was confirmed by the former chairmen of the NCM, Tahir Mahmood and Wajahat Habibullah., interviews, 12 February 2013, New Delhi and 20 February 2013, New Delhi, respectively.

³³⁹ See, ‘Minorities Panel Seeks Investigative Powers Like NHRC’, *Outlook*, 26 January 2012 (electronic edition).

³⁴⁰ High levels of communal violence against religious minorities since independence are one of the recurring features of Indian politics. See Ashutosh Varshney, *Ethnic Conflict and Civic Life: Hindus and Muslims in India* (New Haven: Yale University Press, 2002); Paul R. Brass, *The Production of Hindu-Muslim Violence in Contemporary India* (Seattle: University of Washington press, 2003); and Steven I. Wilkinson, *Votes and Violence: Electoral Competition and Ethnic riots in India* (Cambridge: Cambridge University Press, 2004).

Muslims, has been endemic, with high rates of casualties in urban areas in the north.³⁴¹ For other minorities that are regionally concentrated, such as Christians in the North-east, Muslims in Kashmir, and Sikhs in Punjab, this violence has taken on the form of ethno-regional struggles. Whilst the causes of such violence are, undoubtedly, many and complex, Brass argues that in many cities in northern India there exists an ‘institutionalised riot system’ – the presence of political parties, ideological context and partisan state actors and institutions that have in-built incentives to ‘produce communal riots’ in which Muslims tend to be the main victims. Both militant Hindus and those who have no connection with militant Hindu groups suffer from the ‘very present of the evidence of Partition and the imagined dangers of future partitions’.³⁴² ‘In every major city and town in north India’, writes Brass,

there are further symbols of that presence wherever there are large concentrations of Muslim populations. These Muslim concentrations are called “mini Pakistans”...[and] in turn are seen as centres of riot production designed to intimidate Hindus and generate more and more Partitions, more and more violence on the Hindu body.³⁴³

Not unnaturally, high levels of violence have produced reactions from minorities too. The period from the 1980s to the 2000s saw the emergence of a new contestational juncture in which some minorities (Christians, Muslims and Sikhs) sought to contest the constitutional settlement but instead precipitated the rise of the Hindu Right.

Partition not only generated a division of India on religious lines, but also ethnic consolidation of displaced people and the growth of Hindu nationalism. Migration changed the demography of many localities, cities and sometimes provinces. The resettlement of large numbers of refugees in many parts of India provoked conflicts between the new arrivals and local dwellers.³⁴⁴ But in the 1950s and 1960s a generalised conflict was avoided because violent Hindu-Muslim riots had discredited Hindu nationalism and Muslim separatism, and the Congress’ political accommodation of minorities deflected their religious and cultural demands. Singh has conceptualised this form of accommodation as ‘hegemonic control’ because it was not a bargain of equals

³⁴¹ The most recent episodes have been in north-west Uttar Pradesh in August - September 2013.

³⁴² Brass, *The Production of Hindu-Muslim Violence in Contemporary India*, 384.

³⁴³ Ibid.

³⁴⁴ Ian Talbot and Gurharpal Singh, *Partition of India* (Cambridge: Cambridge University Press, 2009), 128-9.

but traded political support for ‘protection’, and ‘unequal encapsulation’.³⁴⁵ Symbols of minority identity (Muslim Personal Law, Urdu and Aligarh University), perceptions of discrimination (Sikhs and the Punjabi Suba movement) and constraints on freedom of religion (Christians) would eventually lead to competing mobilisations by the minorities and the Hindu Right.

This process can be dated from the general election of 1967: the gradual political decline of the Congress over the next 20 years, the formation of the Janata government (1977-1979), in which the Bharatiya Jana Sangh was a major coalition partner, and the mobilisation of minorities – all were key signposts in this development.

By the early 1980s, some religious minorities, especially those in the border regions (Punjab, Jammu and Kashmir and North-east), had begun to contest ‘hegemonic control’ with ethno-religious demands for self-determination. Thus, some political formations among Sikhs in Punjab, who had remained unreconciled to the Partition, continued to pursue sovereignty within the Indian Constitution, first, through the *Punjabi Suba* (Punjabi-speaking state), and then the Anandpur Sahib Resolution (1973).³⁴⁶ The *Dharam Yudh Morcha* (1981) by the Shiromani Akali Dal (SAD) led to the storming of the Golden Temple by the Indian Army (1984), and a ten-year campaign by Sikh militants for a separate Sikh state of Khalistan. This violent rebellion was ultimately crushed by the use of overwhelming force (250,000 military and para-military personnel) but at the cost of nearly 30,000 lives and the suspension of normal governance in the state. In the event, the Indian state restructured Sikh politics but almost two decades after the return of normalcy, the ethno-religious demands of the Anandpur Sahib Resolution remain unaddressed.

Similarly, in Jammu and Kashmir decades of failure to evolve a working political settlement for the management of the state with special status under the Constitution led to full-scale insurgency from the mid-1980s. By conservative estimates

³⁴⁵ Gurharpal Singh, *Ethnic Conflict in India: A Case-Study of Punjab* (Basingstoke: Macmillan), makes a distinction between the exercise of ‘hegemonic control’ and ‘violent control’ over religious minorities. The former is predicated on some degree of consent but which makes an overt contest for power ‘unthinkable’; the latter arises when ‘hegemonic control’ breaks down and coercion is used to control the challenge to state power, 45-8.

³⁴⁶ See Joyce Pettigrew, *The Sikhs of the Punjab: Unheard Voices of State and Guerrilla Violence* (London: Zed, 1995).

almost 50,000 people were killed by militant and security personnel and 150,000 Kashmiri Hindus fled the valley to settle in the Hindu majority region of Jammu.³⁴⁷ For the Hindu Right, the plight of these refugees became a potent symbol of violence against the nation. Again the insurgency in Jammu and Kashmir was controlled by an overwhelming use of force which restored the familiar pattern of ‘violent control’ that has characterised governance in the state; and although since 2002 and 9/11 the insurgency has subsided, the valley continuously relapses into cycles of violence interspersed with semblances of peace.

Christian majority states in the North-east also witnessed a significant rise in ethnic and religious violence in the 1980s. Some states like Nagaland have sustained a separatist movement dating from Independence that had oscillated between periods of sustained insurgency and a willingness to negotiate with the Indian state.³⁴⁸ In others, for instance Manipur, the conflict was directed at new settlers, often Hindu and Muslim Bengali settlers. Both forms of conflicts, however, further provided ideological grist to the *Hindutva* mill in the construction of Christians as an alien community. Indeed, the regular efforts of Christian missionaries to exercise the right to conversion subsequently led to episodic violence (Odisha 2007), attempts at reconversion (Gujarat), and pressure by BJP and Congress state governments to introduce Freedom of Religion Bills to restrict the right to convert to another faith.³⁴⁹ In the early 2000s, the annual reports of the US State Department on freedom of religion in India were highly critical of the violations of one of the basic fundamental rights.³⁵⁰

Yet, the main mobilisation by a religious minority, and one which produced a massive counter-reaction, both within Congress and the Hindu Right, was a defensive response by India’s Muslims. A mass conversion of low caste Hindus to Islam in the south in 1981 provided political Hinduism with a popular symbol with which to attack

³⁴⁷ Sumantra Bose, *Kashmir: Roots of Conflict, Paths to Peace* (Cambridge, Mass.: Harvard University Press, 2003); Sumit Ganguly, *The Crisis in Kashmir: Portents of War, Hopes of Peace* (Cambridge: Cambridge University press, 1997).

³⁴⁸ See Marcus Franke, *War and Nationalism in South Asia: The Indian State and the Nagas* (London: Routledge, 2011); Sanjib Baruah, ed., *Ethnonationalism in India: A Reader* (New Delhi: Oxford University Press, 2010).

³⁴⁹ The passing of the Freedom of Religion Act in the state of Gujarat in March 2003 further stoked up communal passions. See Goldie Osuri, *Religious Freedom in India: Sovereignty and (Anti) Conversion* (London: Routledge, 2013).

³⁵⁰ See US Department of State, available at <http://www.state.gov/j/drl/rls/irf/> [accessed on 12 April 2012].

Muslims and other religious minority groups.³⁵¹ The Shah Bano case (1986), which led the Congress government to overturn a Supreme Court ruling restoring the *status quo ante* in favour of Muslim personal law, became the mainspring for the BJP's virulent campaign to construct a Hindu temple dedicated to the deity Lord Ram at the site of the Babri Masjid in Ayodhya – a mobilisation which saw emergence of the BJP as a major national political force committed to an ideological Hindu nationalism. The climax of mobilisation by forces of *Hindutva* was marked with the demolition of the Babri Masjid in Ayodhya by Hindu nationalist activists in December 1992.³⁵² This event was followed by the rise of the BJP to national governance (1996, 1998-9, 1999-2004) and renewed efforts to build a Hindu nation.

Although Hindu nationalist efforts to pursue the *Hindutva* agenda at the national level during the BJP-led NDA period (1998-2004) were somewhat stymied by its coalition partners – who rejected the demands to abrogate Article 370 of the Constitution that gives special status to Jammu and Kashmir, repeal Muslim personal law and build a temple to Lord Ram at Ayodhya – these impulses were redirected to the state level.³⁵³ In Gujarat, communalisation began in earnest when the BJP assumed state power in 1998. In coordination with the Vishwa Hindu Parishad (VHP) and the Bajrang Dal, the BJP began to target Gujarat's religious minorities.³⁵⁴ In August 1999, a bill against religious conversion was introduced to the state legislative assembly, even though it directly contravened an article of the Constitution and SCs, STs and OBCs were singled out for 'reconversion' to Hinduism. Anti-minority violence reached its climax on the morning of 27th February 2002, when a train carrying Hindu *karsevaks* (religious volunteers) was set on fire outside Godhra railway station, allegedly by a large Muslim mob. The state government promptly declared the incident an organised Islamic terrorist attack. In the ensuing violence, incited by a communalised media and government, Hindu mobs unchecked, and often with the support of the state administration, embarked on four-day retaliatory massacres in which more than 2,000

³⁵¹ N. Subramanian, *Ethnicity and Populist Mobilisation: Political Parties, Citizens and Democracy in South India* (Delhi: Oxford University Press, 1999), 308.

³⁵² Christophe Jaffrelot, ed., *Hindu Nationalism: A Reader* (Princeton: Princeton University Press, 2007), 20.

³⁵³ Howard Spodek, 'In the Hindutva Laboratory: Pogroms and Politics in Gujarat, 2002', *Modern Asian Studies* 44:2 (March 2010), 349-99.

³⁵⁴ In the first half of 1998 alone, there were over forty recorded incidents of assaults on prayer halls, churches and Christian assemblies. 'Dateline Gujarat', *Communalism Combat*, March/April 2002 (electronic edition).

Muslims were killed and over 150,000 were displaced.³⁵⁵ At the height of the violence, there were 125,000 refugees in camps. The Gujarat pogroms were the most serious example of ethnic cleansing of Muslims since Partition.

To summarise: the period from 1980s to the 2000s witnessed the emergence of a contestational juncture that challenged how the rights of India's religious minorities had been framed at Independence. However, political mobilisation by Christians, Muslims and Sikhs in the borderland states evoked a violent counter response in the form of a narrow, ideological vision of political Hinduism. Sixty-eight years after Independence, minorities' citizenship rights continue to be mediated by the 'people'³⁵⁶ in which some minorities, particularly Muslims, are regularly constructed as the 'other', with high levels of discrimination and violence.³⁵⁷ Not unnaturally, for some religious minorities these shortcomings have impacted adversely on their identity, security and ability to develop economically and socially.

Religious minorities and the institutionalisation of 'competing equalities': the case of India's Muslims

The argument made so far is that the institutionalisation of 'competing equalities' at Independence has created different forms of path dependence for minorities and non-minorities, and has also undermined minorities' citizenship rights because the assertion of these rights is all too often viewed as undermining the national ideal. But not all minorities are equally affected: small and prosperous communities, such as Jains and Parsis, are among India's high achievers; others like Christians, Muslims and Sikhs, have varying levels of integration, and their socio-economic profile is different in regions in which they constitute a majority (North-east, Jammu and Kashmir, Punjab).³⁵⁸ Nonetheless, the pattern of institutionalised difference is most apparent

³⁵⁵ Zoya Hasan, 'Mass Violence and Wheels of Indian [In]justice', in Amrita Basu and Srirupa Roy, eds., *Violence and Democracy in India* (Oxford: Seagull Books, 2006), 201-2.

³⁵⁶ For this important distinction between 'citizen' and 'the people, see Dipankar Gupta, *Justice before Reconciliation: Negotiating the 'New Normal' in Post-riot Mumbai and Ahmedabad* (New Delhi: Routledge, 2011), 29-31.

³⁵⁷ The state's failure to tackle communal violence and its post-conflict responses will be examined in detail in Ch. 7.

³⁵⁸ Rowena Robinson, 'Indian Christians: Trajectories of Development', in Gurpeet Mahajan and Surinder S. Jodhka, eds., *Religion, Communities and Development: Changing Contours of Politics and Policy in India* (London: Routledge, 2010), 151-172.

among India's Muslims for whom insecurity, discrimination and exclusion from state-sponsored development, either through employment facilitated by reservations, or targeted socio-economic development, has produced one of the most disadvantaged communities.

In 1983 the report of the High Power Panel on Minorities (henceforth Gopal Singh Panel Report) declared Muslims a socially and educationally backward community which needed special measures. It noted that Muslims were educationally worse off than most minorities and severely under-represented in the elite IAS (3.22 per cent), IPS (2.64 per cent), and IFS (3.14 per cent).³⁵⁹ But almost two decades later, the SCR noted a further deterioration in the community's status: on almost all indicators Muslims were as disadvantaged, if not more so, as the lowest caste groups who had benefited from reservations and targeted development policies. Since the Gopal Singh Panel Report, central and state governments have done little to correct this situation despite mass social and poverty alleviation programmes. The dominant policy discourse continued to ignore the exclusion of non-Hindu minorities on the assumption that policies designed to tackle exclusion are applicable only to historically oppressed groups (SCs, STs and OBCs). Even after Mandal, while public policies on the lower castes continued to be framed in the language of justice, equality and democracy, the concerns of minorities were seen mainly as matters of security and identity.³⁶⁰ A decisive break, however, appeared to take place with the formation of the first UPA government in 2004.

The dominant approach after 1950 towards religion's claim for public space was defined by secularism and development. Often, the state assiduously rejected such claims because of the assumed religious intent, with minority claims regularly stigmatised as 'communal', 'separatist' and encouraging 'fissiparous' tendencies.³⁶¹ However, the SCR (2006) 'marked an important shift in the popular/political discourse on India's religious minorities'.³⁶² By directly addressing the 'development deficit' among Muslims, it 'opened up new ways of talking about religious minorities'.³⁶³ These

³⁵⁹ Hasan, *Politics of Inclusion*, 264.

³⁶⁰ *Ibid.*, 9-10.

³⁶¹ See Singh, *Ethnic Conflict in India*, 42.

³⁶² Surinder S. Jodhka, 'Institutionalising Equality: Context and Meanings of Equal Opportunity Commission', *Indian Journal of Human Development* 3:2 (2009), 297.

³⁶³ *Ibid.*

‘new ways’ included *inter alia* taking the Socio-Religious Category (SRC) seriously, recognising the level of deprivation among some of these communities, especially Muslims, and developing new approaches to remedy this under-development.

Despite the wealth of data available to the Planning Commission and other executive agencies, for political and ideological reasons it had not been disaggregated for religious minorities. As the SCR observed:

While the perception of deprivation is widespread among Muslims, there has been no systematic effort since Independence to analyse the condition of religious minorities in the country. Despite the need to analyse the socio-economic and educational conditions of different SRCs, until recently appropriate data for such an analysis was not generated by Government agencies.³⁶⁴

One of the major achievements of the SCR was to use new data to examine the condition of SRCs. In doing so, it was a significant act of recognition within the secular, scientific establishment that disadvantaged communities exist among religious communities. This shift, from recognition to accepting SRCs as social categories worthy of state policy programmes, acknowledged that the life chances of some communities were also determined by their religious identities. ‘Indeed’, as Jodhka concluded, ‘the proposals put forward by the Sachar Committee for amelioration of the Muslim population are premised on the assumption that religious identity be treated as a relevant category in the State policy and perspective on development.’³⁶⁵

By identifying data on the social and economic development of religious communities, the SCR was able to demonstrate the scale of disadvantage suffered by some of India’s Muslims. This included, among other things, very poor representation in state governance and employment, both at the national and state levels; a dismal provision for education, infrastructure and security in areas of Muslim settlement; an extremely improvised support from financial services for Muslim corporations; and widespread perception of wholesale religious discrimination, resulting in ghettoisation and an inward-looking, identity-centred community.³⁶⁶ Comparatively, on key performance indicators, such as education, most SRCs, including SCs and STs, recorded

³⁶⁴ SCR, 2.

³⁶⁵ Jodhka, ‘Institutionalising Equality’, 298.

³⁶⁶ For a detailed discussion of the findings, see SCR, Chs. 3 to 9.

a noticeable improvement. However, similar evidence for developments within India's Muslims was difficult to find. As the SCR concluded:

Our analysis shows that while there is considerable variation in the conditions of Muslims across states, (and among the Muslims, those who identified themselves as OBCs and others), the *Community exhibits deficits and deprivation in practically all dimensions of development. In fact, by and large, Muslims rank somewhat above SCs/STs but below Hindu-OBCs, Other Minorities and Hindu-General (mostly upper castes) in almost all indicators considered. Among the states that have large Muslim populations, the situation is particularly grave in the states of West Bengal, Bihar, Uttar Pradesh and Assam....* In addition to the 'development deficit', the perception among Muslims that they are discriminated against and excluded is widespread, which exacerbates the problem.³⁶⁷

The SCR's analysis of the Muslim community's disadvantage is wide-ranging. For reasons outlined earlier, our focus is on three dimensions of the post-SCR developments: public sector employment, service delivery, and provision for enhanced security.

Muslims and public sector employment

In terms of employment, the SCR recognised that the profile of the Muslim community was heavily biased towards the unorganised sector in urban areas. This sector had faced severe challenges following economic liberalisation, making Muslim livelihoods even more precarious. However, what was equally striking was the low level of Muslim employment in the public sector: 'Muslims' shares in employment in various [government] departments', the report noted, 'are abysmally low at all levels'.³⁶⁸ Table 3.2 below highlights the level of significant under-representation of Muslim employment in government and public sector undertakings. In some of the largest undertakings, such as railways, banks, security agencies and state-level departments, it is well below 13.4 per cent proportion of the community's total population. No department or undertaking matches or exceeds it. Employment, moreover, was concentrated in lower grades (C and D), with significant under-representation in senior positions.

³⁶⁷ Ibid., 237. Emphasis added.

³⁶⁸ Ibid., 167.

Table 3.2
Muslim employees in government employment, 2006

Departments/Institutions Reporting	Reported Number of Employees	Reported Number of Muslim Employees	Muslims as Percentage of Reported Employees
State Level – Departments	4,452,851	278,385	6.3
Railways	1,418,747	64,066	4.5
Banks and RBI	680,833	15,030	2.2
Security Agencies*	1,879,134	60,517	3.2
Postal Service	275,841	13,759	5.0
Universities**	137,263	6,416	4.7
All Reported Government Employment (Excludes Public Sector Undertakings)	8,844,669	438,173	4.9
Central Public Sector Undertakings***	687,512	22,387	3.3
States Public Sector Undertakings	745,271	80,661	10.8
All Public Sector Undertakings	1,432,783	103,048	7.2

Source: SCR ,165.

Notes: *CRPF (Central Reserve Police Force), CISF (Central Industrial Security Force), BSF (Border Security Force), SSB (Sashastra Seema Bal – one of India’s Central Armed Police Forces), and other agencies; **129 Universities (Central and State) and 84 Colleges; *** Date from 154 Public Sector Undertakings.

Table 3.3 below indicates that there has only been a marginal change in the number of Muslims employed in senior service posts since 1980: only in the IPS the proportion increased slightly. And nor is the situation better in the states: ‘in no state’, did the employment of Muslims, ‘match their population share’. Even best performing states only matched 50-70 per cent of the proportion.³⁶⁹

Table 3.3
Percentage of Muslims in senior civil service posts

Name of Service / Year	1980	2006
Indian Administrative Service	3.2	3.0
Indian Police Service	2.6	4.0
Indian Foreign Service	3.1	1.8

Source: Hasan, *Politics of Inclusion*, 264; SCR, 165.

³⁶⁹ Ibid., 171. These included Karnataka, Tamil Nadu and, surprisingly, Gujarat.

The SCR concluded its section on employment by noting that a ‘detailed analysis of Muslim presence in government employment’ confirmed that a ‘very small proportion of government/public sector employees are Muslims and on average they are concentrated in lower-level positions’.³⁷⁰

Muslims and service delivery

If Muslims are heavily under-represented in public and private sector employment, the community’s ‘development deficit’, the SCR concluded, can also be attributed to poor service delivery – the provision of public sector goods and infrastructure. The report found the community lagging behind in all key ‘human development indicators’.³⁷¹ In education, for instance, it found high levels of deprivation: ‘From lower levels of enrolment to a sharp decline in participation in higher levels of education’, the report concluded, ‘the situation of Indian Muslims is indeed very depressing as compared to most other SRCs; in fact their situation seems to have worsened in relative terms.’³⁷² The report recognised the centrality of improving the educational performance of the community, but noted with interest that the improvement in the educational background of SCs and STs, who had been able to ‘catch up with Muslims’, was most likely the result of specially targeted programmes to ‘establish schools or improve infrastructure and provide incentives for enrolment’. In a telling phrase, the SCR noted that reservations for these groups have had an impact in ‘providing the economic means to educate children and simultaneously increase the economic returns to education’.³⁷³

In contrast, in the absence of such special programmes directed at the Muslim community, the clustering of deprivation – poor educational achievement, high levels of poverty and unemployment – was identified with poor service delivery. In large regions of the north, Muslim communities were more disadvantaged than most: ‘more than 1,000 Muslim-concentration villages in West Bengal and Bihar [did] not have any educational institutions; in Uttar Pradesh, this figure is 1,943’,³⁷⁴ 40 per cent of ‘larger villages with a substantial Muslim concentration [did] not have any medical

³⁷⁰ Ibid., 186-7.

³⁷¹ Ibid., 2.

³⁷² Ibid., 243.

³⁷³ Ibid., 76.

³⁷⁴ Ibid., 143.

facilities’.³⁷⁵ While poor infrastructure was one of the common features Muslims shared with other poor communities, they were especially affected because this was combined with a discriminatory attitude, a general ‘secular’ development bias, and a pervasive insensitivity by the state and NGOs to the community’s needs. ‘Access to schools, health care, sanitation facilities, potable water and means of daily transportation’, the SCR surmised, ‘are some of the basic facilities one can expect a state to provide for its citizens.’³⁷⁶ With the exception of Kerala, there was ‘relatively low access to such facilities for Muslims across India’.³⁷⁷

Muslims and insecurity

Although the SCR centred on the socio-economic conditions of the Muslim community, it recognised how insecurity had impacted on its development. Muslim identity, the SCR noted, had become increasingly ‘problematic in public space’, with growing marginalisation of shared common spaces. Perceptions of discrimination by Muslims were especially high in sectors such as employment, housing and education. Muslim women felt particularly vulnerable. In fact, the SCR noted that ‘lack of a sense of security and a discriminatory attitude towards Muslims is felt widely.’³⁷⁸ It acknowledged that there was a variation in the intensity of feeling across the states, but ‘communal tension or any untoward incident in any part of the country is enough to make Muslims fear for their safety and security.’³⁷⁹ ‘Violent communal conflicts’, the Commission concluded:

especially like some recent ones in a state [Gujarat], in which there is large-scale targeted sexual violence against Muslim women has a spread affect even in regions of the country not directly affected by the violence. There is immense fear, a feeling of vulnerability...The lack of adequate Muslim presence in the police force accentuates this problem in almost all Indian states as it heightens the perceived sense of insecurity, especially in a communally sensitive situation.³⁸⁰

According to the SCR, this outcome was largely the failure of law enforcement agencies to control communal conflicts and the experience of state agencies in dealing with post-

³⁷⁵ Ibid., 150.

³⁷⁶ Ibid., 253.

³⁷⁷ Ibid.

³⁷⁸ Ibid., 13.

³⁷⁹ Ibid.

³⁸⁰ Ibid., 14.

conflict situations in which Muslims were victims.³⁸¹ But the long-term impact of these developments was the further ‘ghettoisation’ of Muslim populations in areas of the community’s concentration: ‘Fearing for their security’, the SCR concluded, ‘Muslims are increasingly resorting to living in ghettos across the country.’³⁸² The impact of insecurity had led to cumulative processes that had reinforced discrimination and disadvantage.

Increasing ghettoisation of the Community implies a shrinking space for it in the public sphere...Social boycott of Muslims in certain parts of the country has forced Muslims to migrate from places where they lived for centuries; this has affected their employability and means of earning a livelihood. Ghettoisation, therefore, has multiple adverse effects: inadequacy of infrastructural facilities, shrinking common spaces where different SRCs can interact and reduction in livelihood options.³⁸³

While some of these conclusions were undoubtedly drawn from the post-conflict experience of Gujarat, other independent studies have confirmed the trend towards ghettoisation.³⁸⁴

Conclusion

This chapter has examined how historically minority rights were framed during constitution-making, India’s critical juncture which marked a radical rupture with the colonial past and embodied the vision of a modern, secular India. Minority rights which had assumed political dimensions during colonial rule were severely curtailed while group rights were largely limited to socio-economically disadvantaged Hindu castes. Equally disadvantaged groups among religious minorities were largely excluded from the system of protective discrimination through reservations. As noted previously, the writings of Bjpai, Hasan and Verma, to a varying degree, reinforce the reading of the caste/religion distinction, though inroads into this were made over time by the dilution of the OBC category at the states’ level. Nevertheless, this distinction institutionalised different forms of path dependence for socio-economically disadvantaged castes/groups

³⁸¹ Ibid.

³⁸² Ibid.

³⁸³ Ibid.

³⁸⁴ See in particular, Laurent Gayer and Christophe Jaffrelot, eds., *Muslims in Indian Cities: Trajectories of Marginalisation* (London: Hurst, 2012).

among minorities and the majority, producing rival structures and institutions for regimes of ‘competing equalities’.

The SCR was a major turning point in the post-Independence history of India’s Muslims: it recognised, for the first time, the degree of discrimination and disadvantage (‘development deficit’) suffered by the community.³⁸⁵ The report acknowledged that this was determined, to some extent, by factors such as regional variations (the concentration of Muslims in some of the poorest states such as Uttar Pradesh, Bihar and West Bengal), the community’s own assets, and its cultural capital. However, official state policies, or the lack of them, had impacted disproportionately on the community’s sense of identity, security, and its overall development.

Implicitly, the SCR also acknowledged that India’s critical juncture had institutionalised different forms of path dependence in terms of equality of opportunity between minority and majority disadvantaged groups because in key indicators (e.g. education) of progress some minorities, such as Muslims, were at a lower level than SCs and STs. Whereas reservations provide ‘increasing returns’ to politically mobilised SCs, STs, and from the 1990s onwards the OBCs, poor religious communities became further marginalised. Even the inclusion of Muslims in the OBC category after Mandal had failed to provide a critical breakthrough: the recognition of these castes/classes remains politically contested, though more efforts have been made to implement the policy in some states (Kerala, Karnataka, Andhra Pradesh and Tamil Nadu) than others.³⁸⁶

³⁸⁵ The SCR findings were critiqued on ideological, methodological, and legal grounds. Academics like Prof. Sukhdeo Thorat agree with provision of reservation or special programmes for backward communities but insist these must be linked to discrimination. According to Thorat, ‘A discriminated group is denied equal opportunity because of caste and religious background. But that has to be proved. In the case of SCs, it is absolutely clear. But in the case of Muslims you have to prove statistically that they are discriminated against. If not, the general policy of economic intervention is enough. The SCR and RMCR have not referred to discrimination; they only focus on inequality that Muslims lag behind the Hindus. So removal of disparity within the group itself is the independent objective of the government. But if that disparity is caused because of general neglect in the past, or because of discrimination, we don’t know. In case of Dalits, we know the disparity is because of discrimination even in the present. Many studies conducted on this issue prove that SCs are discriminated. But how can you prove Muslims are discriminated?’ Interview, 19 March 2013, New Delhi. Political parties, particularly the BJP, as we shall see in subsequent chapters, opposed the report. For an incisive critiques, see Steven I. Wilkinson, ‘A Comment on the Analysis in Sachar Report’, *EPW* (10 March 2007), 832-836; Sanjeer Alam, ‘Social Exclusion of Muslims in India and Deficient Debates about Affirmative Action: Suggestions for a New Approach’, *South Asia Research* 30:1 (2010), 43-65.

³⁸⁶ SCR, Ch.10.

From the 1980s to the early 2000s, one response to discrimination and unequal treatment by minorities, particularly in the borderland regions, was to mobilise around identity and ethno-nationalist demands that produced prolonged insurgencies and counter-insurgencies. These also generated a powerful counter-reaction in the rise of the Hindu Right and the Gujarat riots in 2002. Perhaps more appropriately for our work, these events reoriented some minority communities' political outlook from 'identity' to 'development,' and from the late 1990s onwards, intersected with Congress' efforts to rebuild its relationship with the minorities.³⁸⁷ Thus, the election of the UPA-led Congress government in 2004 marked the beginning of a new contestational juncture in which politically mobilised minority groups called for 'full equality of opportunity'. How the UPA responded to this challenge is examined in the next chapter.

³⁸⁷ See Jenkins, *Identity and Identification in India*.

Chapter Four

The UPA in power: the new equal opportunities framework, Muslims and the limits of change

Introduction

The formation of a Congress-led UPA government following the Lok Sabha elections in 2004 marked a new contestational juncture in the efforts of India's religious minorities to establish a more substantive framework of equality of opportunity. Against the backdrop of 9/11, the rise of BJP and the *Hindutva* forces, and the failure of the direct assertion of minority rights by ethno-religious communities during the period from the 1980s to the 2000s, this new approach was distinguished by locating minority concerns within the national and international discourse on social exclusion. This debate highlighted the need to counter the negative implications of the securitisation of Muslim communities and to tackle social and economic disadvantage. For the Congress, which had been in the political wilderness since the mid-1990s, the change intersected with its reinvention as a social democratic party that was willing to come to terms with coalition governance. The new contestational juncture held out the promise of redefining the constitutional settlement by addressing the long-term demands of the minorities, especially Muslims. Although this development gathered considerable momentum in the first few years of the UPA (I)'s administration, by mid-2007 the political momentum behind these policies had been largely dissipated with the familiar pattern of path dependence reasserting itself.

This chapter, which sets the background for the more detailed case studies of policies on employment, service delivery and security in Chapters Five, Six and Seven, gives an overview of the UPA's approach to minorities, with special reference to Muslims. It does so by operationalising the framework of institutional policy analysis outlined in Chapter Two, particularly the policy process (agenda-setting, policy formation, decision-making, implementation and evaluation) and the role of key institutions and actors. It begins by outlining how change in policy occurred before the 2004 general elections. The process of policy formulation is then examined with reference to the two seminal reports: the SCR and the RMCR. Of particular interest is

how these reports and the associated committees sketched out a new framework of equality of opportunity which promised to transform the foundational settlement both for minorities and non-minorities. However, institutional and political factors combined to frustrate this outcome, with the consequence that the UPA's decision-making process ultimately produced a partial commitment to new policies that were poorly designed, ineffectually implemented, and still await systematic assessment.

Agenda-setting: UPA and the 2004 general elections

Although the BJP-led NDA's policies on minorities were Janus-faced – 'to accommodate minority interests while trying to query the concept of minority itself'³⁸⁸ – state power was used to influence cultural policy and education.³⁸⁹ The events of 9/11, the Kargil war, the militants' attack on the Indian Parliament, and the post-attack mobilisation against Pakistan were all skilfully exploited to equate Islam with violence. The narrative of Hindu-Muslim conflict, which is so central to *Hindutva*, became entwined with the global 'clash of civilisations'. What Nussbaum calls the 'clash within'³⁹⁰ was overlaid by a meta-narrative of the 'War on Terror'. Thus, the Gujarat riots (2002) took place against the background of heightened global and domestic Indian Islamophobia; and in the post-conflict management, even the mild-mannered Prime Minister, Atal Bihari Vajpayee, could not resist the association between Islam and violence.³⁹¹ Although the BJP at the national level tried to backtrack from this position, the damage had been done.

The origins of the new UPA-period contestational juncture lie in the developments in the 1990s. First, many Muslim and Christian organisations, notably of the lower castes, became increasingly disenchanted with their community leadership's pursuit of identity politics. The implementation of the Mandal Commission Report gave birth to organisations such as All India Backward Muslims Morcha which was founded

³⁸⁸ Subrata Mitra, 'The NDA and the Politics of Minorities in India', in Katharine Adeney and Lawrence Sáez, eds., *Coalition Politics and Hindu Nationalism* (London: Routledge, 2005), 78.

³⁸⁹ *Ibid.*, 85.

³⁹⁰ See Martha Craven Nussbaum, *The Clash Within: Democracy, Religious Violence, and India's Future* (Cambridge, MA: Belknap Press, 2007).

³⁹¹ Manas Dasgupta, 'Gujarat Incidents a Blot: Prime Minister', *The Hindu*, 5 April 2002.

in Bihar in 1994 to secure SC status for Dalit Muslims.³⁹² A similar organisation, led by Ali Anwar Ansari, the *Pasmanda* Movement, adopted an oppositional identity to *Ashraf*, and sought to create an awareness of the socio-economic conditions of poor Muslims, especially Dalit Muslims. It also campaigned for access to reservations and affirmative action programmes for religious minorities and for better representation of Muslims in government structures.³⁹³ Although the movement was unable to build a strong following across Bihar and among Muslims,³⁹⁴ its mobilisation led to the passage of resolutions in state assemblies of Bihar (2000), Uttar Pradesh (2006), and Andhra Pradesh (2009) that supported the inclusion of Dalit Christians and Muslims in the SC category.³⁹⁵

Second, a number of significant court cases, centred on the definition of OBCs, indirectly bore down on the inclusion of religious minorities within this category, particularly in states in the south that were inclined to take an expansive definition.³⁹⁶ Third, from the early to mid-1990s, Congress or Congress-led coalition governments in Kerala and Karnataka evolved new formulas for granting reservations in employment and education to religious minorities (Christians and Muslims) within the OBC category that provided rich returns. Fourth, at this time some sections within Congress began to recognise the transformative potential of this policy, despite its historic opposition to the Mandal Commission's recommendations.³⁹⁷ Following three election defeats (1996, 1998 and 1999), Congress reassessed its traditional refusal to participate in coalitions. Coming to terms with the regionalisation of Indian politics also required building an agenda for coalition governance with parties that had spearheaded Mandalisation.³⁹⁸ In 2003, at meetings in Shimla and Srinagar, the party decided upon a clear preference for coalition alliances with like-minded secular parties – a process helped by the loss of three states to the BJP (Rajasthan, Madhya Pradesh, and Chhattisgarh) in December 2003.

³⁹² Laura Dudley Jenkins, *Identity and Identification in India: Defining the Disadvantaged* (London: Routledge Curzon, 2003), 113.

³⁹³ See Khalid Anis Ansari, 'Rethinking the Pasmanda Movement', *EPW* 44:13 (28 March - 3 April 2009), 8.

³⁹⁴ *Ibid.*, 9.

³⁹⁵ See Kashif-ul-Huda, 'Ali Anwar's Struggle for Pasmanda Muslims', *Two Circles*, 17 November 2009 (electronic edition).

³⁹⁶ See Zoya Hasan, *Politics of Inclusion: Caste, Minorities and Affirmative Action* (New Delhi: Oxford University Press, 2009), Ch.4.

³⁹⁷ *Ibid.*, 90.

³⁹⁸ See Paranjoy Guha Thakurta and Shankar Raghuraman, *Divided We Stand: India in a Time of Coalitions* (Thousand Oaks: Sage Publications, 2007).

In this context, minorities, especially the Muslim community, featured prominently in the party's election campaign. Substantive equality of opportunity for SCs, STs, OBCs and religious and linguistic minorities was to be the core of the party's agenda on the minorities.³⁹⁹ The party's 2004 election manifesto stated that:

The Congress believes in affirmative action for all religious and linguistic minorities. The Congress has provided for reservations for Muslims in Kerala and Karnataka in government employment and education on the grounds that they are a socially and educationally backward class. The Congress is committed to adopting this policy for socially and educationally backward sections among Muslims and other religious minorities on a national scale...The Congress will adopt all possible measures to promote and maintain communal peace and harmony, especially in sensitive areas. It will enact a comprehensive law on social violence in all its forms and manifestations, providing for investigations by a central agency, prosecution by Special Courts and payment of uniform compensation for loss of life, honour and property.⁴⁰⁰

The BJP was criticised for damaging 'social harmony by deliberately inciting and sponsoring a communal carnage in Gujarat; by glorifying violence against missionaries; by encouraging viciously communal and fascist organisations like the VHP/Bajrang Dal to spread hate'.⁴⁰¹ Vajpayee was attacked for displaying a singular lack of consistency and clarity on major national issues such as Ayodhya, the preservation of secularism, relations with Pakistan and Jammu and Kashmir.⁴⁰² The 2004 Lok Sabha elections, the Congress boldly claimed, were 'a clash of sharply competing values, of diametrically opposite ideologies', and offered an opportunity to 'consolidate all forces subscribing to the fundamental values of our Constitution'.⁴⁰³

The UPA's NCMP, agreed by all parties which supported the alliance after the elections, including the Communists who gave outside backing, provided the broad framework of governance. It committed the administration:

...to preserve, protect and promote social harmony and to enforce the law without fear or favour to deal with all obscurantist and fundamentalist elements who seek to disturb social amity and peace, [and] *to provide for*

³⁹⁹ Indian National Congress, *Manifesto 2004*. Available at: <http://www.indian-elections.com/partymanifestoes/party-manifestoes04/congress.html> [accessed on 12 April 2012].

⁴⁰⁰ Ibid.

⁴⁰¹ Ibid.

⁴⁰² Ibid.

⁴⁰³ Ibid.

*full equality of opportunity, particularly in education and employment for Scheduled Castes, Scheduled Tribes, OBCs and religious minorities.*⁴⁰⁴

The NCMP, furthermore, promised to: reverse the communalisation of education under the NDA, especially in higher education; implement the Places of Worship (Special Provisions) Act, 1992; encourage negotiation for a settlement on Ayodhya; ‘enact a model comprehensive law to deal with communal violence and encourage each state to adopt that law to generate faith and confidence in minority communities’; ‘promote modern and technical education among all minority communities [for] social and economic empowerment of minorities’; establish a National Commission to address the socially and economically backward sections among religious and linguistic minorities, with reserved places in education and employment; provide adequate funding for the National Minorities Development Corporation; provide Constitutional status to the Minorities Commission; restructure the National Integration Council (NIC) and ensure that it met twice a year; ‘strive for recognition and promotion of Urdu language under Article 345 and 347 of the Constitution’; and, ‘take the strictest possible action, without fear or favour, against all those individuals and organisations who spread social discord, disturb social amity, [and] propagate religious bigotry and communal hatred’.⁴⁰⁵ In brief, both the Congress manifesto and the UPA’s NCMP were committed to a new approach towards equality of opportunity for minorities. The real test was whether the UPA could deliver.

Policy formulation

The process of policy formulation, as with other stages in the policy process, is difficult to delineate into a discrete stage. Nonetheless, because of the highly contentious nature of the subject matter it did, in large measure, correspond with the policy process outlined in Chapter Two (see Figure 2.1). At the core of this process was the need to establish sound empirical evidence for policy change while drawing on familiar patterns of institutional innovation. Accordingly, policy formulation was undertaken within the conventions of Indian policy-making which includes ‘top-down’ expert commissions and committees, and engagement with emerging policy networks, such as the network

⁴⁰⁴ National Common Minimum Programme of the Government of India. Available at: <http://pmindia.nic.in/cmp.pdf> [accessed on 11 April 2012] Emphasis added.

⁴⁰⁵ Ibid., 6-11.

of Muslim activist, academics and politicians. As such, it was heavily influenced by substantive constraints (defined by the problem itself) and procedural constraints (institutional, constitutional and organisational). The core framework of policy formation was provided by reports of one committee, one commission and two expert groups: the Sachar Committee Report (2006), the Ranganath Misra Commission Report (2007), a report by the expert group on Equal Opportunity Commission (2007) and a report by the expert group on Diversity Index (2008). These initiatives are summarised in Table 4.1 below:

Table 4.1
A summary of UPA’s policy initiatives on religious minorities

Policy initiatives	Specific measures taken
Affirmative action for minorities	<ul style="list-style-type: none"> • Sachar Committee Report (2006) • Ranganath Misra Commission Report (2007) • Prime Minister’s 15-Point Programme (2006) • Executive action to monitor and target employment of minorities in national government service (Office Memorandum, 2011)
New institutions	<ul style="list-style-type: none"> • Ministry of Minority Affairs (2006) • Introduction of a bill to give constitutional status for National Commission for Minorities (2004) • National Commission for Minority Educational Institutions (2004)
Anti-religious discrimination	<ul style="list-style-type: none"> • Expert group report on Equal Opportunity Commission (2007) • Communal Violence Bills (2005/2011)
Promotion of diversity	<ul style="list-style-type: none"> • Expert group report on Diversity Index (2008) • National Commission for Minority Educational Institutions Act (2004)

Source: Ministry of Minority Affairs, National Common Minimum Programme.

Note: This table excludes promotional policies such as provision of scholarship, support for State Wakf Boards, increased funding for the Maulana Azad Educational Foundation, the Scheme of Leadership Development of Minority Women, the Scheme for Skills Development of Minorities, and the Free Coaching and Allied Schemes.

The Sachar Committee was set up following a notification from the PMO on 9th March 2005. Its rationale was that because of the

lack of authentic information about the social, economic and educational status of the Muslim community of India which comes in the way of planning, formulating and implementing specific interventions, policies and programmes to address the issues relating to the socio-economic backwardness of this community, [the] Government has constituted a

High Level Committee to prepare a comprehensive report covering these aspects.⁴⁰⁶

More specifically, the terms of references required the committee to examine the geographical locations in which Muslims live, their pattern of livelihoods, socio-economic development, 'relative share in public and private sector employment', and whether it was 'in proportion to their population in the various states', and if not, what were the 'hurdles'.⁴⁰⁷ The Committee was also to ascertain the share of Muslim OBCs in public sector employment in the centre and the states. Although no specific interventions were identified, the Committee's finding would enable the 'government to address relevant issues relating to the social, economic and educational status of the Muslim community'.⁴⁰⁸ The Committee was to be chaired by Rajinder Sachar, a distinguished jurist with a track record in human rights, and included academics and public activists. It was to report within 15 months.⁴⁰⁹

Prior to the formation of SCR, on 29th October 2004, the government also set up a National Commission for Religious and Linguistic Minorities (or Ranganath Misra Commission after its chairman). This commission was charged with three specific tasks: to address the issue of developing criteria for 'socially and economically backward sections among religious and linguistic minorities'; to recommend measures... 'including reservation in education and government employment' for the welfare of these groups; and to suggest 'necessary constitutional, legal and administrative modalities required for the implementation of its recommendations'.⁴¹⁰ But, unlike the Sachar Committee, this commission was not formally constituted until March 2005, had its terms of reference extended, and despite an initial reporting deadline of six months, belatedly submitted its final report in May 2007.

Mainly because of its terms of reference, the work of the Ranganath Misra Commission was deeply contested. Formally, commissions in India have legal autonomy from the government in power; they are regarded as independent and

⁴⁰⁶ SCR, v.

⁴⁰⁷ Ibid., 3.

⁴⁰⁸ Ibid.

⁴⁰⁹ The absence of female representatives on the Committee was criticised by BJP, and Muslim female academics. 'Report will Create Disharmony: BJP', *Economic Times*, 1 December 2006 (electronic edition); Kalpana Sharma, 'Muslim Women Criticise Sachar Report for Overlooking their Problems', *The Hindu*, 28 January 2007 (electronic edition).

⁴¹⁰ RMCR, 1.

objective, and therefore their recommendations are respected. Although many governments use a commission to delay policy-making, or defer decision-taking, they rarely invite controversy over its composition. However, appointments to the Ranganath Misra Commission were highly politicised. According to one member, Tahir Mahmood, he initially declined to join, but was prevailed on to do so by the Prime Minister because he knew that as a former Chairman of the NCM Mahmood supported reservation for minorities.⁴¹¹ Apparently the Prime Minister informed Mahmood that ‘I am not a law man. Recommending reservation needs support with legal grounds; that is why I set up this commission and that is why I nominated you to this commission.’⁴¹² Whereas Mahmood’s appointment appear to have been strategically driven, to make the case for minorities, the appointment of Asha Das, a retired former secretary of Ministry of Social Justice and Empowerment (MSJE), well-known for her BJP sympathies, as an additional member-secretary of the Commission in May 2005, counterbalanced his influence. She was appointed only after the Commission’s work had commenced, and her appointment remains shrouded in mystery. Who recommended this dissenting member be added to the Commission, on what grounds the decision was made, and whether there was any strong differences between the Prime Minister and other decision-makers over her appointment, or whether it was a calculation on the part of the UPA to forestall a backlash against the recommendations, are questions that remain unanswered.⁴¹³ Whatever the intentions, Asha Das frustrated the Commission’s work, opposed its main recommendations, and ultimately submitted her own dissenting note.

⁴¹¹ As Chairman of the NCM, Prof. Tahir Mahmood had recommended that reservations should be introduced for minorities. In the NCM annual report for 1998-99, under the ‘Under-representation in public employments’ section, ‘it is recommended that (1) as even fifty years after Independence there are serious imbalances and inequalities in respect of the representation of Minorities in all public employments, top priority should be given to the adoption of measures to rectify this situation and ensure the Minorities their due share in the National resources and their management, (2) in all public employments under the Central Government there must be at least 15 per cent representation of the Minorities – with a breakdown of 10 per cent for the Muslims and 5 per cent for the other Minorities taken together; and that this should be ensured by adopting suitable measures and issuing mandatory guidelines to all government departments, public sector undertakings and the concerned recruiting authorities, (3) the wholly vague provision for “special consideration” to be given to Minorities in recruitment to public service, found in the Prime Minister’s 15-Point Programme for Minorities, be clarified to specify that it means weighting and relaxation of prescribed requirements as are available to the Scheduled Castes and Tribes’. National Commission for Minorities, *Annual Report 1998-99* (New Delhi: GoI, 1999), 40. Remarkably, these recommendations mirror almost exactly the recommendations of the RMCR.

⁴¹² Tahir Mahmood, interview, 20 February 2013, Noida.

⁴¹³ It was suggested by some of those interviewed that the appointment of a member-secretary to the Commission was deliberately designed to frustrate the Commission’s recommendations. Whilst there is no written documentary evidence to support this inference, the subsequent actions of the member did contribute to the delay in the RMCR becoming public.

Her efforts to continuously prolong the Commission's tenure when the Chair was seriously ill were eventually thwarted in March 2007.

UPA (I) and a new framework of equality of opportunity for religious minorities with special reference to Muslims

The four reports of a committee, commission and expert groups – the SCR, the RMCR, EOC report and the expert group on Diversity Index report (DI report) – mark a major landmark in the development of equal opportunities discourse in India. Together, it has been suggested, they represent something of a ‘paradigm shift’ in how to address the challenges of delivering equality in twenty-first century India.⁴¹⁴ Combining specific (directed at minorities) and general (directed at redefining the framework of equality of opportunity) measures, the recommendations of these reports recast the framework of ‘competing equalities’ with a perceptible shift from the focus on national integration, which had characterised the earlier construction of religious minorities, to justice and equality.⁴¹⁵ This change was made possible by the new discourses of social inclusion, diversity and anti-discrimination, and was most evident in the desire to shift the debate with reference to India's Muslims from the politics of ‘identity’ to the politics of ‘development’ and ‘social exclusion’. Religious minorities were to be enabled to fully share the glow of citizenship in India's developing economy. The core elements of this framework included: (i) recognising religion as a category of social exclusion; (ii) creating a level playing field for religious minorities on a par with SCs, STs and OBCs; (iii) ensuring that service delivery reflects the principle of proportionality; and (iv) institutionalising the better monitoring of equality of opportunity and promotion of social diversity.

Religion as a category of social exclusion

We have noted above that the Sachar Committee was formed because of ‘lack of authentic information about the social, economic and educational status of the Muslim community of India’.⁴¹⁶ This outcome was the result of institutional resistance by the

⁴¹⁴ Tarunabh Khaitan, ‘Transcending Reservation: A Paradigm Shift in the Debate on Equality’, *EPW* 43:38 (20-26 September 2008), 8-12.

⁴¹⁵ For the importance of this shift see, Rochana Bajpai, *Debating Difference: Group Rights and Liberal Democracy in India* (New Delhi: Oxford University Press, 2011), Ch. 6.

⁴¹⁶ SCR, v.

secular state against the recognition of religious communities as SRCs. In the political language of the foundational settlement, religion as a category was non-negotiable beyond cultural and linguistic rights because it was associated with Partition. As a consequence, despite widespread perception of deprivation and discrimination among religious communities, notably Muslims, there was no analysis of the socio-economic and educational conditions of the minorities. ‘Until recently’, the SCR noted, ‘appropriate data for such an analysis was not generated by Government agencies.’⁴¹⁷ Much of the initial work of the SCR, therefore, centred on disaggregating such data to establish the comparative position of Muslims *vis-à-vis* other communities. Once this was achieved, the assessment of the Committee was clear:

A wide variety of policy initiatives and programmes have been launched by successive governments to promote the economic, social and educational development of the minority communities in India. However, while the Muslims have no doubt made some visible progress, the perception remains that the economic and educational gap between the Community and the rest of the SRCs has been widening. Once the ‘development deficit’ among Muslims is assessed policy interventions will need to be reviewed in the context of available evidence, and new initiatives launched to grapple with the marginalisation of Muslims in the social, economic and political space.⁴¹⁸

To overcome this ‘development deficit’, the SCR proposed two types of measures: specific programmes aimed at enhancing affirmative action through better educational, infrastructure and self-help provision and support by private and public sector undertakings aimed at the Muslim community, and general initiatives that went beyond the conventional conceptual tool-box of the Indian approach to disadvantage. First, it proposed the creation of a National Data Bank for transparent, generally accessible and relevant data on SRCs so their engagement in public and private programmes could be better evaluated. Second, an autonomous Assessment and Monitoring Authority was proposed that would highlight areas of concern for further development. Third, to enhance the framework of equality of opportunity, the SCR recommended a more decisive shift from non-discrimination to anti-discrimination with new legislation that would be overseen by the creation of an EOC. Finally, to promote diversity and arrest religious ghettoisation, the Committee proposed the construction of a DI that would measure diversity in critical areas such as employment in the public and private sectors

⁴¹⁷ Ibid., 2.

⁴¹⁸ Ibid.

and housing. The degree of organisational diversity would become the new marker of willingness to embrace diverse, plural and equal opportunities-driven modern India.⁴¹⁹

Religious minorities and SCs, STs and OBCs – a new level playing field

In addition to the approaches to ensure better equality of opportunity and promotion of diversity, a key feature of the new framework was to erase the structural barriers between religious minorities, and SCs, STs and OBCs in the recognition of protective equality. By creating a level playing field, in which religious minorities would be included in the protective and developmental provisions of affirmative action in employment and service delivery, the framework sought to eradicate the anomalies which had persisted as ineradicable barriers. Potentially, this proposal challenged the very essence of the constitutional settlement.

The RMCR's main proposal extended protective equality enjoyed by SCs, STs and OBCs to religious minorities. To this end, the Commission opted for a criteria of socio-economic backwardness in keeping with that defined for the majority (Hindu) community with 'no discrimination whatsoever between the majority community and minorities'⁴²⁰ and '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*'.⁴²¹ The logical extension of this principle, the Commission argued, was 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.⁴²²

To be consistent with this recommendation, which de-linked caste from religion, there was a need to delete paragraph three of the Constitution (Scheduled Caste) Order (1950), 'which originally restricted the Scheduled Caste net to the Hindus and later opened it to Sikhs and Buddhists' but still excluded Christians, Jains, Muslims and

⁴¹⁹ Ibid., Ch.12.

⁴²⁰ RMCR, 148-9.

⁴²¹ Ibid., 149. Emphasis added.

⁴²² Ibid.

Parsis.⁴²³ In making caste religiously neutral, moreover, the Commission was insistent that a change in an individual's religion, for example conversion to Christianity or Islam, should not affect his or her SC status. In short, the constitutional logic of restricting reservations to former Hindu untouchables (SCs) was now to be extended to religious minorities, including the followers of those religions that officially proclaimed an egalitarian creed.

By making caste religiously neutral, the RMCR opened up the possibilities of reservations in central and state employment for religious minorities. Given the extent of under-representation of some religious minorities in public employment, especially Muslims, the Commission suggested that 15 per cent 'of posts in all cadres and grades under the Central and State governments should be earmarked' for Muslims (10 per cent) and other minorities (5 per cent). Such a provision, it argued, was consistent with Article 16(4) of the Constitution, which provides the enabling provision for reservations for SCs and STs.⁴²⁴ In the event this proved difficult to implement, the RMCR recommended that 8.4 per cent of the 27 per cent OBC quota be reserved for religious minorities, with 6 per cent earmarked for Muslims and 2.4 for non-Muslims.⁴²⁵

In addition, the RMCR proposed a raft of legal and institutional measures which, among other things, included: firm protection for minority rights to education; the need for statutory status for the judicial enforcement of the PM's 15PP for minorities; a Parliamentary Committee on constitutional policy for minorities; a national committee for monitoring the educational and economic development of minorities; the establishment of state-level Minorities Commissions and Welfare Departments in all

⁴²³ Ibid., 154. This recommendation was strongly opposed by Asha Das in her dissenting note in which she argued against granting the SC status to the disadvantaged Muslims and Christians. See *ibid.*, 156-68.

⁴²⁴ This article also stipulates that: 'Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.'

⁴²⁵ RMCR, 153. Prof. Tahir Mahmood, who wrote the recommendations of the RMCR, explained that the members of the commission anticipated the first recommendation would be difficult to digest in the Indian political context. Therefore, he added a rider recommending an alternative reservation in the OBC sub-quota. He justified the provision of reservation for poor Christians and Muslims by stating that 'surprisingly reservation is successfully working in Kerala and Karnataka and nobody has challenged it nor has any court taken *suo motu* cognisance of it. So if it is constitutionally valid in two states then it can be constitutionally valid in all over India. That was our argument.' Mahmood, interview, 12 April 2014, New Delhi. Mahmood's position is indirectly supported by Fazal, see Tanweer Fazal's, 'Between Identity and Equity: An Agenda for Affirmative Action for Muslims', in Gurpeet Mahajan and Surinder S. Jodhka, eds., *Religion, Communities and Development: Changing Contours of Politics and Policy in India* (London: Routledge, 2010), 228-47.

states and Union Territories; and the decentralisation of all minority-related schemes to the district-level with corresponding structures for minority representation.⁴²⁶

Proportionality in service delivery

Another basic dimension of the new approach was that the principle of proportionality should apply in public sector service delivery. In the development of equal opportunity policies in the US and the UK it became axiomatic that services provided by the state and parastatal organisation should be beyond direct and indirect discrimination, and service budgets should be proportionally allocated to target groups, such as black and ethnic minorities, to reflect their proportion in the population.⁴²⁷ In India, the principle of proportionality had been conceded, to some degree, for SCs and STs in the five-year plans – notwithstanding the problems associated with inadequate allocation of funds, non-utilisation, implementation and administrative bottlenecks. But this principle was not extended to religious minorities because of concerns that any special treatment for these groups would contravene the Constitution.

Although the case for a sub-plan for minorities in the Eleventh Five-Year Plan (2007-12) was rejected,⁴²⁸ the proposals which emerged from the SCR, RMCR, and other related initiatives recognised the principle of proportionality within the limits of executive and legislative action. Hence, the PM's 15PP, re-launched in January 2006, was the flagship measure at the centre of this drive, with the specific aim of improving equal opportunities for minorities by ensuring an equitable share for religious minorities in economic activity and employment, improving their living conditions, and preventing and controlling communal riots.⁴²⁹ This initiative drew on resources allocated to other programmes. Where possible, it aimed to ensure that 15 per cent of the total outlay was earmarked for minorities. In 2007-08, the newly created MoMA identified 90 MCDs for

⁴²⁶ (RMCR) *ibid.*, 154-55.

⁴²⁷ See Wendy Ball and John Solomos, eds., *Race and Local Politics* (Basingstoke: Macmillan, 1990).

⁴²⁸ Hasan, *Politics of Inclusion*, 54.

⁴²⁹ Ministry of Minority Affairs, 'Prime Minister's New 15-Point Programme for the Welfare of Minorities'. Available at: http://www.minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/amended_guidelines.pdf [accessed on 4 September 2013].

a MSDP ‘to address the “development deficits” specially in education, employment, sanitation, housing, drinking water and electricity supply’.⁴³⁰

The case for proportionality was also made for some of the high profile UPA government programmes – Bharat Nirman (creation of basic rural infrastructure), Prime Minister Rozgar Yojana (provision of institutional finance to educated unemployed youth), Swarnajayanti Gram Swarozgar Yojana (major self-employment programme for the rural poor), NREGA, Mid-Day Meal Scheme, and Polio Eradication – aimed at poverty reduction.⁴³¹ Monitoring data available for some of these programmes indicated that take-up by religious minorities, notably Muslims, was below the mean;⁴³² and in seeking to correct this imbalance through better distribution and monitoring, the case was also made for extending this approach to the activities of public sector units, banks and private contractors dependent on official contracts. In following this approach, these recommendations were building on the existing policies of leveraging change by using the state sector.

Institutionalising equality of opportunity and promotion of social diversity (Equal Opportunity Commission and Diversity Index)

A further innovation in creating a level playing field for religious minorities was the proposal to create an EOC and a DI. Both proposals emerged from the recommendations of the SCR, but their origins were to be found in the experience of the US, the UK, and Canada in responding to competing social disadvantages on race, ethnicity, gender and tribe. Some of these countries (e.g. UK), like India, were faced with multiple, competing and overlapping institutions for promoting equality (e.g. race and gender) that required integration within a singular overarching framework.⁴³³

In order to face these complex challenges of disadvantage and discrimination, often around the existence of multiple axes of deprivation, new thinking was needed on

⁴³⁰ Ministry of Minority Affairs, ‘Initiatives Taken by the Ministry of Minority Affairs’, *Press Information Bureau (PIB)*, 19 December 2008.

⁴³¹ RMCR, 91-2.

⁴³² *Ibid.*, Ch.7.

⁴³³ *Equal Opportunity Commission: What, Why and How?* (New Delhi: GoI, 2008). See also Khaitan, ‘Transcending Reservation’.

‘how to handle the interaction effects of more than one axis of disadvantage’.⁴³⁴ The expert group which examined this subject proposed an EOC with a focus on eradicating discrimination against ‘deprived groups’ identified by an objective deprivation index defined by ‘sex, caste, language, religion, disability, descent, place of birth, residence, race or any other’ grounds.⁴³⁵ The EOC was to be the executive body that would initially focus on two domains: education and employment. However, its overall remit was policy intervention and coordination:

the Commission will have advisory and consultative functions with government departments, private enterprises and autonomous institutions in respect of equal opportunity practices for which the EOC will evolve Equal Opportunity Practices Codes in different sectors and regions...The Commission’s overall role would thus be to work towards ensuring the elimination of discrimination and denial of equal opportunities in all walks of life.⁴³⁶

Whilst the EOC would focus on advocacy, monitoring, and where necessary, group grievances, a more direct effort to promote social diversity in the public and private sector was proposed by the expert group’s report on the DI. This recommended the creation of a DI to oversee the encouragement of diversity in education, employment and housing societies. ‘The case for increasing social diversity in public spaces’, the report noted:

can be built on the notion of a fair demographic representation for all groups of population. Groups that are subjected to discrimination in society tend to get under-represented (as compared to their proportion in the population) in several public spheres. This leads to inequity and alienation resulting in resentment and frustration among the excluded population.⁴³⁷

The DI would measure the ‘diversity gap’ of public spaces of particular social groups – religion, caste, gender – in proportion to the population who are eligible to enter the institution. Significant under-representation of any category, the report suggested, would be met through incentivisation in the allocation of state fund to institutions (e.g. universities in the public and private sectors), corporate social responsibility, backed with the threat of affirmative action (public and private sector), and ‘incentives to

⁴³⁴ (*Equal Opportunity Commission*) *ibid.*, 12.

⁴³⁵ *The Equal Opportunity Commission Act, 2008*, Expert group report on Equal Opportunity Commission, 2008, 8.

⁴³⁶ *Equal Opportunity Commission*, 40-1.

⁴³⁷ *Report of the Expert Group on Diversity Index* (New Delhi: GoI, 2008), 33.

builders for housing complexes that have more “diverse” resident populations to promote “composite living spaces” for “socio-religious communities”⁴³⁸.

Overall, the recommendations represented a decisive shift in the framing of equality of opportunity in post-Independence India, especially for minorities. They were distinguished by new ‘out-of-the-box thinking that went beyond reservations in public employment and education’.⁴³⁹ In recognising religion as an important SRC around which deprivation can be clustered, for instance, the SCR challenged the post-Independence taboo about religion in public policy. By proposing to include disadvantaged Christians and Muslims within the framework of reservations, the RMCR sought to create a level playing field, one in which caste was de-linked from religion. And the proposals to create an EOC and a DI attempted to move beyond a group-based system of protective equality, to establish a general equalities framework aimed at combating discrimination and promoting diversity. The real challenge before the UPA was to translate policy-making into reality.

Decision-making: understanding the UPA’s decisions and non-decisions

Whereas the policy-making process was reasonably transparent, decision-making was far more opaque. As a coalition, the UPA needed to accommodate the interests of its partners and external supporters (e.g. the Left parties, the BSP and the SP)⁴⁴⁰ who competed for different caste and religious constituencies. Within the administration itself, moreover, there was a clear division between those in government and the parties; and within the UPA there was a two-fold division of authority: the Prime Minister, Manmohan Singh, and the President of the Congress, Sonia Gandhi.⁴⁴¹

⁴³⁸ Ibid, viii.

⁴³⁹ Khaitan, ‘Transcending Reservations’, 8.

⁴⁴⁰ Relations between the UPA government and outside parties were managed through the mechanism of a Coordination Committee.

⁴⁴¹ C. P. Bhambri, *Sonia in Power: UPA Government, 2004-06* (New Delhi: Shirpa Publications, 2006), argues that amongst other things, the creation of the National Advisory Council (NAC) under the Chairmanship of Sonia Gandhi established a ‘dual centre of power’, 24. This aspect has been examined in more detail by Sanjaya Baru in *The Accidental Prime Minister: The Making and Unmaking of Manmohan Singh* (New Delhi: Penguin, 2014), see 93-4, 102-3.

Foremost among these institutional constraints was the BJP's ability to mobilise extensive institutional, political and social opposition to any change in the foundational settlement which appeared to 'appease' minorities. Although in opposition, the BJP and the forces of *Hindutva* could, as we shall see, readily mobilise political opinion by playing on the emotional codes of Indian nationalism such as national unity and Partition that had become firmly embedded in the institutionalisation of state policies. The BJP and some sections within Congress itself thus represented the 'permanent nationalist establishment' which could garner extensive sympathy within the civil service, both within the centre and the states.

Equally important was the political opposition of SC, ST and OBC lobbies that opposed policy change in favour of religious minorities at their expense. As the main beneficiaries of the institutionalised reservations system, these lobbies (as we shall see in subsequent chapter) objected strongly to any dilution of their existing quotas or change in the existing institutional arrangements that underpinned the regimes of 'competing equalities'. Sometime this institutional opposition was voiced directly by the lobbies' leadership and apex intuitions; more often than not, it was articulated implicitly within the structures of governance which had emerged to oversee their interests, and recognised by the government in its policymaking process towards these groups.

Finally, other institutional constraints were not inconsiderable. Since 1947 the civil service had been nurtured on the idea that religious demands, especially by minorities, were inadmissible. This secular outlook was also underpinned by the judiciary, which tended to interpret the foundational settlement in narrow and restrictive terms. While it has gradually relented in extending reservations, the inclusion of religious minorities within this framework continues to be a source of dispute. As we shall see below and in Chapters Five, Six, and Seven, judicial activism was to play a significant role in limiting the executive's ability to develop and implement policy.⁴⁴²

⁴⁴² See Rudolf C. Heredia, *Taking Sides: Reservations, Quotas and Minority Rights in India* (New Delhi: Penguin Books, 2012), Ch.5.

Sachar Committee Report (SCR)

The SCR became embroiled in controversy even before it was published. When the Committee requested data from the armed forces on the proportion of Muslims in the army, it was accused in the press and Parliament of ‘trying to “communalise” the army, with senior army officers particularly vocal in their protests’.⁴⁴³ Yet, when the report was presented to the Prime Minister, his response was supportive. According to one member of the SCR:

He found the committee report an accurate assessment of the Muslim community in India. He also found the methodology robust. He was satisfied because the broad direction of the SCR was more to do with the fundamental policies of India.⁴⁴⁴

Before the report was tabled in Parliament on 30th November 2006,⁴⁴⁵ the Prime Minister gave it his wholehearted support, affirming the need for ‘fair and legitimate share for minorities in central and state government and private sector jobs’.⁴⁴⁶ Addressing the National Development Council on 9th December he said: ‘We will have to devise innovative plans to ensure that minorities, particularly the Muslim minority, are empowered to share equitably the fruits of development. They must have the first claim on resources.’⁴⁴⁷ In a debate on the report in the Rajya Sabha, A. R. Antulay, the Minister of Minority Affairs, announced that the ‘Sachar Committee’s recommendations will be implemented’. He, however, avoided direct comment on whether the recommendations would be debated in the Parliament, saying ‘I did not say that the SCR will be discussed in Parliament during the current session.’⁴⁴⁸ Although a meeting at which minority Members of Parliament (MPs) from all parties attended was held, the minister confirmed it was not called to discuss the SCR but because there was

⁴⁴³ Steven I. Wilkinson, ‘The UPA and Muslims’, in Lawrence Sáez and Gurharpal Singh, eds., *New Dimensions of Politics in India: The United Progressive Alliance in Power* (London: Routledge, 2012), 73.

⁴⁴⁴ Abusaleh Shariff, interview, 13 February 2013, New Delhi.

⁴⁴⁵ It is alleged that the copy of report was tabled in Parliament and was given to MPs in both houses of parliament. However, it was not provided to Members of the Legislative Assembly and Members of Legislative Councils. Garima Mishra, ‘Revisiting the Sachar Report’, *Indian Express*, 31 December 2012 (electronic edition).

⁴⁴⁶ Prime Minister’s Office, ‘Prime Minister Inaugurates National Conference of State Minorities Commissions’, 2 November 2006. Available at:

http://pmindia.nic.in/content_print.php?nodeid=458&nodetype=2 [accessed on 10 May 2012].

⁴⁴⁷ Prime Minister’s Office, ‘Clarifications on Prime Minister’s Reference to “First Claim on Resources”’, 10 December 2006. Available at: <http://pmindia.nic.in/press-details.php?nodeid=516> [accessed on 2 June 2013]. Not unexpectedly, this statement was sensationalised as ‘Muslims must have first claim on resources’.

⁴⁴⁸ *RSD*, 18 December 2006.

no parliamentary Standing Committee scrutinising MoMA.⁴⁴⁹ Subsequently, there were very limited references to the SCR in the Lok Sabha or Rajya Sabha,⁴⁵⁰ but formally the government remained committed to fully implementing its recommendations. Surprisingly, unlike the legislation on extending reservations in education to OBCs, the UPA singularly failed to build a cross-party consensus around the SCR.⁴⁵¹

One reason for this was the predictable response of the BJP which condemned the SCR as nothing but ‘vote-bank politics’ and ‘minority appeasement’.⁴⁵² Pro-BJP media headlined the Prime Minister’s earlier comments as ‘Muslims must have first claim on resources’. Indeed, the BJP alleged the SCR’s findings had been manipulated because evidence from the National Sample Survey Organisation report demonstrated that it was Christians not Muslims who suffered the highest unemployment rate. A Muslim vice-president of the BJP stated:

We have been saying it all along that the Sachar Committee was created for vote-bank reasons. It was designed to serve a political purpose especially ahead of the Uttar Pradesh assembly elections. The National Sample Survey Organisation report vindicates our assertion.⁴⁵³

This position was also echoed by a senior BJP MP in an interview:

We don’t agree with [SCR’s] recommendations. We believe the SCR is divisive in nature, appeasing minorities, pro-Congress, and allows the Congress to consolidate the Muslim vote-bank.⁴⁵⁴

Rejecting the case for a more equitable representation of Muslims in state employment as a ‘dangerous doctrine’, the BJP spokesman said the party would fight the implementation of the SCR recommendations ‘tooth and nail’.⁴⁵⁵ In brief, the BJP’s

⁴⁴⁹ Ibid.

⁴⁵⁰ See *Lok Sabha Debate (LSD)* 31 August 2008; *LSD*, 9 June 2009; *LSD*, 23 March 2011; and *LSD*, 18 December 2012.

⁴⁵¹ The SCR was supported by the Communists, but opposed by the SP. Surprisingly, the latter would subsequently champion the case for affirmative actions for Muslims and the RMCR.

⁴⁵² ‘Presidential Speech by Shri Rajnath Singh at the National Council Meeting, Lucknow (Uttar Pradesh)’, *BJP*, 23 December 2006. Available at: http://www.bjp.org/index.php?option=com_content&view=article&id=240:presidential-speech-by-sh-rajnath-singh-in-national-council-meeting-lucknow-uttar-pradesh&catid=84&Itemid=503 [accessed on 1 June 2013].

⁴⁵³ ‘Report Shows Sachar Findings Manipulated: BJP’, *Times of India*, 31 March 2007 (electronic edition).

⁴⁵⁴ Chandan Mitra, interview, 14, March 2013, New Delhi.

⁴⁵⁵ *Indian Express*, 6 November 2006 (electronic edition).

rhetoric of minority appeasement rekindled the spectre of the two-nation theory and religious separatism as the root of Partition and communal conflict.⁴⁵⁶

Ranganath Misra Commission Report (RMCR)

The BJP's vociferous opposition to the SCR report and institutional engagement with the RMCR ensured that the latter's recommendations would prove difficult to translate into policy. The report was completed on 10th May 2007 but not tabled in Parliament until after the Lok Sabha elections in 2009. By mid-2007, the UPA had begun to backtrack on its commitments to minorities. Among the explanations given for this turnaround are the BJP's opposition, the performance of the Congress party in mid-term elections, and the growing difficulties of managing the coalition following the withdrawal of Communist support after the vote of confidence over the nuclear fuel deal with the US.⁴⁵⁷ Equally relevant were the internal opposition within the Congress itself, and the increasing institutional and judicial opposition to the new proposals.

Despite the Prime Minister's support for the RMCR, by the end of 2007 the UPA had begun to distance itself from the report's recommendations. Although the contents of the report were widely leaked to the press, it was not immediately tabled in Parliament, nor circulated to India's premier policy-making body, the Planning Commission.⁴⁵⁸ On 9th December 2009, Mulayam Singh Yadav (SP) in the Lok Sabha taunted the Prime Minister for not releasing the report:

RMCR was introduced in July 2007. The government is hiding it for two years and the report was not tabled in the Lok Sabha. Is it trivial? One day, two day, every day has been like that. Liberhan was also similar. Why no debate about this report has taken place for about two years? I want to ask this. Prime Minister is sitting here. Prime Minister, please tell us when this discussion session will take place.⁴⁵⁹

In fact the report was kept under very restricted circulation. 'One funny thing', recalls a member of the Commission,

is that a couple of months after the report was tabled in Parliament I received a phone call from the former deputy secretary of the

⁴⁵⁶ Hasan, *Politics of Inclusion*, 188.

⁴⁵⁷ Baru, *The Accidental Prime Minister*, Ch. 12.

⁴⁵⁸ Mahmood, interview, 20 February 2013, Noida.

⁴⁵⁹ *LSD*, 9 December 2009. Translated from Hindi.

Commission. He said he had been told that all copies of the report from all members and chairman must be submitted to the ministry. They were trying to suppress it. They didn't want the report to be circulated. Even after it was tabled, we were asked to return our copies. I refused and said that now the report is tabled in the Parliament, there is nothing confidential about it so I will release the report to the press. So I did that. That is how it became public. The government has not sent the report to any parliamentarian.⁴⁶⁰

Although the delay in making the report public might be considered a normal part of political calculations in weighing the costs and benefits, its potential implications for other groups – SCs, STs and OBCs – also needed to be taken into consideration. The government's referral of the report to the NCSC and NCBC elicited a reply from the former that 'Dalit Christians and Dalit Muslims cannot be included in the SC list as they do not "satisfactorily" fulfil the key criterion on being SC'.⁴⁶¹ Subsequently, this position was modified to one in which such inclusion of Dalit Christians and Dalit Muslims would be acceptable provided the share of reservation for 15 per cent of SCs were not encroached.⁴⁶² As late as 24th January 2011, the NCSC's position was that 'reservation should be extended to them but the share of 15 per cent of SCs should not be disturbed and the element of reservation for these communities (Dalit Christians and Dalit Muslims) should be determined by the Government keeping in view of their population. As per the direction of the Supreme Court, the overall reservation of 50 per cent has to be maintained.'⁴⁶³ A month later, the NCSC added further conditions that such an inclusion would have to demonstrate that after conversion Christian and Muslim Dalits were still following caste traditions and customs and were still suffering untouchability and discrimination.⁴⁶⁴ This renewed emphasis on caste, and the need for a separate quota for religious minorities, reconfirmed the institutional position of 'competing equalities'.

⁴⁶⁰ Mahmood, interview, 20 February 2013, Noida.

⁴⁶¹ Hasan, *Politics of Inclusion*, 213-4.

⁴⁶² National Commission for Scheduled Castes, *Minutes of the 7th Meeting of the National Commission for Scheduled Castes*, 24 January 2011. Available at: <http://ncsc.nic.in/files/ncsc/144.pdf> [accessed on 14 May 2013].

⁴⁶³ Ibid.

⁴⁶⁴ National Commission for Scheduled Castes, *Minutes of the 9th Meeting of the National Commission for Scheduled Castes*, 14 February 2011. Available at: <http://ncsc.nic.in/files/ncsc/148.pdf> [accessed on 14 May 2013].

Equal Opportunity Commission and the Diversity Index

Similar institutional factors appear to have impeded the UPA's decision-making process in its efforts to push through a new framework for managing equal opportunities and promoting diversity. When the expert group on the EOC submitted its report, along with the draft bill in February 2008, a Cabinet note was circulated to all ministries and departments.⁴⁶⁵ Initially, the government supported the proposal, including it in the President's Address to Parliament on 4th June 2009; in a debate in the Rajya Sabha on 13th July 2009, Salman Khurshid (Minister of Minority Affairs) confirmed the proposal for an EOC was under serious consideration by the government. The EOC Bill was listed for introduction in the winter session of Parliament in 2009, but because of its potential implications it was referred to the Group of Ministers, which included 11 Cabinet ministers. Reluctant to overturn the existing regimes of 'competing equalities', with their existing executive bodies and oversight, and facing bitter opposition within the ministries on whether the new body should be located in MoMA or MSJE, the Group of Ministers decided that the remit of EOC should be limited to 'minorities only'.⁴⁶⁶ The bill was still pending before Parliament in May 2014.⁴⁶⁷

⁴⁶⁵ *LSD*, 17 December 2009.

⁴⁶⁶ Salman Khurshid, as the former Minister of Minority Affairs, objected strongly to the Group of Ministers' decision to limit the EOC's jurisdiction to minorities only. I am grateful for this fact to Prof. Gurharpal Singh who met Khurshid during his visit to SOAS in March 2014. Khurshid's interpretation is confirmed by the reports in the press and other sources. Justice Sachar, Abusaleh Shariff, Asaduddin Owaisi, former chairmen of NCM, Mohammad Qureshi and Wajahat Habibullah, argued that an EOC should be for all Indians, not just minorities. In similar vein, Zoya Hasan asserted, 'it does not make much sense to set up EOC while there are several commissions already. EOC makes sense when you don't have so many commissions. We have 15 commissions in India. However, if you have EOC it has to deal with all marginalised groups. *But ministries and commissions which are opposed to EOC have said that EOC should be only for minorities. That doesn't make any sense at all. Consequently, it is going to end up ridiculously if it is decided to set up now to show that the government is doing something for minorities but it will be only for minorities. And there is already NCM. Government has set up two other minority-related commissions. So what is the point of setting up yet another commission for minorities? I think there is political opposition to it from other commissions and ministries. I think that is the reason for its failure.*' Zoya Hasan, interview, 11 March 2013, New Delhi. Emphasis added. Prof. Sukhadeo Thorat who was consulted by the expert group on EOC also criticised the decision of Group of Ministers on the EOC for not being 'conceptually clear', Sukhadeo Thorat, interview, 19 March 2013, New Delhi.

⁴⁶⁷ Similar to SCR and RMCR, the issues around the EOC Bill was not actively discussed in Parliament. 'Proposal is under consideration' was the most frequently repeated claims by the Ministry of Minority Affairs, see *LSD*, 17 December 2009; *LSD*, 2 August 2010; *LSD*, 25 August 2011; and *LSD*, 22 August 2013. In the quarterly review on the implementation of SCR recommendations, it was simply noted that 'EOC submitted its report on 13th March 2008', without referring to further progress, *LSD*, 3 May 2010. Despite Salman Khurshid's announcement that 'Ministry would like to constitute an EOC during the Twelfth Plan' (Ministry of Minority Affairs, 'National Conference of State Ministers for Minority Welfare', *PIB*, 8 June 2012), the EOC was still under consideration by the government in early 2014. The MoMA's report on follow up action on Sachar Committee Report (status as on 1 February 2014) also still asserted that the EOC was under consideration by the government. Available at: http://www.minorityaffairs.gov.in/sites/upload_files/moma/files/Sachar_Committee_Recommendation-wise.pdf [accessed on 3 May 2014].

Interestingly, as with the RMCR, the circulation of the DI report was also strictly controlled.⁴⁶⁸ Soon after the report was submitted, it was criticised by the Central Statistical Office for being ‘conceptually flawed’, ‘over-simplistic’, and ‘statistically challenging’.⁴⁶⁹ There were, as a result, considerable inter-ministerial tensions over the report and its ownership. The Chairman of the expert group confided in an interview: ‘Ministers have not done anything to promote this index. As far as DI is concerned, they received the report, made some copies, distributed a few, and forgot about it.’⁴⁷⁰ Indeed, there was little in the DI to appeal to SCs, STs and OBCs because, with established national commissions and exclusive anti-discrimination legislation, the proposal either appeared to undermine the *status quo*, or at best, add another layer of unnecessary complexity. In fact, if the EOC and DI proposals had been implemented, alongside existing commissions, they would have produced a ‘regulatory nightmare’.⁴⁷¹ The idea of one single regulatory authority was clearly desirable, but institutionally difficult within a framework of ‘competing equalities’ backed by powerful political lobbies. According to one senior analyst, the proposal for an EOC and a DI lacked a clear mandate for where they would be ‘located at the heart of governance’. As a result, as generic measures, and without community support, they were ‘killed off by inter-ministerial in-fighting and the SCs, STs and OBCs lobbies’.⁴⁷²

Implementation: executive action, symbolism and promotional policies

As we have seen, the general view of UPA policies on minorities, particularly Muslims, is that they were framed by political calculations. The decision to implement, or not implement these policies, it is argued, was driven primarily by political calculations and the cost and benefits of political payoffs. But this is only a partial explanation. Institutional path dependence suggests that the UPA had to overcome three forms of

⁴⁶⁸ ‘We submitted the DI report to the government, but only 500 copies were made. It was not even distributed properly. The report did not reach all the relevant sections. The number of copy was much smaller compared to the SCR. SCR was uploaded online so at least it was available to people who could access to the internet. The DI report is now available online but it took a long time to get it online.’ Amitabh Kundu, interview, 10 February 2013, New Delhi.

⁴⁶⁹ Manoj C. G., ‘Diversity Index May Have to Wait’, *Financial Express*, 26 June 2009 (electronic edition); Manoj C. G., ‘Diversity Index Report Flawed: Central Statistical Office’, *Indian Express*, 27 June 2009 (electronic edition).

⁴⁷⁰ Kundu, interview, 10 February 2013, New Delhi.

⁴⁷¹ Khaitan, ‘Transcending Reservations’, 11.

⁴⁷² Surinder S. Jodhka, interview, Skype, 10 August 2013.

opposition. First, it was the politically institutionalised opposition of the BJP and *Hindutva* forces, which articulated an anti-minorities construction of the foundational settlement. This opposition, it needs to be noted, also had a significant constituency within the Congress itself. Second, the institutionalised path dependence of SC, ST and OBC interests, with increasingly powerful political lobbies, presented a formidable obstacle to the inclusion of minorities within India's framework of 'competing equalities'. At times, as we have seen above, these interests were articulated as zero-sum conflicts of potential losses. Third, and perhaps most importantly, the institutionalised path dependent framework of dealing with minorities as communities of culture had become firmly embedded within the structures of the secular state so that provision of special programmes for minorities – of affirmative action or reservations – brought forth generally hostile responses. Typical of this outlook were, for example, comments such as these:

It is not constitutional to have schemes just for Muslims. We cannot design schemes just for Muslims, or have budgetary allocations for Muslims, or call Muslims, Muslims. It is simply not constitutional. The Constitution makes special mention of SCs and STs for affirmative action, not of Muslims. We can only have intervention for all minorities.⁴⁷³

These 'assumptive worlds', the 'mental models' with which the Indian state operated illustrate the embedded nature of resistance to policy change. These assumptions and understandings of minorities, as we shall see in Chapters Five, Six, and Seven, and the repertoire of everyday bureaucratic discourses were critical to shaping solutions and policy actions. Indeed, in India, the problematic status of some minorities, and the associations of Muslims with the break-up of the country in the national imagination, suggests that the UPA policies needed a cultural transformation of embedded institutional opposition. In the absence of a political commitment and a capacity to overcome institutional cultures of resistance, policy implementation was reflected in 'executive action', 'symbolism', and 'promotionalism'.⁴⁷⁴

⁴⁷³ Farah Naqvi, 'Open a Window', *Hindustan Times*, 1 November 2006 (electronic edition).

⁴⁷⁴ For these modes of implementation, see contributions by Wendy Ball and John Solomos, Ken Young and John Solomos and Gurharpal Singh in Wendy Ball and John Solomos, eds., *Race and Local Politics* (Basingstoke: Macmillan, 1990).

Executive action

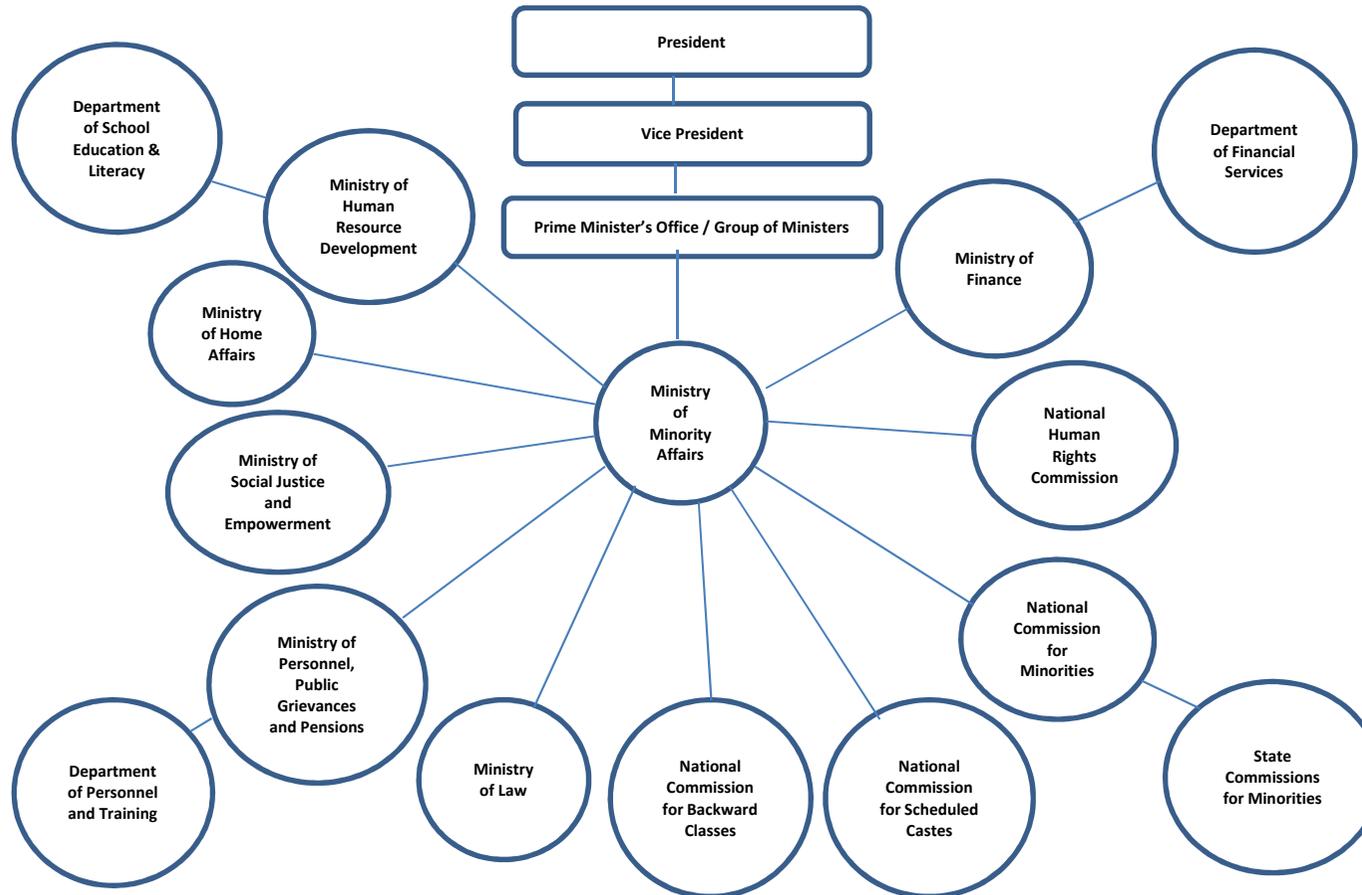
Executive action taken by the UPA government to implement its policy mix was of two types: symbolic and substantive. Symbolic measures included the launch of new commissions (National Commission for Minority Educational Institutions) and reorganisation of existing administrative structures. Foremost among these was the creation of MoMA (2006) which was established to ‘ensure a focused approach to the issues related to the minorities and to play a pivotal role in the overall policy, planning, coordination, evaluation and review of the regulatory and development programmes for the benefit of the minority communities’.⁴⁷⁵ Carved out of existing functions within the Ministry of Human Resource Development and other departments, MoMA was launched as a nodal ministry with an overseeing role and a ministerial head with membership of Council of Ministers.

However, from the outset the reorganisation of existing administrative structures into MoMA was resented by senior administrators as duplicating existing services. Figure 4.1 illustrates the location of MoMA among central ministries and commissions.⁴⁷⁶ It does not represent the actual lines of authority. It is clear from the evidence and fieldwork data presented in subsequent chapters that MoMA was viewed as a coordinating ministry rather than an autonomous ministry. Lacking the authority of functional ministries, and severely under-resourced, it soon became a ministry for advocacy, constantly seeking feedback from, and consultations with other ministries and relevant institutions within the administrative structure. Its ability to oversee programmes, as we shall see in Chapters Five and Six, was severely limited. In fact MoMA and its ministers struggled to fulfil the brief allotted to them, neglecting some of the essential parliamentary business. Eight years after its creation, MoMA has struggled to establish an authoritative presence within India’s central administration.

⁴⁷⁵ Ministry of Minority Affairs, ‘Frequently Asked Questions in Respect of Programmes, Schemes and Initiatives for Minorities’. Available at: http://minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/FAQ_Ministry.pdf [accessed on 1 May 2014].

⁴⁷⁶ The Figure 4.1 excludes institutions that we do not cover in this research.

Figure 4.1
MoMA and organisational dependency: ministries and other structures



Source: produced by author.

In contrast to these symbolic measures, executive authority was used to implement aspects of affirmative action short of reservation quotas. Thus, in January 2007, the Ministry of Personnel, Public Grievances and Pensions (MPPGP) issued an Office Memorandum which stated:

[A]vailable evidence indicates that the representation of minorities in Government service and public sector employment is not satisfactory...Government is committed to ensuring fair representation to the minorities in Government employment, including public sector enterprises, public sector banks and financial institutions and the Railways.⁴⁷⁷

As a result, all heads of department, public sector undertakings and para-government organisations were required 'to submit Half Yearly/Annual Reports...to Ministry of Ministry Affairs.'⁴⁷⁸

The same approach was also used on 22nd December 2011, when a new Office Memorandum was issued establishing a reservation of 4.5 per cent for minorities in the OBC quota. Although this action, as we shall see below, was probably more a matter of symbolic implementation, the use of an Office Memorandum was indicative of the government's intent to circumvent legal challenges.⁴⁷⁹

Substantive executive action was also evident in the case of affirmative action in the area of service delivery. The 15-Point Programme, first launched by Mrs Indira Gandhi in 1983, and aimed at areas of Muslim concentration, was revamped as the Prime Minister's new 15-Point Programme in January 2006, with a particular focus on four areas: education, employment, living conditions and minorities' security. This initiative drew on existing programmes but with the objective that '15 per cent of the total outlay was earmarked for minorities'.⁴⁸⁰ In 2007-8, MoMA identified 90 MCDs for their socio-economic backwardness for which the MSDP was launched in 2009 to

⁴⁷⁷ Ministry of Personnel Public Grievances and Pensions, 'Prime Minister's New 15-Point Programme for the Welfare of Minorities - Measures to Give Special Consideration to Minorities in Recruitment', *Office Memorandum*, 8 January 2007. Available at: http://www.minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/DoPT_guidelines.pdf [accessed on 22 October 2011].

⁴⁷⁸ Ibid.

⁴⁷⁹ However, as we shall see in Ch. 5, it was ostensibly rejected on technical grounds by the Supreme Court.

⁴⁸⁰ Ministry of Minority Affairs, 'Guidelines for Implementation of Prime Minister's New 15-Point Programme for the Welfare of Minorities'. Available at: http://www.minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/pm15points_eguide.pdf [accessed on 28 September 2012].

overcome the “development deficit” specially in education, employment, sanitation, housing, drinking water and electricity supply’.⁴⁸¹ Significantly, the launch of this programme was accompanied by a range of affirmative action provisions that included targeting and monitoring of service delivery to ensure effective implementation. To what extent these instruments were actually utilised, however, or were effective in delivering change to the targeted group (mostly Muslim communities), is something that we discuss at length in Chapter Six.

Symbolic implementation

Alongside executive action many of UPA policies on minorities amounted to ‘symbolic implementation’ – that is appearing to act on policies but failing to ensure that they are legislated for or implemented. This is often viewed as ‘tokenism’, ‘gesture’ or ‘performative politics’, but it can also be interpreted as framing policy within existing institutional constraints.

The case of reservations for minorities in employment and education was firmly made by the RMCR. Yet, the UPA’s efforts to implement these recommendations, both in the first and second administration, in spite of the fact that RMCR had declared that new legislation was unnecessary, were clearly more symbolic than indicative of an ability to successfully implement the measure. For most of its tenure, the government hesitated to move on the proposal because of the pending appeal to the Supreme Court by the Andhra Pradesh state government which had sought to institute 4 per cent reservations for Muslims in employment.⁴⁸² When the UPA did move, in late 2011, on the eve of elections in Uttar Pradesh, to institute a 4.5 per cent reservation for minorities in the existing OBC quota through an Office Memorandum, it was not only charged with opportunism, but accused of inadequate preparations to meet the potential legal challenges. Subsequently, as we shall see in Chapter Five, the UPA’s efforts and the Andhra Pradesh case became entwined: the Andhra Pradesh High Court’s rationale was

⁴⁸¹ Ministry of Minority Affairs, ‘Initiatives Taken by the Ministry of Minority Affairs’, *PIB*, 19 December 2008.

⁴⁸² Hasan, *Politics of Inclusion*, 178. The case of Andhra Pradesh is instructive. In 2005, the Congress government in the state sought to provide 5 per cent reservations for Muslims in employment through an executive order but it was quashed by the state’s High Court. In 2007, under a new state act passed in response to the verdict, 4 per cent reservations in government jobs and educational institutions was extended to 15 for Muslim SEBCs. This act was rejected by the Andhra Pradesh High Court on 8th February 2008 because, according to the court, ‘the state government was trying to appease certain sections of the society’, *The Siasat Daily*, 8 February 2010 (electronic edition). This case is further examined in Ch. 5.

only too evident in the Supreme Court judgment rejecting the UPA's Office Memorandum.

Other policy measures that were part of symbolic implementation included the communal violence bills (2005 and 2011) and the introduction of a bill to give the NCM constitutional status. Both were high profile measures designed to increase the threshold of penalties for those committing acts of communal violence and putting the NCM on par with other 'protected minorities' commissions. Both, however, failed to reach the statute books, and were more aspirational rather than deliverable. Whereas the institutional obstacles to the Communal Violence Bill (2005 and 2011) still remain considerable (see Chapter Seven), the failure to secure constitutional status for the NCM needs to be understood both against the backdrop of institutional opposition from the key actors identified above, and the shortage of parliamentary time in a congested timetable.⁴⁸³

Promotional policies

A large number of initiatives undertaken by the UPA can be interpreted as promotional, designed to improve the status or conditions of minority groups through 'low cost' options.⁴⁸⁴ These initiatives were specific, general and voluntary. They included: the vast majority of scholarship schemes targeted at minority students, better support for State Wakf Boards (Muslim charitable endowments), more funding for the Maulana Azad Educational Foundation (catering for Muslim students), the Scheme of Leadership Development of Minority Women, the Scheme for Skills Development of Minorities, and the Free Coaching and Allied Schemes.⁴⁸⁵ Such 'underfunded and uncoordinated proposals', comments Wilkinson, certainly helped the UPA to publicise the fact that it was 'doing something for minorities', but they were unlikely to challenge the underlying issues of economic and social development.⁴⁸⁶ Wilkinson's assertion that these measures were part of 'vote-bank' politics reconfirms the standard interpretation of the UPA's actions. It overlooks, however, how the administration was constrained

⁴⁸³ Despite the Constitution (103rd Amendment) Bill, 2004 to give constitutional status to the NCM, the bill was lost because of lengthy consultations with various ministries including the Ministry of Law and dissolution of the Fourteenth Lok Sabha. Ministry of Minority Affairs, *Annual Report 2012-13* (New Delhi: GoI, 2013), 44.

⁴⁸⁴ For the role of promotional policies in policy-making, see John Solomos and Gurharpal Singh, 'Race Equality, Housing and the Local State', in Ball and Solomos, *Race and Local Politics*, 95-114.

⁴⁸⁵ See <http://www.minorityaffairs.gov.in/>

⁴⁸⁶ Wilkinson, 'The UPA and Muslims', in Sáez and Singh, eds., *New Dimensions of Politics in India*, 76.

from specific action or a more detailed assessment of this action itself. Certainly the promotional policies – between executive action and symbolic implementation – enabled the UPA to directly appeal to the minorities, especially Muslims, but at the same time how these measures were framed and the resources allocated to them were also indicative of the institutional constraints within which the UPA was operating.

Thus, overall, the process of implementation was far more complex than the electoral incentive model suggests: the broad range of policies resulted in a range of implementation strategies which were pursued with unequal vigour. Different approaches were used to address political, judicial and institutional constraints. Whilst the UPA was clearly mindful of the political pay-off in these strategies, we should not overlook the real obstacles to policy formation and implementation in this highly contested policy sector.

Evaluation

Finally, in making sense of the UPA policies on minorities we need to mention briefly the processes of evaluation – political, administrative, and analytical and technical – that were undertaken by the UPA. Although these evaluations were partisan, they give useful insights into the overall policy process and modes of opposition to the policies.

Politically, the UPA naturally sought to publicise its achievements. In the 2009 Lok Sabha elections, for instance, the Congress' manifesto highlighted the award of 400,000 scholarships to minorities, special programmes for the 90 MCDs, and then went on to trumpet the fact that 'the Indian National Congress has pioneered reservations for minorities in Kerala, Karnataka and Andhra Pradesh in government employment and education on the basis of their social and economic backwardness. We are committed to adopt this policy at the national level.'⁴⁸⁷ At a conclave in Jaipur in January 2013, the Congress recommitted itself to 'the recommendations of the Sachar Committee' as a guide to the implementation of 'the PM's 15PP and other minority related programmes'.⁴⁸⁸ While this statement betrays a degree of unfinished business, or

⁴⁸⁷ Indian National Congress, *Lok Sabha Elections 2009 Manifesto*. Available at: <http://aicc.org.in/pdf/manifesto09-eng.pdf> [accessed on 2 December 2013], 14.

⁴⁸⁸ Jaipur Declaration, *Indian National Congress*, 5-6. Available at <http://aicc.org.in/pdf/Jaipur%20Declaration%20-%20Final.pdf> [accessed on 14 February 2013].

partial fulfilment of the SCR's objectives, nonetheless, it is indicative of how the Congress and the UPA have politically sought to assess their own achievements.

Such political self-evaluations have generally been dismissed by activists and NGOs working in the field. Several (see Chapter Two) have produced highly critical assessments, questioning the very design and implementation of policies which, despite public declarations, remain to be assessed. According to press reports, the immediate trigger for the UPA to announce a new committee to evaluate the impact of the SCR recommendations was 'another well-publicised research paper by the chief scholar at the US-India Policy Institute, Abusaleh Shariff in which he argued that there was no perceptible improvement in the status of Muslims'.⁴⁸⁹ Apparently this paper came on the back of several delegations by Muslims groups to the Prime Minister, Sonia Gandhi and Rahul Gandhi which made the point that 'minority welfare schemes [were] being ineffective'.⁴⁹⁰ These persistent criticisms by Muslim policy networks and NGOs exerted some political effect. In February 2013, the Minister of Minority Affairs, K. Rahman Khan, announced that the UPA government would appoint a 'high-power committee to review and assess the implementation of Justice Rajinder Sachar Committee' recommendations and Prime Minister's 15-Point Programme'.⁴⁹¹ The committee was to be time-limited and include some leading experts who had participated in the policy-making process described above. The review committee on the SCR's recommendations was set up in August 2013 and instructed to submit its report within six months. However, at the time of writing (August 2014), only an interim report had been submitted to MoMA (March 2014).⁴⁹²

Beyond the political, and the incomplete administrative evaluations, the UPA policies on minorities have yet to be comprehensively appraised. Technically, monitoring and evaluation, for example in the delivery of the 15-Point Programme, was built into the scheme. Monitoring data on employment of minorities should have been collected following the issue of the Office Memorandum in 2007. To what extent these data have been gathered, monitored and evaluated for better policy formation and implementation remains to be determined. Evidently, as we shall demonstrate in

⁴⁸⁹ Mohammad Ali, 'High-Power Panel to Review Sachar Panel Report, 15-Point Programme', *The Hindu*, 18 February 2013.

⁴⁹⁰ Ibid.

⁴⁹¹ Ibid.

⁴⁹² Zeeshan Shaikh, 'Bring Law like SC-ST Act to Protect Muslims, Says Panel on Sachar', *Indian Express*, 18 March 2014 (electronic edition).

Chapters Five, Six, and Seven, the use of policy instruments to collect such data to inform policy evaluation appears to have been highly inconsistent. Furthermore, there is very little evidence that such data have been made available to policy groups, activists, parliamentarians, or generally placed within the public domain in a systematic form. The few case studies that have been undertaken portray weak policy design and implementation as well as gross misuse of targeted funds.⁴⁹³ Thus, technically and analytically, the process of evaluation remains yet to be undertaken. Analytically, the use, non-use and denial of data on some of these policy areas by government officials and politicians indirectly raise basic questions about the policy process that need to be addressed.

Conclusion

This chapter has attempted to provide an overview of the UPA policy process on minorities. It demonstrates that the policy process conformed to the ‘policy cycle’ outlined in Chapter Two (see Figure 2.1), but the lines of demarcation between the stages, for instance, between decision-making and implementation, were sometimes unclear and often fused. Between 2004 and 2007, there was a significant momentum behind policy change that suggested a wholesale revision of the foundational settlement through a new framework of equality of opportunity for minorities which included a mixture of affirmative action, reservations and new institutional innovations. These measures, furthermore, were designed to promote diversity and combat discrimination in the public sphere. Taken together, these proposals represented a new contestational juncture which held the promise of bringing religious minorities within the framework of protective equality and delivering substantive equality.

However, between 2007 and 2008 political and institutional factors appear to have undermined this momentum. The UPA, which was besieged on a number of fronts – and withstood a vote of confidence on the nuclear energy deal with the US – saw the desertion of some of its supporters, including the Left parties. At the same time, it began

⁴⁹³ Abusaleh Shariff, *Inclusive Development Paradigm in India: A Post-Sachar Perspective* (New Delhi: US-India Policy Institute, 2012); Jawed Alam Khan, *Policy Priorities for Development of Muslims in the 11th Plan: An Assessment* (New Delhi: Centre for Budget and Governance Accountability, 2012); Centre for Equity Studies, *Promises to Keep: Investigating Government Responses to Sachar Committee Recommendations* (New Delhi, 2012).

to encounter significant opposition to the proposals from the three main institutionalised forces: the BJP-led *Hindutva* brotherhood, the political lobby of SCs, STs and OBCs who viewed the proposals as a potential erosion of their protected equalities framework, and sections within the state structure, principally the civil service and the judiciary. In the face of this determined opposition, the government resorted to three strategies: executive action, symbolic implementation, and the use of promotional policies. Not unexpectedly, these approaches heavily diluted the prospects of major policy change while the administration attempted to maximise the political returns from its efforts. How this policy process worked in the sectors of employment, service delivery and security for minorities is examined in detail in case studies in the next three chapters.

Chapter Five

UPA, Muslims and public sector employment

Introduction

Equitable representation of racial, ethnic, religious and other minorities in public sector employment is recognised as a key outcome of substantive equal opportunities policies. Such policies increase the access of previously excluded or under-represented groups to public sector employment and can be transformative in challenging cultures of exclusion.⁴⁹⁴ In India, the Constitution specified the percentage of reservations in the public sector for SCs and STs (15 per cent, 7.5 per cent respectively) since 1982; they were extended nationally for OBCs in 1990. These measures are generally viewed as having contributed to significant improvement in the life chances of some of these groups. Recognising this fact, and the gross under-representation of Muslims in public sector employment, the SCR called for ‘equity and inclusiveness’ in areas of ‘education’ and ‘employment’,⁴⁹⁵ a recommendation supported by the RMCR.

This chapter undertakes a detailed case study of Muslims employment in central government during the UPA government. Drawing on the framework of institutional policy analysis, it explores the key decisions made by the policy actors, the policy formulation process in Parliament and at the executive level, and the debate around reservations for minorities. It also assesses the utility of employment monitoring data provided by the government – a crucial resource for better progress towards fairer representation. The policy process, and the limited monitoring data so far available, suggests that no appreciable inroads have been made in the improvement of employment of Muslims in the state sector. This outcome, it is argued, is not only the result of lack of political will on the part of the UPA, but also the product of entrenched institutional factors that have thwarted such change.

⁴⁹⁴ See the contributions of Wendy Ball and John Solomos, eds., *Race and Local Politics* (Basingstoke: Macmillan, 1990), especially Chs. 1, 2, 3 and 6; Shayla C. Nunnally, *Trust in Black America: Race, Discrimination, and Politics* (New York: New York University Press, 2012); Xavier de Souza Briggs, ed., *The Geography of Opportunity: Race and Housing Choice in Metropolitan America* (Washington D.C.: Brookings Institution Press, 2005).

⁴⁹⁵ SCR, 243.

Agenda-setting

Both the SCR and RMCR – as well as previous surveys – acknowledge the gross under-representation of Muslims in public sector employment.⁴⁹⁶ This under-representation was at all levels, but particularly striking in some of the large public sector undertakings. Nor was the picture noticeably different in the states: whilst the states in the south generally tended to have higher levels of representation than those in the north, nowhere (with the exception of Andhra Pradesh) did it match the actual Muslim population in the state. The highest percentage of Muslims in government jobs was in Assam (11.2 per cent), but still significantly below the community's population in the state (30.9 per cent).⁴⁹⁷ Data provided by SCR also demonstrated that one category of Muslims included in reservation policies, the Muslim OBCs, was also significantly under-represented, and performed poorly compared to Hindu OBCs or the Muslim general category. 'The relative deprivation of Muslim OBCs', observes the SCR, 'is highest in the railways.'⁴⁹⁸

Conceptually, the SCR and RMCR proposed different policy approaches to this imbalance. Whereas the former was inclined towards positive action,⁴⁹⁹ the latter recommended affirmative action, including reservations for poor Muslims in employment and education.

The SCR acknowledged that there was a case for bringing very poor Muslims, who were 'cumulatively oppressed', within the Indian reservations system.⁵⁰⁰ However, in general it 'did not believe in reservations', because they would 'benefit only a small

⁴⁹⁶ See *ibid.*, Ch.5; RMCR, Ch.3.

⁴⁹⁷ (SCR) *ibid.*, 17-77.

⁴⁹⁸ *Ibid.*, 210.

⁴⁹⁹ For the distinction between reservation, affirmative action and positive action see fn. 29 of Introduction. For detailed analysis on the application of positive action in the English context, see John Solomos and Gurharpal Singh, 'Housing, Racial Equality and Local Politics: Policy Making in a Changing Context', *Policy Paper in Ethnic Relations*, No. 19 (Centre for Research in Ethnic Relations: University of Warwick, 1990), 1-21; Jessica Smith, *Latest Thoughts from Government on Tackling Inequality: The New Opportunities White Paper* (Manchester: Centre for Local Economic Strategies, 2009); Fiona Mackay and Kate Bilton, *Learning from Experience: Lessons in Mainstreaming Equal Opportunities* (Edinburgh: University of Edinburgh, Governance of Scotland Forum, 2000).

⁵⁰⁰ 'Muslims in India', the SCR noted, 'in terms of their social structure, consist of three groups – ashrafs, ajlaf, and arzals. The three groups require different types of affirmative action. The second group, ajlaf/OBCs, need additional attention which could be similar to that of Hindu-OBCs. The third group, those with similar traditional occupation as that of the SCs, may be designated as Most Backward Classes as they need multifarious measures, including reservation, as they are "cumulatively oppressed."' SCR, 214.

number of people'.⁵⁰¹ Reservations, as one senior member of the Committee admitted in an interview, only contributed to 'individual gain, not public good'.⁵⁰² For him positive actions, which contributed to realising the principle of 'proportionality' and broad-based policies, were far more effective in getting 'Muslims into public sector jobs'.⁵⁰³ Indeed, even Justice Rajinder Sachar appeared unsympathetic to the idea of reservations: when interviewed he avoided direct comments, declaring 'I don't know about the legality part. We already have reservation for OBCs and others. Whether the Constitution permits this or not, that is a matter for the Supreme Court to give the final verdict.'⁵⁰⁴ This mind-set, the terms and reference of SCR, and the fact that the RMCR was undertaking its work with specific reference to the question of reservations – all made the Committee reluctant to recommend reservations, for fear that in the absence of a constitutional amendment, reservations ran the risk of being challenged in the courts. Conversely, generic recommendations for *all* minorities would not attract any legal challenge.

As a result, the SCR recommendations were couched mainly within the framework of positive action: a more transparent system of recruitment by including minorities in selection committees;⁵⁰⁵ advertising posts in Urdu and vernacular newspapers, or including statements in job advertisements that 'women, minority, and backward class candidates are encouraged to apply';⁵⁰⁶ strong emphasis on improving the educational attainment of Muslim students;⁵⁰⁷ and a raft of monitoring authorities, including the creation of a National Data Bank for data on SRCs, and the formation of an Assessment and Monitoring Authority that would monitor and review data on religious minorities, including employment data.⁵⁰⁸ And, as we have seen in Chapter Four, these proposals were also accompanied by a shift in emphasis from 'non-discrimination' to 'anti-discrimination', including a proposal to outlaw direct and indirect discrimination and an EOC and a DI that would measure diversity in employment, public and private sectors, and housing.

⁵⁰¹ Abusaleh Shariff, interview, 13 February 2013, New Delhi.

⁵⁰² Ibid.

⁵⁰³ Ibid.

⁵⁰⁴ Rajinder Sachar, interview, 14 February 2013, New Delhi. In a follow-up interview he clarified his view on reservation that 'only the better-off Muslims will get it. Not the poor Muslims,' 14 April 2014, New Delhi.

⁵⁰⁵ SCR, 252.

⁵⁰⁶ Ibid., 253.

⁵⁰⁷ Ibid., 243.

⁵⁰⁸ Ibid., 238-9.

Critics of the SCR found a serious disjunction between its analysis and its recommendations. Whilst welcoming some of the recommendations, such as the creation of the EOC and DI, for Hasan neither of these proposals dealt ‘specifically with the problems of under-representation of Muslims [in public sector employment]’.⁵⁰⁹ Where radical and transformative measures were required, the Committee’s recommendations were tentative and conservative.⁵¹⁰ Its proposals, moreover, give further leeway to policymakers to use their discretion both in interpretation of recommendations and formulation of policy.⁵¹¹ In brief, positive action was framed in terms of the needs of ‘all minorities’.

In contrast, the recommendations of RMCR for reservation for socially and economically disadvantaged Muslims in public sector employment were unambiguous. As the report concluded:

Since the minorities – especially the Muslims – are very much under-represented, and sometime 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 word “socially and educationally”* – and that 15 per cent of posts in all cadres and grades under the Central and State governments should be earmarked for [minorities].⁵¹²

Of this 15 per cent, the Commission insisted, 10 per cent should be earmarked for Muslims, who constitute 73 per cent of all minorities, and 5 per cent for other minorities.⁵¹³ This recommendation, according to the Commission, was consistent with Article 16 (4) of the Constitution which sanctioned reservations for SC, STs and OBCs. Adding a rider, the Commission suggested that if this approach proved difficult, then within the 27 per cent OBC quota, 8.4 per cent should be reserved for religious

⁵⁰⁹ Zoya Hasan, ‘Muslim Deprivation and the Debate on Equality’, *Seminar*, October 2009 (electronic edition).

⁵¹⁰ Dr. Abusaleh Shariff confirmed that ‘the Sachar committee was not constituted to give recommendation to government. It was a fact-finding committee, to investigate the socio-economic and educational status of Muslims. If you read the recommendations they are generic recommendations, not specific recommendations. The report was to highlight the condition of Muslims which has not been addressed by the previous governments. That was the main mandate. [It was a] status and diagnostic report. We have shown that Muslims are under-represented in government structure both in national and most of state governments. Let the government decide how to solve the problem. We entirely left it to government to solve it’. Interview, telephone, 4 July 2013.

⁵¹¹ Evidence of implementation of SCR’s recommendations at the state level indicates there were wide variations. See sections on implementation and evaluation in this chapter and Ch. 6.

⁵¹² RMCR, 152-3. Emphasis original.

⁵¹³ *Ibid.*, 153.

minorities, with 6 per cent earmarked for Muslims and 2.4 per cent for non-Muslims.⁵¹⁴ In short, in a fundamental departure from the conventional understanding of the subject the RMCR insisted that reservations for ‘backward’ Muslims were not only within the remit of existing constitutional provisions, but were also necessary and essential to establish a level playing field among all minorities and to end religious discrimination.⁵¹⁵

To summarise: the SCR and RMCR offered different policy alternatives for increasing Muslim employment in the public sector. Whereas the former was largely within the framework of positive action, consistent with the constitutional settlement that reservations for minorities *qua* minorities were unconstitutional, the latter held that the accepted understandings of the constitutional norms were ‘discriminatory’ and ‘exclusionary’. This anomaly could be overcome by bringing Christians and Muslims within the existing regime of reservations. As we shall see below, the UPA attempted to implement both of these approaches.

Policy formulation

As noted previously, the stages in the policy process often overlapped. Whereas the SCR, despite political differences, was largely accepted by the government, and its implementation pursued through executive action, the RMCR, because of its recommendations, was less clearly identified with a distinctive policy process.

Sachar Committee Report (SCR)

Following its publication, the government gave the SCR full support. A.R. Antulay, the Minister of Minority Affairs, announced in the Rajya Sabha that the ‘Sachar Committee’s recommendations will be implemented’.⁵¹⁶ Crucially, the initiatives taken centred primarily on executive action. The PM’s 15PP,⁵¹⁷ for instance, launched in

⁵¹⁴ Ibid.

⁵¹⁵ As we noted in Ch. 4, the RMCR recommendation that poor Christians and Muslims be brought under the Constitution (Scheduled Castes) Order (1950) was key to bring these groups within the ‘net’ of affirmative action.

⁵¹⁶ *RSD*, 18 December 2006.

⁵¹⁷ Ministry of Minority Affairs, ‘PM’s New 15-Point Programme for the Welfare of Minorities’. Available at:

January 2007, required all ministries and departments to implement and monitor the schemes, including employment, and provide MoMA with monthly and quarterly reports.⁵¹⁸ The MPPGP further directed all heads of departments, public sector enterprises, public sector banks, financial institutions, quasi-government organisations and autonomous bodies, and all appointing authorities, to include at least one minority member in all selection committees/boards for recruitments to Group C and D posts. The guidelines also stated that for Group C and D posts information about the vacancies should be disseminated through schools or colleges in relevant areas. Furthermore, all ministries and government departments were required to submit half-yearly and annual reports on the recruitment of minorities to MoMA. In committing firmly itself to substantive positive action, an Office Memorandum of January 2007 boldly declared that ‘the Central and State Governments will give special consideration to minorities in appointments’.⁵¹⁹ These guidelines were followed up by MoMA⁵²⁰ in drawing attention to the Department of Personnel and Training (DoPT)’s instructions that ‘all Ministries/Departments and state governments ...[should ensure the] representation of minority community in selection committee/board for making recruitment to 10 or more vacancies in group “C” & “D” posts/services’.⁵²¹

Ranganath Misra Commission Report (RMCR): the parliamentary and executive domains

Unlike the SCR, the RMCR and its recommendations on reservations in employment for minorities, particularly Muslims, became embroiled in political, parliamentary, executive and judicial quagmires. Initial opposition to the report, including within Congress, led the Congress-dominated UPA to adopt an institutionally conservative

http://www.minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/amended_guidelines.pdf [accessed on 4 September 2013].

⁵¹⁸ A central level Committee of Secretaries was designated to monitor the progress of implementation once in every six months and report to the Union Cabinet. Moreover, this monitoring was to be further strengthened by a Review Committee, composed of nodal officers from all the ministries and departments concerned, at least once every quarter to review the progress and submit reports to the Union Cabinet. Ibid., 8-9.

⁵¹⁹ Ministry of Personnel, Public Grievances and Pensions, ‘PM’s New 15-Point Programme for the Welfare of Minorities - Measures to Give Special Consideration to Minorities in Recruitment’, *Office Memorandum*, 8 January 2007. Available at: http://www.minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/DoPT_guidlines.pdf [accessed on 22 October 2011].

⁵²⁰ Ministry of Minority Affairs, ‘Recommendation-wise Follow up Action on the SCR’, 11 July 2013. Available at: http://minorityaffairs.gov.in/sites/upload_files/moma/files/recommendationonsacharcommitteeinbrief.pdf [accessed on 30 July 2013].

⁵²¹ Ibid.

position until the eve of elections in Uttar Pradesh in early 2012. In so doing, this both reflected the complex institutionalised opposition to the proposal within the policy-making subsystems and the party's desire to exploit the report for political advantage by partaking in 'symbolic implementation'. Congress' efforts to push through the Andhra Pradesh model of reservations for Muslims in employment and education, as we shall see below, ultimately faltered on the rock of institutional opposition.

Parliamentary domain

We have seen how the Congress and the UPA backtracked from reservations for Muslims after the release of the SCR. Following the well-publicised leak of the RMCR (after it was finally submitted in May 2007), the pressure on the government to distance itself from its recommendations further intensified. The BJP's national spokesperson, Ravi Shankar Prasad, denounced the recommendations as 'communal banking', and asserted that opening the SC and ST quota to Muslims would further divide the country.⁵²² However, in December 2007 in the Lok Sabha, Deventra Prasad Yadav (Rashtriya Janata Dal - RJD) urged an early implementation of the recommendations, lamenting the fact that despite the submission of the report, the Cabinet had not given a clear direction as to whether its recommendations would to be incorporated into the Eleventh Five-Year Plan.⁵²³ There was no follow-up discussion, and the government studiously avoided further parliamentary discussion. Hence, when Mulayam Singh Yadav (SP), urged the government to lay the report before Parliament, he was frequently interrupted by the Speaker for not giving prior notice of the matter. Despite Basu Deb Acharia (CPI (M))'s support, the Speaker prevented Yadav from raising discussion of the subject.⁵²⁴ Surprisingly, nor was the matter of the report raised in Parliament by Muslim MPs. The absence of a well-organised Muslim – or minority – MPs' caucus, as we shall see, was to prove important.⁵²⁵

⁵²² 'BJP for Rejecting Ranganath Misra Report on Dalit Converts', *Indian Express*, 23 May 2007 (electronic edition).

⁵²³ *LSD*, 1 December 2007.

⁵²⁴ *LSD*, 9 December 2009.

⁵²⁵ The successful implementation of equal opportunities policies requires a committed lobby of politicians, administrators and civil society activists. The decline of Muslim representation in Parliament was noted by SCR, and has been identified as a critical (missing) variable in explaining the failure of policy on minorities. See Zoya Hasan, *Politics of Inclusion: Castes, Minorities, and Affirmative Action* (New Delhi: Oxford University Press, 2009), Ch.5.

Significantly, from May 2007 to August 2014, there was no notable debate in Parliament on policy-making on the subject, and nor was the issue raised by Congress MPs. Historically, we have seen how Congress has followed a fine path between championing minorities whilst also nursing its Hindu majority constituency. These tensions surfaced as the government came ‘under pressure from its own MPs and ministers...not to concede the demand of inclusion of Dalit Christians and Dalit Muslims in the SC list’.⁵²⁶ Allegedly, one of the reasons proffered for this resistance was the negative impact of such a proposal on Hindu SCs by lowering the cost of conversion to Islam or Christianity.⁵²⁷ The UPA’s ambivalence on policy discussion is captured in the words of Mahmood: ‘The RMCR was never discussed in Parliament; it was discussed outside Parliament.’⁵²⁸

Executive domain

At the executive level, the inner tensions between the various policy actors and subsystems can be seen in how they responded to the RMCR’s recommendations. On the eve of state elections in Uttar Pradesh in 2012, the government issued a special Office Memorandum providing a 4.5 per cent sub-quota for Muslims in the OBC’s 27 per cent quota. The initiative for the Office Memorandum came not from the relevant ministries but the PMO. Given this, what was the role of MoMA, the MSJE, and the DoPT and the MPPGP in policy formation (see Figure 4.1 for an organisational map of these ministries)?

In March 2010, the Minister of Human Resource Development, Arjun Singh, urged the government to act on the RMCR, saying ‘we cannot just sleep over it’.⁵²⁹ Responding to Singh’s remark, Abhishek Singhvi, a senior Congress MP, replied that ‘it is this party and the government which had initiated the process. So there is no question of disowning [it]. There is no question of sleeping over it.’⁵³⁰ Despite this statement, MoMA remained silent on the matter until July 2010. Then Salman Khurshid stated that ‘we are actively looking at the reservation issue. We have a commitment in our

⁵²⁶ Ibid., 215.

⁵²⁷ Ibid.

⁵²⁸ Tahir Mahmood, interview, 20 February 2013, Noida.

⁵²⁹ ‘Don’t Sleep over the Ranganath Commission Report: Arjun’s’, *Outlook*, 24 March 2010 (electronic edition).

⁵³⁰ ‘Case for Reservation among Backwards in all Communities: Congress’, *Times of India*, 26 March 2010 (electronic edition).

manifesto. I am pushing for it all the time.’⁵³¹ He emphasised that MoMA was in regular touch with the MSJE.⁵³² However, the nature of this cooperation remains unclear because as the guardian of SC, ST and OBC interests, the MSJE appeared reluctant to initiate inter-governmental consultations and seemed unenthusiastic about adoption of the RMCR report because quotas for minorities posed a potential threat to SCs, STs and OBCs. Thus, it requested the NCSC to give feedback on the recommendations of the RMCR.⁵³³ In response, the NCSC agreed to extend reservation to Dalit Christians and Dalit Muslims, but without disturbing its share of 15 per cent of SCs and without breaching the overall reservation of 50 per cent.⁵³⁴ The MSJE, allegedly, also consulted the NCBC to firm up this opposition.⁵³⁵ The NCBC, perhaps because of the expected backlash from the OBCs for diluting their quota with Dalit Muslims and Dalit Christians, initially remained non-committal.⁵³⁶ Whilst these manoeuvres were undoubtedly part of the wider consultation process, nonetheless, they highlighted the highly institutionalised resistance to change from among the state actors managing the administration of SCs, STs and OBCs provisions. Indeed, the MSJE, notwithstanding its considerable experience in policy formation in the subject, remained reluctant to lead on the matter.

Perhaps because of the sensitivities around the subject, or because of the reluctance to openly oppose the claims of poor religious minorities, the annual reports and official documents of the institutionalised caste lobbies – NCSC, NCST, NCBC – are largely devoid of any serious debate on the matter;⁵³⁷ and the NCM’s reports

⁵³¹ ‘Government Considering Reservation for Muslims through OBC Route’, *Times of India*, 28 July 2010 (electronic edition).

⁵³² Ibid.

⁵³³ This referral can be perhaps explained by the historical opposition of the NCSC to inclusion of minorities within the SC list. For an interesting insight into the inter-organisational differences over the matter between the NCSC and the NCM, see Hasan, *Politics of Inclusion*, 213-4.

⁵³⁴ National Commission for Scheduled Castes, *Minutes of the 7th Meeting of the National Commission for Scheduled Castes*, 24 January 2011. Available at <http://ncsc.nic.in/files/ncsc/144.pdf> [accessed on 14 May 2013].

⁵³⁵ The NCBC is in charge of providing advice to MSJE in reference to castes, sub-castes, and communities for inclusion in the central list of OBCs. The fact that MSJE requested feedback from NCBC was confirmed in the interview with Mahmood.

⁵³⁶ Ibid.

⁵³⁷ Only some of the annual reports of NCSC (2004-05, 2005-06) and NCST (2004-05, 2005-06, 2006-07) are available online. See, National Commission for Scheduled Castes, *Annual Reports of the NCSC*. Available at <http://www.ncsc.nic.in/pages/display/47> [accessed on 8 January 2015]; National Commission for Scheduled Tribes, *NCST Reports*. Available at <http://www.ncst.nic.in/index2.asp?slid=490&sublinkid=280&langid=1> [accessed on 8 January 2015]. There was no discussion of reservations for Dalit Christians and Dalit Muslims in these reports. The NCBC views on the provision of sub-quota for poor Christians and Muslims, with the exception of 2010-11 report, are largely silent. See, National Commission for Backward Classes, *Annual Report 2007-08*

provide only fragmentary comments on the policy process.⁵³⁸ However, the one exception to the rule is the NCBC Annual Report for 2010-11. This report provides a damning critique of the RMCR and questions the Commission's competence to make the recommendations that it did.⁵³⁹ It challenged the proposal that religious minorities, especially Muslims, be brought into the net of reservations as an effort to 'rewrite Article 16 (4) of the Constitution of India'.⁵⁴⁰ Reconfirming caste as the primary signifier of backwardness, the NCBC rejected the RMCR's contention that backwardness be defined primarily with reference to a uniform criterion in which caste and religion are neutral. Indeed, in reconfirming the principles of the constitutional settlement, the NCBC asserted that:

Uniform criteria cannot be evolved for the reason that different considerations come into play in determining the social backwardness among SCs/STs and OBCs. SCs are those who suffered the indignity of "untouchability". Large sections of STs are far removed from civilisation. OBCs suffer from social backwardness.⁵⁴¹

For the NCBC, the essential signifier of backwardness was the 'social inequality' arising from caste that has been established in last three millennia.⁵⁴² In rejecting in total the RMCR recommendations, the NCBC annual report justified its response in drawing on the constitutional settlement, its affirmation in the *Indra Sawhney* case, and tellingly, the dissenting note of Asha Das to the RMCR which rejected the deletion of 'religion' from The Constitution (SC) Order of 1950 (see Chapter Four).⁵⁴³

(New Delhi: GoI, 2008); National Commission for Backward Classes, *Annual Report 2008-09* (New Delhi: GoI, 2009); National Commission for Backward Classes, *Annual Report 2009-10* (New Delhi: GoI, 2010); National Commission for Backward Classes, *Annual Report 2011-12* (New Delhi: GoI, 2012).

⁵³⁸ Remarkably, only the recommendation sections of annual reports are available online. See National Commission for Minorities, *NCM Recommendations*. Available at http://ncm.nic.in/NCM_Recommendations.html [accessed on 8 January 2015]. In reference to the reservation issue, the annual report of 2008-09 recommends that 'reservation for Dalit Christians and Dalit Muslims at par with SCs/STs should be given,' but without any enforcing mechanism or detailed analysis of the policy process that had failed produce such an outcome. See, National Commission for Minorities, *Annual Report 2008-09* (New Delhi: GoI, 2009), 44. Other annual reports do not discuss reservations. See, National Commission for Minorities, *Recommendation made in Annual Report 2004-05* (New Delhi: GoI, 2005); National Commission for Minorities, *Recommendation made in Annual Report 2005-06* (New Delhi: GoI, 2006); National Commission for Minorities, *Recommendation made in Annual Report 2006-07* (New Delhi: GoI, 2007); National Commission for Minorities, *Recommendation made in Annual Report 2007-08* (New Delhi: GoI, 2008); National Commission for Minorities, *Recommendation made in Annual Report 2008-09* (New Delhi: GoI, 2009); National Commission for Minorities, *Recommendation made in Annual Report 2010-11* (New Delhi: GoI, 2011). The annual report for 2009-10 is not available online.

⁵³⁹ National Commission for Backward Classes, *Annual Report 2010-11* (New Delhi: GoI, 2011), 65-80.

⁵⁴⁰ *Ibid.*, 79.

⁵⁴¹ *Ibid.*, 71.

⁵⁴² *Ibid.*, 67-8.

⁵⁴³ *Ibid.*, 80.

The NCBC statement is remarkable not only as a defence of an institutionalised caste lobby's interests but because of its opposition to a contemporary concept of social justice for *all*. The idea of 'different considerations' underpinning 'competing equalities' which the NCBC supported was, in many ways, at the heart of historical path dependence that had solidified around socio-economically disadvantaged castes. Indeed, the NCBC reacted with hostility to the RMCR's suggestion that SCs, STs and OBCs had developed a 'vested interests' in 'backwardness' in the ever-increasing list of these categories that were included in reservations. Such an observation, the NCBC pithily observed, was 'a sweeping criticism lacking in particulars and without any objectively verifiable data'.⁵⁴⁴

The DoPT (in the MPPGP), another important actor in employment policy, was even less visible in this process. On 10th August 2011, the Minister of Personnel, Public Grievances and Pensions stated in the Lok Sabha that the reservation for minorities in central and state governments was under consideration, but that it was not possible to fix a time for taking a decision.⁵⁴⁵ Yet, apart from this statement, the MPPGP deliberately remained in the background, not because it was unfamiliar with the policy-making process on the subject, but because its efforts appeared to be directed at protecting the interests of SCs, STs and OBCs.⁵⁴⁶ Until the DoPT circulated the Office Memorandum, the MPPGP avoided making official announcements or giving a lead on policy options.

During this process MoMA also avoided clearly stating its position on the matter. Only a few months before the Uttar Pradesh legislative assembly elections in 2012, the PMO asked MoMA to draft a formal proposal for job quotas for Muslims within the OBC sub-quota for consideration by the Cabinet Committee on Political Affairs.⁵⁴⁷ MoMA's public position at the time was that it wanted 8.4 per cent of the

⁵⁴⁴ Ibid., 68.

⁵⁴⁵ LSD, 10 August 2011.

⁵⁴⁶ Interestingly, the Ministry of Personnel, Public Grievances and Pensions launched a special recruitment scheme to fill vacant reserved posts in government jobs for SCs, STs (2004) and OBCs (2008). Before the launch of this scheme, the Minister of Ministry of Personnel, Public Grievances and Pensions made a careful review of the SCs, STs and OBCs employment data and directed the DoPT to provide ministries and departments with specific guidelines for implementation of this scheme. See 'New Drive Launched to Fill Vacant Reserved Posts', *Hindustan Times*, 25 July 2011. This initiative is examined later in the chapter.

⁵⁴⁷ 'Uttar Pradesh Polls Near, PMO Pushes Move for OBC Muslim Quota', *Financial Express*, 25 November 2011 (electronic edition).

OBC quota for minorities,⁵⁴⁸ but it was reluctant to lead on the matter because of its cautious nature and because employment fell under the jurisdiction of the MPPGP. Furthermore, any such change required an amendment to the central OBC list, necessitating consultations with the MSJE. Given these powerful institutional players, MoMA's ability to lead and coordinate was heavily compromised. Salman Khurshid had admitted that his ministry had evolved into a 'letter-writing ministry', constantly seeking feedback from and consultation with the other ministries and relevant institutions.⁵⁴⁹ Khurshid's successor, K. Rahman Khan, also pointed out that the fractured system on minority issues hinders MoMA from developing and implementing policy.⁵⁵⁰

Although these structural constraints certainly impacted on the work of MoMA, the ministers in-charge failed to build a momentum for the policy. Meetings of the Consultative Committee on Minority Affairs in Parliament, for instance, were limited: there was no meeting in 2008-9,⁵⁵¹ a sole meeting in 2009-10,⁵⁵² a relative flurry of activity in 2010-11 when the Committee convened on four occasions,⁵⁵³ a halving of the frequency of meetings in 2011-12,⁵⁵⁴ and a final outburst of enthusiasm in 2012-13, when four meetings took place.⁵⁵⁵ Some of these meetings, for example in 2009-10 and 2010-11, were held in conjunction with the Ministry of Corporate Affairs. Employment was not on the agenda. Rather, they focused on the MSDP and scholarship schemes.⁵⁵⁶ While it is possible that the Ministry of Parliamentary Affairs did attempt to allocate time to MoMA, or that the minority issue was sidelined because of pressing parliamentary business, MoMA itself expended little effort to increase the frequency of meeting of the Consultative Committee on Minority Affairs, or explore other options by holding cross-party forums in which MPs, ministers, and senior government officers could discuss policy formulation and implementation. It appears in the absence of a

⁵⁴⁸ 'Ministry Wants 8.4 Per Cent for Minorities in OBC Quota', *Indian Express*, 28 November 2011 (electronic edition).

⁵⁴⁹ Abusaleh Shariff confirmed Khurshid's remark in the interview, 13 February 2013, New Delhi.

⁵⁵⁰ K. Rahman Khan, interview, 12 February 2013, New Delhi; Centre for Equity Studies, *Promises to Keep: Investigating Government Responses to Sachar Committee Recommendations* (New Delhi, 2012), xix; Zoya Hasan, *Congress after Indira: Policy, Power, Political Change (1984-2009)* (New Delhi: Oxford University Press, 2012), 172.

⁵⁵¹ Ministry of Parliamentary Affairs, *Annual Report 2008-09* (New Delhi: GoI, 2009), 31-2.

⁵⁵² Ministry of Parliamentary Affairs, *Annual Report 2009-10* (New Delhi: GoI, 2010), 86.

⁵⁵³ Ministry of Parliamentary Affairs, *Annual Report 2010-11* (New Delhi: GoI, 2011), 86.

⁵⁵⁴ Ministry of Parliamentary Affairs, *Annual Report 2011-12* (New Delhi: GoI, 2012), 90.

⁵⁵⁵ Ministry of Parliamentary Affairs, *Annual Report 2012-13* (New Delhi: GoI, 2013), 103.

⁵⁵⁶ Except 2008-09, when no consultative committee meeting was held, in all consultative committee meetings held from 2009 to 2013 the issue of employment was never discussed.

strong lead from MoMA, the government ultimately opted for a lower percentage of reservations for minorities at 4.5 per cent of the OBC quota.

The policy-making process in the final stages still remains obscure. On 7th December 2011, it was noted in the Rajya Sabha that the percentage of quota for minorities was still ‘in the domain of inter-ministerial consultations’.⁵⁵⁷ However, the speed with which the policy was formulated, and without a parliamentary debate, indicates that whatever inter-ministerial policy consultation took place they were cursory. The decision was contrary to MoMA’s earlier stand of 8.4 per cent, and allegedly more in line with the findings of the Mandal Commission than RMCR.⁵⁵⁸ This drastic reduction was both a reflection of the serious political opposition to such a proposal and the UPA’s desire to pursue ‘symbolic implementation’ in the face of powerful institutionalised resistance from SC, ST and OBC interests.

Decision-making

On 22nd December 2011, the UPA government circulated an Office Memorandum to all ministries and departments stating that with effect from 1st January 2012 the existing 27 per cent quota for OBCs would have a sub-quota of 4.5 per cent for SEBCs belonging to minorities, as defined in Section 2 (c) of the National Commission for Minorities Act, 1992.⁵⁵⁹ Announced on the eve of the Uttar Pradesh assembly polls, the decision was universally derided. The BJP called it a ‘dangerous political game’, and the CPI (M) and SP condemned it as ‘most inadequate’ and ‘tokenism’.⁵⁶⁰ Since 35 Muslim groups in the OBC category were already entitled to reservations, amounting to 2-3 per cent under the 27 per cent OBC quota, the creation of a 4.5 per cent sub-quota for ‘all minorities’ replacing this existing entitlement potentially threatened to undermine the existing provision for Muslims because other SEBCs belonging to minorities, especially

⁵⁵⁷ *RSD*, 7 December 2011.

⁵⁵⁸ ‘Justify Minority Quota in OBC, Supreme Court Tells Government’, *Indian Express*, 12 June 2012 (electronic edition).

⁵⁵⁹ Department of Personnel and Training, ‘Office Memorandum: Reservation for Other Backward Classes in Civil Posts and Services under the Government of India – Sub-Quota for Minority Community’, 22 December 2011. Available at: http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02adm/41018_2_2011_Estt_Res.pdf [accessed on 3 May 2013].

⁵⁶⁰ ‘Quota for Minorities: BJP Warns of Civil War, CPM Seeks More Reservation; Congress Happy’, *Times of India*, 23 December 2011 (electronic edition).

Christians and Sikhs, educationally outperformed Muslims. In its haste to exploit the announcement for political advantage, the irony of this outcome was lost on the UPA.

The Muslim community itself was divided over the issue. While some activists supported the move, others, particularly those in states in the south, where Muslims have been included in OBC category since the pre-Mandal period, expressed exasperation at the centre's decision and held that the most privileged among the community, 'the creamy layer', would benefit.⁵⁶¹ Asaddudin Owaisi, President of the All India Majlis-e-Ittehadul Muslimeen, and MP from Hyderabad, maintained that the move was in the right direction towards more specific quotas for Muslims.⁵⁶² Similarly, Zoya Hasan, a leading academic and policymaker, argued that the institutional bias, institutional discrimination and institutional prejudice against Muslims in India made reservation necessary, and the government decision gave Muslims a better option, despite the very small percentage.⁵⁶³ A leading Muslim member of the NCM, however, was less sympathetic: he was in favour of de-linking SC status from a narrow definition of Hindu socially disadvantaged castes, so that poor Christians and Muslims could be brought under the category, but considered the UPA's effort too little to effectively address Muslim under-representation in government employment. While it is right to include poor Christians and Muslims in the definition of SCs and STs, he insisted, as caste discrimination was rooted in tradition, not religion, the real issue was the exclusion of a large number of backward Muslims from the OBCs list. There was, in short, a need for a comprehensive and systematic restructuring of the Muslim OBC list.⁵⁶⁴

However, the government plan soon faced opposition from the Election Commission for violating its Code of Conduct. The Commission directed that the sub-quota should not be implemented in poll-bound states (Goa, Punjab, Uttarakhand, Uttar Pradesh, and Manipur) until after the elections.⁵⁶⁵ Subsequently, the Andhra Pradesh High Court struck down the reservation in government jobs on the grounds that it had been carved out in a 'casual manner', and that an Office Memorandum based on

⁵⁶¹ '4.5 Per Cent Sub-Quota for Minorities a Grand Betrayal by UPA Government', *The Milli Gazette*, 24 December 2011; 'Reservation Demand for Muslims Gains Momentum', *Times of India*, 1 November 2011 (electronic edition).

⁵⁶² Asaduddin Owaisi, interview, 6 March 2013, New Delhi.

⁵⁶³ Zoya Hasan, interview, 11 March 2013, New Delhi.

⁵⁶⁴ Wajahat Habibullah, interview, 12 February 2013, New Delhi.

⁵⁶⁵ 'Election Commission Stalls 4.5 Per Cent Sub-Quota in Poll States', *Times of India*, 12 January 2012 (electronic edition).

religious lines was not an ‘intelligible consideration’.⁵⁶⁶ The Court held that the central government had violated articles 15 (1) and 16 (2) of the Constitution and failed to prove that religious minorities are homogeneous or more backward, hence deserving of ‘special treatment’.⁵⁶⁷ In response, the government filed an appeal to the Supreme Court, but this was rejected on three counts: that the Office Memorandum issued by central government had no legal support; that the government had failed to produce data to back up its decision; *and that no policy consultation had been conducted with relevant statutory bodies such as the NCBC and NCM.*⁵⁶⁸

The Supreme Court requested the government to submit relevant supporting documents to explain how it had reached the figure of 4.5 per cent. These documents, including the SCR, extracts of the RMCR, and the Mandal Commission Report, were submitted in response. However, despite the Attorney General’s assertion that the 4.5 per cent sub-quota was based on the calculations of the Mandal Commission Report, the Supreme Court refused to stay the Andhra Pradesh High Court’s order. The wording in the Office Memorandum, ‘4.5 per cent sub-quota for socially and educationally backward communities belonging to religious minorities’, was interpreted as violating the Constitution by making religion the basis of classification. In spite of Khurshid’s argument that the sub-quota was based on the backwardness of a minority group, not on religion,⁵⁶⁹ and the Solicitor General’s efforts to suggest that the sub-quota was not for all religious minorities but aimed at the lowest ranks of Christian or Muslim converts,⁵⁷⁰ the Supreme Court rejected that stand on the grounds that it was still difficult to prove ‘*this particular population is poorer than the rest of the OBCs*’.⁵⁷¹

In the interviews conducted during fieldwork, some leading office holders suggested that the government intentionally fielded inadequate counsel in its defence.⁵⁷² While this charge is difficult to prove, its post-verdict statements appeared to confirm the belief that the government was resigned to the outcome. Three months later,

⁵⁶⁶ ‘Centre Moves Supreme Court over Order against 4.5 Per Cent Sub-Quota for Minorities’, *NDTV*, 9 June 2012 (electronic edition).

⁵⁶⁷ *Ibid.*

⁵⁶⁸ *Ibid.*; ‘Justify Minority Quota in OBC, Supreme Court Tells Government’, *Indian Express*, 12 June 2012 (electronic edition). Emphasis added.

⁵⁶⁹ Sidharth Pandey, ‘Supreme Court Does Not Unlock 4.5 Per Cent Minority Sub-Quota’, *NDTV*, 13 June 2013 (electronic edition).

⁵⁷⁰ ‘Supreme Court Slams Government Again, Refuses to Stay Quashing of Sub-Quota’, *Indian Express*, 14 June 2012 (electronic edition).

⁵⁷¹ *Ibid.* Emphasis added.

⁵⁷² Owaisi, interview, 6 March 2013, New Delhi.

Khurshid was still expressing optimism that ‘when the constitutional bench [of the Supreme Court] takes it [the case] over, I am very hopeful that we will get some relief’.⁵⁷³ In October 2012, following a Cabinet reshuffle, Khurshid was replaced by K. Rahman Khan at MoMA. On taking office, the new Minister reaffirmed his commitment to the 4.5 per cent sub-quota, and referred to the Andhra Pradesh High Court’s judgment as a ‘misunderstanding’. ‘The court’, he insisted, ‘has not rejected the quota... [it] has only said that the procedure adopted to ascertain backwardness is not satisfactory’.⁵⁷⁴ Insisting that reservation is a ‘constitutional right’, he also affirmed support for the inclusion of Dalit Christians and Dalit Muslims in the SC category, but admitted that ‘the government has left it to the court to decide...So let us wait for the Supreme Court order.’⁵⁷⁵

Post-judicial intervention

Judicial intervention, both by the Supreme Court and the Andhra Pradesh High Court, confirmed the conventional view that the judiciary was inclined to take a conservative interpretation of any new proposals that challenged the constitutional settlement.⁵⁷⁶ UPA’s efforts to apply the ‘Andhra Pradesh model’ were unable – both in Andhra Pradesh and nationally – to overcome institutionalised opposition to reservations for minorities.⁵⁷⁷ At the same time, that the UPA government appeared to be engaged in ‘symbolic implementation’ is confirmed by a former senior member of the RMCR who recalled:

We submitted our report in May 2007, and nearly 6 years later, in fact 2 days ago (18th February 2013), I received a phone call from the former deputy secretary of the commission. He phoned me and said, ‘Sir, we have met the Minister of Minority Affairs and he wants some clarification of our report’. Six years after, the new Minister of Minority Affairs (K. Rahman Khan) is seeking clarification about the report on what ground the recommendation of this report was made! I was very upset and furious. I said: ‘Where was the Minister of Minority Affairs sleeping all these days? Justice Ranganath Misra is dead, he is not available, Anil

⁵⁷³ ‘Centre Optimistic about Getting Relief on Minority Sub-Quota’, *Zee news*, 10 September 2012 (electronic edition).

⁵⁷⁴ ‘New Minority Affairs Minister in Favour of Muslim Quota’, *Outlook*, 30 October 2012 (electronic edition).

⁵⁷⁵ *Ibid.*

⁵⁷⁶ For judicial resistance in the interpretation of minority rights, see Rudolf C. Heredia, *Taking Sides: Reservation Quotas and Minority Rights* (New Delhi: Penguin Books, 2012), especially Ch.5.

⁵⁷⁷ Interestingly, the efforts of the Andhra Pradesh Congress government to establish reservations for Muslims in employment and education were rejected by the Andhra Pradesh High Court on three occasions between 2005 and 2010.

Wilson, who was an education member, is also dead. If he really wanted to seek the clarification, the minister could have called me or Mohinder Singh. Why should I reply to you?'. Look what is happening. Six year after, they are asking me for clarification about the report. So they have no intention of taking any action on it. They are just beating about the bush.⁵⁷⁸

The UPA government showed a certain degree of passivity in allowing the Supreme Court verdict to block further movement on reservation for minorities. While the Supreme Court judgment clearly invalidated the RMCR suggestion that a constitutional amendment was unnecessary for such reservation, the UPA failed to build upon the creative proposals in RMCR or create a climate in which a constitutional amendment, or Supreme Court reversal of its decisions, could have succeeded.

Minister K. Rahman Khan insisted that constitutional change was a necessary requirement for progress on reservation. As he stated in an interview:

My opinion on the RMCR is that it is difficult to implement. In the present constitutional mechanism it is not possible. The report recommended 10 per cent for all and 5 per cent for particular backward people.... Now the Supreme Court verdict is that reservation should not be more than 50 per cent. How do you compromise this? We cannot implement this because of Constitution. We are not in the position to amend the Constitution because we don't have majority. What is recommended should happen but if government has to adopt it... it is not necessary that all the recommendations should be implemented.⁵⁷⁹

This skilful blame displacement was also apparent in the Lok Sabha on 22nd November 2012 in response to Shiv Sena and BJP interventions about the 4.5 per cent ruling.⁵⁸⁰ Khan declined to comment directly, stating only that the 'Supreme Court observed that since similar issues were pending consideration before the Constitutional Bench, the matters concerning the 4.5 per cent reservation for minorities be tagged along with those matters. The matter is presently *sub-judice*.'⁵⁸¹ In March 2013, at a National Editors' Conference, Khan again sought to strike an optimistic note, referring to the Karnataka and Kerala quota system and claiming that the government was 'trying to expedite the matter'.⁵⁸² And in June 2013, at a conference in Jaipur on the SCR, both Khurshid and

⁵⁷⁸ Mahmood, interview, 20 February 2013, Noida.

⁵⁷⁹ Khan, interview, 12 February 2013, New Delhi.

⁵⁸⁰ *LSD*, Questions No 95 (22 November 2012), 27.

⁵⁸¹ Minister Khan's Answer to Question no 95, 'Reservation for minorities', *Lok Sabha Q&A*, 22 November 2012.

⁵⁸² 'Government Trying to Expedite Muslim Sub-Quota within Job Quota: Rahman Khan', *Indian Express*, 23 March 2013 (electronic edition).

Khan expressed their desire to ensure the provision of the 4.5 per cent sub-quota for Muslims. Khan stated that the central government was willing to put it before the Supreme Court, while Khurshid added that ‘[the government] will try to convince the Constitutional Bench of the Supreme Court that the sub-quota is not religion-based, but is on the basis of backwardness’, and ‘reservation is not granted to a particular caste, but if all people of that particular caste are backward, they can be granted reservation’.⁵⁸³

According to Khan’s most recent statement, the Congress is still:

Committed to what we had promised in our party manifesto about reservation to backward among Muslims. We are confident that 4.5 sub-quota for backward Muslims will see the light of the day. We are trying that the case comes up for an early hearing in the Supreme Court. Talks are on with Attorney General. We are hopeful that it will happen soon.⁵⁸⁴

As of August 2014, the case is still pending. The UPA government, before its demise in May 2014, failed to take any action either to pursue the matter in the Supreme Court or explore alternative avenues to resolve the issue.

Implementation and evaluation

We have discussed at length the issue of reservations for minorities, especially Muslims, to demonstrate the institutionalised opposition to the proposal within the policy process – opposition which has delayed the implementation of the measure. In contrast, affirmative action provisions suggested by the SCR faced fewer legal challenges, and some of the measures taken under executive action, such as monitoring and targeting, were ‘substantive’ rather than ‘symbolic’. In this section we discuss the issues related to public access to data on minorities, particularly Muslim employment in the public sector. We then review the data provided by MoMA on its websites to examine patterns of change in central ministries and departments between 2006 and 2013. Finally, we reflect on the positive action taken by the Minister of Railways, Mamata Banerjee in West Bengal between 2009 and 2011.

⁵⁸³ ‘Centre to Take 4.5 Per Cent Muslim Sub-Quota Issue to Supreme Court Bench’, *Hindustan Times*, 3 June 2013 (electronic edition); ‘Government to Try to Convince Supreme Court on Minority Sub-Quota: Khurshid’, *Outlook*, 2 June 2013 (electronic edition).

⁵⁸⁴ ‘Government Working for Quick Implementation of Minority Sub-Quota’, *Zee news*, 5 June 2013 (electronic edition).

Data on Muslims in central government employment: public access and denial

Most of the affirmative action programmes launched in pursuit of SCR's recommendations were framed with monitoring mechanisms. Despite these publicly declared policy instruments, systematic collection, publication and use of monitoring data on employment have yet to become routine features of policy.⁵⁸⁵ Furthermore, MoMA, the DoPT, and the Planning Commission (the report of the steering committee on empowering minorities, Eleventh Five-Year Plan report, Twelfth Five-Year Plan report), have not clarified whether minority members have been included in selection committees, whether there has been any improvement in the proportion of minorities in Group C and D posts, in which ministries and departments the proportion has increased, decreased or remained the same, the reasons for such variations, or how the monitoring system has been used. As Khan acknowledged, monitoring of data on employment is yet to become a priority:

The problem is that the monitoring is left to a certain committee which has no time to look into it. At the state level, the Chief Secretary is the chairman of monitoring committee. They have no time, they have no interest. They already have their own work. Monitoring is extra work. So they may monitor and they may not.⁵⁸⁶

Unsurprisingly, therefore, given this haphazard process of policy formation and implementation, these processes have yet to become routinised if not fully accepted within the civil service.

These shortcomings were also demonstrated during fieldwork. Most respondents were unaware of such data; some believed that the data might have been collected but was not generated into a computable form because of its potential political ramifications.⁵⁸⁷ In an interview with Minister Khan at his residence, it was disclosed that time-series data on employment of Muslims does exist, and that the proportion of Muslims in government employment has increased.⁵⁸⁸ However, he failed to keep the

⁵⁸⁵ The paucity and unavailability of government data is also highlighted by Khalidi. See, Omar Khalidi's, *Muslims in Indian Economy* (Gurgaon: Three Essays Collective, 2006), 3-6, and, *Khaki and the Ethnic Violence in India: Army, Police and Paramilitary Forces during Communal Riots* (New Delhi: Three Essays Press, 2010), 42.

⁵⁸⁶ Khan, interview, 12 February 2013, New Delhi.

⁵⁸⁷ Gurpreet Mahajan, interview, 28 January 2013, New Delhi; Amitabh Kundu, interview, 10 February 2013, New Delhi.

⁵⁸⁸ 'Muslims get more employment. And we have year to year data that the level of Muslims is increasing. It is just 4-5 per cent, very small though', Khan, interview, 12 February 2013, New Delhi.

subsequent appointment at which he had promised to provide these data.⁵⁸⁹ Instead, his private secretary directed me to the MoMA website which carries general – and not Muslim, or any other community specific – data on minorities in central government employment. In the absence of Muslim-specific data, we have focused our analysis on the MoMA website data. Such an exercise is clearly limited but, nonetheless, highlights how this data is distorted, misrepresented and, and at times, deliberately concealed from the public. It also illustrates some general trends of the representation of minorities within ministries, departments and public sector undertakings.

Since most ministries and departments failed to submit figures on the employment status of minorities every year from 2006 to 2013, or even at regular intervals, the MoMA data is not sequential. This raises a number of questions: Does non-presentation of data in a particular year mean there was no recruitment that year? Does the information exist, but has not been generated into presentable format? Did recruitment take place, but because minorities were not employed the relevant ministries and departments withheld the data? And was the data submitted, but MoMA deliberately avoided including ministries and departments with low recruitment of minorities in the data sheet? Whilst it was not possible to get further confirmation of these concerns from the Minister, or other key informants, the unsystematic way in which the information has been presented suggests such considerations required further investigation.

⁵⁸⁹ In parenthesis, it is worth recalling the Minister's response to my request for the data on Muslim employment. The Minister claimed to have specific data on 'Muslim' recruitment, and agreed to provide it if I would visit his office the following day. We agreed a definite time for the meeting, and the Minister assured me that he would inform his secretary about my visit. However, when I arrived at the Ministry reception the next day, at the appointed time, my name was not on the list of visitors. After some persuasion, the reception officer allowed me to make a call to the secretary of MoMA, who checked the Minister's schedule for the day but found no record of the promised meeting. After waiting for half an hour outside the building, I managed to get into the MoMA office and once again had to explain to the secretary about my visit and what the Minister had promised the previous day. The secretary informed me that the Minister was in a meeting, but said that if I would wait for about an hour until it was finished, he would speak to the Minister to check what I had told him. After an hour, the secretary told me that the Minister had returned to his residence. As I was sitting on a sofa right next to the door of the Minister's office, it was impossible that he could have left without being noticed. The secretary introduced the private secretary to the Minister to discuss the data the Minister had promised. However, although I explained what data the Minister had claimed to have, the private secretary seemed very cautious and asked me to write down what specific data I needed. When I asked whether there is data on central government employment of Muslims, he insisted that it is on the website, and to my pointing out that the data reported there is not specific to Muslims but includes all minorities, he responded: *'It must be there. You missed it.'* He said that someone would contact me when the data was collected. But by the time I left Delhi, there had still been no contact from MoMA.

More worryingly, however, the data provided by ministries and departments is frequently incomplete. Each year's data specifies the total number of persons recruited and the number of minorities employed. Clearly, the total number of persons employed should be greater than the number of minorities employed. However, in some cases, ministries and departments have submitted data which claims that the number of minorities employed exceeds the total. Furthermore, what ought to be simple calculations are often incorrect. Taking ministries at random and checking whether the sum of the total number of people employed in Groups A, B, C, and D matches with the total number presented by the government reveals several inaccuracies. Such misrepresentation might have originated from the original figure submitted by the ministry or department, or with the official who worked on generating the data sheet, but the failure to verify or cross-check these figures before placing them in the public domain appears surprising.⁵⁹⁰

These errors were also compounded by technical mistakes: in the data for 2007-08, for instance, the first row of the first page of the data sheet is half missing, because the sheet was unskillfully uploaded onto the MoMA website. Fortunately, as the first row includes the names of ministries and departments, it is still recognisable. But this error is repeated in the final page of the 2007-08 data sheet, where the last row is missing, so that it is not possible to see the number of minorities recruited. Had the ministries and departments monitored the summative data file to check whether their own employment data was correctly presented, these mistakes could have been easily corrected. If this is an indication of deliberate data distortion and evasion, then once again questions arise as to whether minorities were recruited in the ministries and departments included in this page, or whether other considerations came into play in not reporting the numbers. Remarkably, neither the Muslim NGOs active in this policy area, nor the Muslim MPs have noticed these glaring errors – an indication not only of the weak monitoring regime but the lack of development of an organised lobby campaigning for such change.⁵⁹¹

⁵⁹⁰ To name a few, in 2006-07 data, Ministry of Urban Development stated that for Group D 53 people were employed in total, while the number of employees from minorities was 101. In 2010-11, the Ministry of Youth Affairs & Sports reported 19 minorities recruited out of a total recruitment of 12 for Group A, and 4 minorities were employed in Group D while there was no recruitment in this group. Also in 2012-13, in the Ministry of Coal while no person was recruited in Group A, one minority person was recruited.

⁵⁹¹ The absence of a well-organised Muslim civil society and the decline of Muslim representation in Parliament will be considered in the Conclusion.

Finally, MoMA's data sheet for 2006-13 states 'minority persons employed during the year', without defining 'minority'- Buddhists, Christians, Jains, Muslims, Sikhs, and Parsis, and whether or not they were recruited through the reservations. Whilst the proportion of Christians and Muslims entitled to reservations is relatively small (via the OBC route), Buddhists and Sikhs, who are part of the SC category, could potentially distort the overall figures. If the Buddhists and Sikhs, who are already entitled to reservation, are nevertheless reflected in the figure provided by MoMA, the real proportion of employment of minorities who are not entitled to reservation would be much lower. These intra-minority factors are not inconsequential: Muslim groups have long complained of being squeezed out of minority representation in employment and other sectors by more educationally advanced minorities (Buddhists, Christians, and Sikhs).

MoMA, minorities' employment data and monitoring

The data available on the MoMA website covers the period from 2006 to 2013. Of the 85 ministries and departments recorded, only 25 reported employment status in a regular sequence. These 25 were selected for detailed analysis, and ministries and departments that returned 'Nil' were excluded on the grounds that this could mean ambiguity, evasion or no recruitment. The proportion of minorities employed in each ministry was also calculated for the various grades (Group A, B, C, and D inclusive) to assess whether recruitment of minorities is still concentrated in lower grades.⁵⁹² The 25 ministries and departments were further divided into high (more than 10 per cent), medium (5 to 10 per cent) or low (below 5 per cent) recruiters of minorities. For detailed assessment, 4-5 ministries and departments were selected for each category.⁵⁹³ A number of observations can be made from this data.

⁵⁹² The SCR had concluded that the employment of Muslims in ministries and departments was 'abysmally low at all levels' and 'the share of Muslims increases only marginally for lower level jobs but even in group D employment (which requires only a low level of education), the share is only about 5 per cent', SCR, 167.

⁵⁹³ Under the Central Civil Services (Classification, Control & Appeal) Rules (1965) central civil posts are categorised into A, B, C, D according to pay scale. Group A carries 'a pay or a scale of pay with a maximum of not less than Rs. 13,500'. The range for Group B is not less than Rs. 9,000 but less than Rs. 13,500; for Group C not less than Rs. 9,000 but less than Rs. 13,500; and for Group D over Rs. 4,000 but less than Rs. 9,000. In general, employment in Groups A and B requires a high level of education, while Group C and D posts are more manual and technical, with low educational requirements. Available at: [http://www.persmin.gov.in/DOPT_ActRules_CCS\(CCA\)\(Eng\)_Index.asp](http://www.persmin.gov.in/DOPT_ActRules_CCS(CCA)(Eng)_Index.asp) [accessed on 3 May 2013].

First, in the high recruiting departments (Table 5.1), in 3 of the 5 departments and ministries the average representation of minorities increased between 2006 and 2013. Recruitment in Agriculture and Cooperation was exceptionally high in 2006-7 at 45 per cent. Conversely, in the Ministry of Coal no minority candidate was recruited in any Group over the period. In general, recruitment of minorities was across the four grades, without noticeable concentration in the low grades (C and D). It is worth noting, however, that as these functional departments and ministries require a high level of educational attainment, and other things being equal, Muslims are likely to have been outnumbered by other minorities, especially Christians and Sikhs, though as we have seen previously, non-OBC Muslims do have a representation within India's elite services such as IAS and IPS. It is also noteworthy that all departments and ministries witnessed a decline in minority recruitment in 2009-10, an election year. Overall, within the recruiting ministries and departments, the representation of minorities was still well below the proportion of the minorities' population (19.5 per cent in 2011 census),⁵⁹⁴ with the highest figure at 14.79 per cent (Ministry of Commerce and Industry).

In the medium ranking ministries and departments (Table 5.2), although the average recruitment of minorities increased over the 2006-13 period in three ministries and departments (Women and Child Development, Post, and Railways), the overall recruitment of all categories was insignificant. The two biggest recruiters, Post and the Railways, witnessed a significant shift, with the latter's average of minority employees increasing from 2.67 per cent in 2006 to 12.54 per cent in 2012. Numerically, most of this increase was in grades C and D, though as a proportion of all higher grades also appear to have increased. As we shall see below, executive action by the Minister of Railways, Mamata Banerjee, seems to have contributed to the development. Some results, on the other hand, may be misleading or of little significance. For example, the Ministry of Parliamentary Affairs only recruited two minority candidates during the period which, due to low total recruitment, represents a large percentage increase in minority appointments.

In the low recruiting departments and ministries (Table 5.3) the average increase over the period was negligible. The data demonstrates that Departments of Corporate Affairs, Biotechnology, and Ministry of Overseas Indian Affairs are less likely to recruit

⁵⁹⁴ Ministry of Home Affairs, *Census of India 2011*. Available at <http://censusindia.gov.in> [accessed on 3 May 2013].

minorities. In the Ministry of Housing and Urban Poverty Alleviation, apart from 2006-07, when the employment of 16 minority candidates led to a large proportionate increase, the representation of minorities is very low: of 284 candidates recruited in 2011-12, none were from the minorities. Given that most Muslims reside in urban areas, the lack of minority employment, particularly in Groups C and D, suggests that the 'special consideration' required by the Office Memorandum (2007) had not been put into practice. In the Department of Corporate Affairs, no minority individuals were employed in Group C or D in 2006-07, in Group B or D in 2008-09, in B, C, or D in 2009-10, or in B or C in 2010-11. The Department of Biotechnology presents a similar picture: in 2008-09, in a total recruitment of 35, no minority candidate was employed. Between 2006 and 2013, in the Ministry of Overseas Indian Affairs, over a period of 7 years only 10 people were employed, none of whom belonged to minority groups. In brief, while the figures for recruitment to these departments and ministries were relatively low, the even lower or non-representation of minorities suggests positive action in recruitment of central administration had made little impact.

Table 5.1
Central government and departments with high recruitment of minorities, 2006-2013

	2006-07			2007-08			2008-09			2009-10			2010-11			2011-12			2012-13			A*
	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	
M/o Commerce & Industry, D/o Commerce			10.62			10.11			16.75			14.21			21.27			17.62			12.95	14.79
Group A	21	2	9.52	23	2	8.70	26	4	15.38	14	3	21.43	42	19	45.24	41	10	24.39	138	18	13.04	
B	32	4	12.50	65	10	15.38	74	14	18.92	54	5	9.26	86	18	20.93	58	10	17.24	103	14	13.59	
C	56	3	5.36	62	2	3.23	68	9	13.24	89	17	19.10	112	17	15.18	151	22	14.57	172	21	12.21	
D	51	8	15.69	28	4	14.29	23	5	21.74	40	3	7.50	28	3	10.71	5	1	20.00	4	1	25	
D/o Information Technology			7.33			32.78			11.07			9.09			12.03			11.74			9.38	13.35
Group A	192	13	6.77	260	73	28.08	179	21	11.73	40	3	7.50	82	13	15.85	133	11	8.27	57	5	8.77	
B	208	18	8.65	43	22	51.16	51	8	15.69	364	32	8.79	115	11	9.57	328	45	13.72	64	6	9.38	
C	49	2	4.08	56	21	37.50	66	4	6.06	20	2	10.00	65	8	12.31	84	8	9.52	39	4	10.26	
D	1	0	0	4	3	75.00	11	1	9.09	5	2	40.00	4	0	0	0	0	0	0	0	0	
M/o Coal			0			20			26.67			3.33			25			0			16.67	13.10
Group A	5	0	0	0	0	0	0	0	0	0	0	0	3	1	33.33	0	0	0	0	1	0	
B	17	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
C	16	0	0	4	1	25.00	14	4	28.57	2	0	0	1	0	0	3	0	0	11	1	9.09	
D	3	0	0	1	0	0	0	0	0	28	1	3.57	0	0	0	1	0	0	13	2	15.38	
D/o Agriculture & Cooperation			45.00			13.57			7.02			6.98			5.64			6.55				12.11
Group A	13	12	92.31	28	7	25.00	5	0	0	26	2	7.69	46	4	8.70	33	2	6.06	No recruitment			
B	43	20	46.51	47	3	6.38	22	2	9.09	25	1	4.00	147	9	6.12	26	4	15.38				
C	26	12	46.15	62	9	14.52	22	5	22.73	27	1	3.70	63	2	3.17	101	4	3.96				
D	18	1	5.56	3	0	0	8	0	0	8	0	0	10	0	0	8	1	12.50				
D/o Space			14.66			16.24			13.21			10.95			9.92			10.56				10.79
Group A	245	24	9.80	323	44	13.62	391	52	13.30	470	49	10.43	381	35	9.19	364	23	6.32	No recruitment			
B	45	12	26.67	123	33	26.83	175	16	9.14	130	8	6.15	155	14	9.03	107	11	10.28				
C	194	33	17.01	170	22	12.94	322	48	14.91	228	34	14.91	210	25	11.90	381	56	14.70				
D	14	4	28.57	12	3	25.00	8	2	25.00	5	1	20.00	0	0	0	0	0	0				

Source: Ministry of Minority Affairs website, compiled by author.

Unit: percentage. A*: Average

Table 5.2
Central government and departments with medium recruitment of minorities, 2006-2013

	2006-07			2007-08			2008-09			2009-10			2010-11			2011-12			2012-13			A*
	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	
M/o Women & Child Development			0			20			16.67			0			5			15.15	No recruitment			8.12
Group A	0	0	0	1	0	0	0	0	0	0	0	0	2	0	0	2	0	0				
B	3	0	0	0	0	0	0	0	0	1	0	0	7	1	14.29	10	1	10.00				
C	2	0	0	3	1	33.33	3	1	33.33	0	0	0	7	0	0	15	3	20.00				
D	2	0	0	1	0	0	3	0	0	0	0	0	4	0	0	6	1	16.67				
D/o Post			7.60			9.65			6.36			8.01			8.27			8.11				8.08
Group A	4	0	0	3	1	33.33	5	0	0	8	0	0	10	1	10.00	Not specified			20	1	5	
B	47	1	2.13	92	11	11.96	40	2	5.00	73	15	20.55	48	7	14.58				147	18	12.24	
C	4382	348	7.94	4682	425	9.08	2419	157	6.49	7473	589	7.88	14840	1175	7.92				2642	222	8.40	
D	610	37	6.07	581	80	13.77	302	17	5.63	152	13	8.55	744	110	14.78				1241	112	9.02	
D/o Expenditure			25.00			0			0			13.33			2.04			6.6				6.71
Group A	0	0	0	6	0	0	0	0	0	9	2	22.22	3	0	0	30	3	10.00	No recruitment			
B	0	0	0	2	0	0	4	0	0	0	0	0	34	1	2.94	49	2	4.08				
C	4	1	25.00	1	0	0	4	0	0	6	0	0	12	0	0	27	2	7.41				
D	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0				
M/o Railways			2.67			6.31			8.32			6.55			8.72			12.54				6.44
Group A	302	13	4.30	17	5	29.41	59	7	11.86	33	3	9.09	28	3	10.71	955	61	6.39	Not specified			
B	0	0	0	450	49	10.89	472	90	19.07	421	35	8.31	422	41	9.72	434	59	13.59				
C	34071	745	2.19	16647	1069	6.42	15285	899	5.88	15793	1014	6.42	12205	978	8.01	19660	2391	12.16				
D	20111	698	3.47	19239	1172	6.09	20397	2016	9.88	9374	653	6.97	5596	569	10.17	7036	1010	14.35				
M/o Parliamentary Affairs			0			0			0			0			25			0				5.61
Group A	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4	1	25	
C	0	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	3	0	0	
D	0	0	0	0	0	0	0	0	0	0	0	0	1	1	100	0	0	0	0	0	0	

Source: Ministry of Minority Affairs website, compiled by author.

Unit: percentage. A*: Average

Table 5.3
Central government and departments with low recruitment of minorities, 2006-2013

	2006-07			2007-08			2008-09			2009-10			2010-11			2011-12			2012-13			A*
	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	total number of persons employed	total number of minorities employed	proportion of minorities employed	
M/o Housing and Urban Poverty Alleviation			25.40			8.33			0			0			0			0			0	4.82
Group A	29	2	6.90	12	1	8.33	1	0	0	2	0	0	2	0	0	2	0	0	1	0	0	
B	9	4	44.44	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	
C	9	8	88.89	0	0	0	0	0	0	0	0	0	0	0	0	147	0	0	0	0	0	
D	16	2	12.50	0	0	0	0	0	0	0	0	0	1	0	0	134	0	0	0	0	0	
D/o Corporate Affairs			4.82			0			0			6.45			1.96			14.07			5.71	4.72
Group A	39	1	2.56	0	0	0	0	0	0	29	4	13.79	69	2	2.90	21	1	4.76	44	3	6.82	
B	36	3	8.33	0	0	0	1	0	0	28	0	0	20	0	0	72	14	19.44	25	1	4	
C	4	0	0	0	0	0	0	0	0	1	0	0	13	0	0	82	11	13.41	1	0	0	
D	4	0	0	0	0	0	1	0	0	4	0	0	0	0	0	28	1	3.57	0	0	0	
D/o Biotechnology			5.26			2.44			0			10.53			1.38			5.62			5.36	4.37
Group A	15	1	6.67	22	0	0	19	0	0	11	0	0	88	10	11.36	52	3	5.77	34	4	11.76	
B	10	1	10.00	5	0	0	3	0	0	7	1	14.29	31	4	12.90	25	1	4.00	22	0	0	
C	14	0	0	14	1	7.14	9	0	0	20	3	15.00	37	6	16.22	12	1	8.33	10	1	10	
D	4	0	0	0	0	0	4	0	0	0	0	0	6	1	16.67	0	0	0	0	0	0	
M/o Overseas Indian Affairs			0			0			0			0			0			0			0	0
Group A	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
C	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
D	0	0	0	10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	

Source: Ministry of Minority Affairs website, compiled by author.

Unit: percentage. A*: Average

Overall, the MoMA data does not support the assertion that UPA's policies of positive action significantly improved the representation of minorities in public sector employment. Indeed, if overall minority representation did not increase, Muslim representation is also unlikely to have improved because even within this category Muslims have traditionally struggled to match the recruitment profile of other minorities. It would appear that in most cases 'special consideration' has been paid only in the constitution of selection committees (by including one minority member), but not in the actual recruitment of minorities itself.⁵⁹⁵ Discriminatory recruitment practices continue at both central and state levels. For example, Maharashtra State has one minority member on its selection boards but the level of Muslim representation has not increased. In the state, selection committees continue to insist that the Marathi language should be used in applications, thereby excluding local Muslims in Maharashtra who are mostly migrants from Uttar Pradesh and Bihar.⁵⁹⁶ These cases prove that the inclusion of a minority member in selection boards is neither a necessary nor sufficient condition for improving the chances for employment of minority candidates. Rather, positive action has to be accompanied by a range of other measures – active monitoring, political support, institutional sympathy, a committed community/lobby behind the measure and a determination to address embedded cultures of resistance – if it is to be effective. Given the room for discretion in the use of positive action to promote better equal opportunities for minorities, it is perhaps unsurprising that these minorities seek reservations as the most effective way of improving their status.

Mamata Banerjee, Railways and West Bengal: a successful model of positive action?

That the UPA policies on minorities, especially Muslims, could be turned into a potentially successful model of positive action is illustrated by the case of Mamata Banerjee, the Minister of Railways (2009-11), and later the Chief Minister of West Bengal. Minority employment in the Ministry of Railways witnessed a noticeable increase during her tenure. It is generally believed Banerjee used executive discretion to push through measures aimed at the Muslim population in West Bengal, a state which had been governed by the Left Front – led by CPI (M) from 1977 to 2011 but one which the SCR found to have a particularly weak record in terms of minority public sector employment and service delivery. Accordingly, Banerjee, who was determined to build

⁵⁹⁵ Habibullah, interview, 12 February 2013, New Delhi; See also, *Post-Sachar Evaluation Committee* (New Delhi: GoI, 29 September 2014), 122.

⁵⁹⁶ (Habibullah) *ibid.*

her constituency for the state elections in 2011, used her Trinamool Congress' (TMC) strength 'in the national Parliament, the Lok Sabha, and [her] control of the Railway Ministry ...as platforms from which to display its commitment to addressing issues and grievances of concern to Muslim voters'.⁵⁹⁷ Among the measures used to enhance employment of Muslims in the Ministry of Railways included: advertising in Urdu newspapers; allowing candidates to take tests in Urdu; waving 'the Railway Recruitment Board examination fee for applicants from minority backgrounds'; and increasing 'the frequency of trains in West Bengal to areas with high Muslim concentration'.⁵⁹⁸ Although there was a general anti-Left wave in the state, the elections of 2011 brought Banerjee to power, and the desertion of the Muslim vote from the CPI (M) played a pivotal role.⁵⁹⁹

It would be misleading, however, to interpret the Banerjee example, as Nielson does, as election-driven. For one, on the eve of elections the Left Front also made extravagant promises to implement reservations for Muslims in the OBC quota, and took measures to effect this before the polls were scheduled.⁶⁰⁰ For another, the institutionalised opposition to Banerjee's actions was somewhat blunted by the decades of neglect of minorities' interest, the absence of a Dalit caste party in the state, *à la* BSP, and the fact that a large number of OBCs in the state were Muslims. That the measures were taken at the level of the state, against a highly unpopular Marxist government, further undermined the institutionalised resistance against minorities. Hence, since the elections the TMC government has announced reservations for Muslims in employment and education but primarily by widening the inclusion of more Muslim groups within the OBC category rather than implementing the recommendations of the RMCR. According to Banerjee, more than 90 per cent of the state's Muslims were now eligible for reservations in employment, and reservations for Muslims in higher education will be introduced from 2014.⁶⁰¹

⁵⁹⁷ Kenneth Bo Nielson, 'In Search of Development: Muslims and Electoral Politics in an Indian State', *Forum for Development Studies* 38:3 (November 2011), 347.

⁵⁹⁸ *Ibid.*, 361.

⁵⁹⁹ *Ibid.*

⁶⁰⁰ *Ibid.*, 355-8.

⁶⁰¹ According to press reports, 'Banerjee emphasised that her government had implemented most of the recommendations of the Sachar Committee'. 'The State government', she said, 'is setting up a Minority Bhavan in each district', adding that her government would extend help to Muslim youths to start small shops, business establishments and other small business in the city and districts. 'We will set up marketing complexes and provide shops to Muslim youths', she added. *The Hindu*, 10 August 2013.

Conclusion

This chapter has examined in detail the UPA's policy process aimed at increasing Muslim presence in public sector employment. From the initial commitment of the government to support the recommendations of the SCR, to hesitancy and doubt over the recommendations of RMCR, the process was characterised by ambivalence, non-decisions, and twin-tracking. From the limited evidence available in the public domain examined above, despite considerable efforts directed at positive action, the share of employment of Muslims in central government posts remains low, and is still considerably below the community's proportion of the population as a whole. Although a more comprehensive analysis remains to be undertaken, this interpretation was supported by the government's own data which suggest an overall decline in minority recruitment to central government posts from 11.56 per cent in 2010-11 to 6.89 per cent in 2012-13.⁶⁰² Such an outcome is all the more surprising given the positive action taken following the Office Memorandum (2007) was accompanied by a public announcement that 'special consideration' would be given to improve the under-representation of minorities in public sector employment. Evidently, the use of tried and tested policy instruments such as monitoring, targeting and regular reviews have yet to be firmly embedded and effectively utilised as tools of policy change.

It could be argued that this outcome was largely the result of UPA's reluctance to implement the SCR and RMCR recommendations.⁶⁰³ In the face of strong opposition from the BJP and *Hindutva* forces against the recommendations of the RMCR for reservations for Muslims in the SC/OBC quotas, the government opted for 'symbolic implementation', or 'gesture politics'— appearing to pursue policies while recognizing that they would be difficult, if not impossible, to implement. This approach was underpinned by political opposition to the measure within the Congress itself which feared it would undermine the foundational settlement by reducing the religious incentive to be a SC Hindu. But perhaps, more importantly, the strongest opposition to the measure came from the Hindu SC/OBC institutionalised lobbies and their political and state interests. The NCSC and NCBC, for example, viewed reservations for minorities as a zero-sum measure that struck at the heart of the foundational settlement

⁶⁰² Cited by Minister of State for Personnel, V. Narayanasamy, in reply to a Parliament question, *RSD*, 19 December 2013.

⁶⁰³ Gautam Navlakha likened this outcome to institutional racism in the West. Interview, 16 March 2013, New Delhi.

closely identified with socially disadvantaged Hindu castes. Indeed, the judiciary's decision to reject reservations on the grounds of religion was the ultimate confirmation of the historically institutionalised approach to the subject.⁶⁰⁴

The UPA policies on religious minorities can be further contrasted with its receptiveness to policy change on caste-based issues.⁶⁰⁵ Analysts have commented on how the government painstakingly sought to build a consensus on Mandal II – the imposition of reservations in higher education for OBCs.⁶⁰⁶ As a result, the subsequent legal challenges were both limited and ineffectual. Similarly, the UPA was also favourably disposed to the BSP-sponsored Promotion Quota Bill (2012) – The Constitution (117th Amendment) Bill – to provide quotas for SCs and STs in senior government promotions.⁶⁰⁷ This bill was brought in response to the High Court and Supreme Court decisions rejecting the Uttar Pradesh BSP government proposal to provide quotas for promotion for SCs and STs. The speed with which the government acted was not just the pay-off to the BSP for its support on the Foreign Direct

⁶⁰⁴ Some studies attribute the low representation of Muslims in civil service to the low level of participation of Muslim students in civil service examinations. But this aspect is beyond the scope of this chapter. See Naseem A. Zaidi, 'Muslims in the Civil Services', *EPW* 49:3 (18 January 2014).

⁶⁰⁵ In stark contrast, consistent efforts were made for SCs, STs and OBCs with similar policy instruments to monitor the employment status of these groups. For instance, Chapter Six of the 'Brochure on Reservation for SC, ST & Other Backward Classes in Services' provides detailed guidelines on how to fill reserved vacancies. It explains the recruitment process in detail, from advertising the post to reporting to the DoPT, with the number of vacancies reserved for SCs, STs, and OBCs out of the total number of reserved seats. For example, it requires that whenever recruitment is to be made one single advertisement should be issued, specifying clearly the vacancies reserved for SCs, STs, and OBCs. It also requires ministries and departments to send a requisition including the number of vacancies reserved for SCs, STs, and OBCs out of the total vacancies. Hence, the ministries and departments must show that the number of vacancies reserved for SCs, STs, and OBCs match the reservation quota fixed by government. If the number of SC/ST candidates is insufficient for the reserved posts, the DoPT requires the appointing authority to report the reserved vacancies to the Director of SC/ST Welfare in the State and Union Territory. The Brochure also clearly states that 'where sufficient number of candidates belonging to SC/ST/OBC are not available to fill up the vacancies reserved for them in direct recruitment, the vacancies should not be filled by candidates not belonging to these communities'. Clearly, the de-reservation was systematically forbidden to ensure that benefit of reservation reaches the intended beneficiaries. The monitoring system is further confirmed in Chapter Nine of the Brochure, which explains the 'Monitoring and Institutional Safeguard'. Every January appointing authorities are required to send SC/ST/OBC reports to ministries and departments, including the total number of employees and the number of SCs, STs, and OBCs among them, and the representation of SCs, STs, and OBCs in various levels. In addition, the guidelines specify the way in which the ministries and departments consolidate the reports received from appointing authorities and submit them to the DoPT by 31st March each year. The publication of such guidelines in a brochure provides a clear picture of who is responsible for collecting data, the date by which the data should be collected, how the data should be consolidated and the date for final submission. Hence, the DoPT has successfully provided directions for employment policy and practice with regard to SCs, STs, and OBCs, and restricted as far as possible the potential for exercising discretionary power. See DoPT, 'Brochure on Reservation for SC, ST & Other Backward Classes in Service', 2011. Available at: http://www.persmin.nic.in/DOPT_Brochure_Reservation_SCSTBackward_Index.asp [accessed on 24 May 2013].

⁶⁰⁶ Hasan, *Politics of Inclusion*, 110.

⁶⁰⁷ 'Rajya Sabha Passes Promotion Quota Bill', *Times of India*, 17 December 2012 (electronic edition).

Investment vote, but an underlying demonstration of institutional consensus in favour of caste issues. Remarkably, while the 4.5 per cent sub-quota for minorities was still pending before the Supreme Court, the Congress continued to insist that '[the Promotion Quota Bill and SCR] are not contrary or contradictory'.⁶⁰⁸

The unevenhandedness of the UPA's approach to the 'competing inequalities', of caste and religious minorities, was further demonstrated during the debate on the Promotion Quota Bill. The Minister of Personnel, Public Grievances and Pensions asserted that there are no SCs among the 102 secretary-level officers in the central government. Of the 113 additional secretaries, only five were SCs, one ST and no OBCs. Furthermore, he claimed the representation of SCs and STs in Groups A, B, and C was not equal to their proportion of the population, so that '*from our side we are convinced that [the SCs and STs] are backward per se*'.⁶⁰⁹ In addition, the MPPGP launched a special recruitment scheme to fill vacant reserved posts in government jobs for SCs, STs and OBCs, and even fixed a date for implementation by central ministries and departments.⁶¹⁰ Such efforts, as we have seen, were singularly absent for religious minorities, particularly Muslims. In short, the underlying principle of different approaches to different social categories (caste groups and minorities), dating from the critical juncture of Partition was the prime determinant of UPA's path dependence policy-making and implementation.

Lastly, in assessing the UPA's policies on employment it would be mistaken not to acknowledge their enabling qualities under the appropriate conditions. The example of Mamata Banerjee in West Bengal illustrates that positive action on employment can deliver if the appropriate conditions are in play. Yet, importantly, to avoid the pitfall of her initiatives being struck down by the judiciary, Banerjee exercised her initiatives within the existing framework of affirmative action (i.e widening the scope of the OBC

⁶⁰⁸ 'Quota Bill also a Fair Deal to Muslims: Cong', *Outlook*, 17 December 2012 (electronic edition). The provision of promotion quotas for SCs and STs in high posts is in stark contrast to the state's approach to minorities. The SCs and STs have been entitled to reservation in promotion since 1955, and the quota was increased in the 1970s. After the quota was discontinued by the verdict of the Supreme Court in 1992, the government amended the Constitution, reinstating the quota in 1995. In 2001, there was further amendment, using reservation to 'provide consequential seniority to SC and ST candidates promoted'. 'Promotion Quota, if Passed, to be Implemented from 1995', *The Hindu*, 9 September 2012. In a context where there exists reservation in promotion from low to middle, and from middle to high level of jobs (from Group C to Group B, within Group B, from Group B to the lowest rung of Group A), the Promotion Quota Bill of 2012 is an extension to the existing job quota for SCs and STs.

⁶⁰⁹ 'Controversial SCs/STs Quota Government Promotions Bill Passed in Rajya Sabha by Huge Majority', *Indian Express*, 17 December 2012. Emphasis added.

⁶¹⁰ 'New Drive Launched to Fill Vacant Reserved Posts', *Hindustan Times*, 25 July 2011.

category to include Muslims). As we shall see in the next chapter, demands for improved service delivery for religious minorities would also have to operate within similar restrictive constraints.

Chapter Six

UPA, Muslims and service delivery

Introduction

Equal access to services provided by the state is a necessary condition of effective equal opportunities policies. Historically, excluded ethnic, religious, and linguistic minorities have often complained of the colour-blind practice of states in the provision of collective goods which produces discriminatory outcomes. With the development of affirmative action policies in the West, the principle of proportionality in resource allocation became an essential requirement of non-discriminatory service delivery.⁶¹¹ In India, with its regime of 'competing equalities', this principle was conceded for SCs and STs but not for religious minorities. In seeking to correct this imbalance, the UPA introduced a multitude of programmes for religious minorities, with a range of affirmative action provisions, including the targeting and monitoring of service delivery to ensure better implementation. However, despite these initiatives, it appears that efforts to improve service delivery for religious minorities, notably Muslims, encountered institutional barriers that remain to be overcome.

Given the vast range of the subject matter, we can only hope to review the policy process in key areas of service delivery. Accordingly, this chapter focuses on education (specifically the provision of scholarships for minority students), better provision of finance, and a concentrated drive to improve socio-economic infrastructure in areas of Muslim concentration (MSDP). These areas were selected because they provide a representative spectrum of the schemes under consideration: a recipient-led initiative (scholarships), a highly institutionalised and regulated sector drive (finance), and a broad area-based programme (MSDP). The different policy approaches reflect the constitutional and institutional constraints under which special programmes for religious minorities were developed. Finally, the chapter reflects on the policy process to assess the modes of resistance to policy change.

⁶¹¹ See Wendy Ball and John Solomos, eds., *Race and Local Politics* (Basingstoke: Macmillan, 1990); Gideon Ben-Tovim, *The Local Politics of Race* (London: Macmillan, 1986).

Agenda-setting

Both the SCR and RMCR recognised the alienation of Muslims from, and their limited access to, state services. In education, though the enrolment of Muslim students had improved, the disparities between Muslims and other SRCs had widened.⁶¹² The SCR found that limited availability of good government schools in Muslim localities resulted in pupils either attending private school or dropping out, particularly at primary, middle and higher secondary levels.⁶¹³ The literacy rate among Muslims (59.1 per cent) was below the national average (65.1 per cent).⁶¹⁴ Contrary to the popular myth, only 3 per cent of Muslim children of school age attend madrasas.⁶¹⁵ The presence of Muslims in elite education institutions, such as Indian Institutes of Management (IIMs) and the Indian Institutes of Technology (IITs), was notably low: the enrolment data for the years 2004-05 and 2005-06 indicates that Muslims accounted for a mere 1.3 per cent of students in all courses in all IIMs in India and 3.3 per cent in IITs.⁶¹⁶ Muslims had the lowest proportion (3.6 per cent) of graduates among all the religious minorities.⁶¹⁷ Reflecting on this data, the SCR concluded that ‘the changes in educational patterns across SRCs suggest that SCs and STs have reaped at least some advantages of targeted government and private action supporting their educational progress. *This reflects the importance of affirmative action.*’⁶¹⁸ As a policy recommendation, the SCR called for a ‘sharper focus on school education combined with more opportunities in higher education for Muslims’ in addition to skill development initiatives for those who do not complete school education.⁶¹⁹

In addition to education, easy access to credit is especially important for Muslims, a large proportion of whom are engaged in self-employment. However, the data indicates that Muslims possess a smaller proportion of loan accounts and amounts outstanding than other minorities.⁶²⁰ Despite the RBI’s effort to extend banking and

⁶¹² SCR, 57.

⁶¹³ Only 17 per cent of Muslims above the age of 17 years have completed matriculation as compared to 26 per cent for all SRCs. Ibid., 60.

⁶¹⁴ Ibid., 52; RMCR, 16.

⁶¹⁵ (SCR) *ibid.*, 77.

⁶¹⁶ Ibid., 68-9.

⁶¹⁷ RMCR, 17.

⁶¹⁸ SCR, 86. Emphasis added.

⁶¹⁹ Ibid.

⁶²⁰ Ibid., 125-26. RMCR, 103.

credit facilities, the chief beneficiaries of these drives were other minorities.⁶²¹ The SCR pointed to an enduring difficulty because ‘banks are...able to direct credit to minorities, [but] they are not being able to do so specifically for Muslims’.⁶²² Even more problematic was the fact that some banks had identified ‘negative geographical zones’ (large areas of Muslim settlement) with poor provision of bank credit and other facilities.⁶²³ To address these discriminatory practices, the SCR recommended that ‘steps should be introduced to specifically direct credit to Muslims, create awareness of various credit schemes...[and] bring transparency in reporting of information about SRCs on provision of banking services’.⁶²⁴

Perhaps more important than education or credit facilities, areas of high Muslim settlement were generally found to suffer an acute development deficit brought on by years of deliberate neglect, which often resulted in an absence of basic infrastructure. The SCR found an inverse correlation existed between the proportion of the Muslim population and the number of schools in small villages.⁶²⁵ A similar pattern was also discernable in relation to medical facilities and post/telegraph offices. To put it differently, the availability of basic facilities sharply declined with the increase in the proportion of Muslim population. This trend was reported to increase as the size of the village increased.⁶²⁶ Although there is no indication that majority Muslim villages had fewer infrastructural facilities than non-Muslims ones, the picture in states like Uttar Pradesh, Bihar, Assam and Jharkhand, with large Muslim populations was bleak because it was here that the community’s population was heavily concentrated.⁶²⁷ Under-development and a high Muslim concentration produced a profile of a community suffering from cumulative disadvantage.

In short, underperformance in education, restricted access to finance and the lack of infrastructural development drew attention to discriminatory practices by the state in service delivery. As the SCR noted, ‘the perception of being discriminated against is

⁶²¹ See, Reserve Bank of India, ‘Credit Facilities to Minority Communities – Evaluation Study’, RPCD No. SP.BC. 13/09.10.01/2001-02 (13 August 2001).

⁶²² SCR, 128.

⁶²³ Ibid., 136.

⁶²⁴ Ibid., 137.

⁶²⁵ Ibid., 143.

⁶²⁶ Ibid. The RMCR also noted that ‘among minorities, about one-third Muslims are living in kutcha houses, which lack basic facilities like drinking water, toilet etc. and likewise they live in rented houses.’ RMCR, 30.

⁶²⁷ (SCR) *ibid.*, 145.

overpowering amongst a wide cross section of Muslims...[the] sense of discrimination combined with issues of identity and insecurity has led to an acute sense of inferiority in the Community which comes in the way of its full participation in the public arena and results in collective alienation'.⁶²⁸ A wide range of inter-linked factors, such as poverty, poor access to schools, low perceived return from school education, madrasa education, the usage of Urdu, and the unwillingness of state governments to recognise minority educational institutions, had caused Muslims to feel discriminated against and led to the further deterioration of their educational condition. Similarly, perceptions of discrimination, by both public and private sector banks, in the provision of credit were widespread in most of the states.⁶²⁹ And with regard to access to basic facilities, Muslims pointed to the poor civic amenities and infrastructure in the Muslim-concentrated areas, while officials denied any discrimination in the provision of these services.⁶³⁰

These findings led the SCR and the RMCR to adopt different policy approaches. While the recommendations of the SCR were centred on affirmative action, including positive action, for all minorities, the RMCR argued that in addition to providing general welfare measures a certain proportion of reservations should be provided for socially and economically disadvantaged Muslims, in line with the provision of reservations for SCs, STs and OBCs. Despite these different policy approaches, as Table 6.1 below shows, there was concurrence in the recommendations on proportionality and targeting.

⁶²⁸ Ibid., 15.

⁶²⁹ Ibid., 15-24.

⁶³⁰ Ibid., 23.

Table 6.1**Some of the main recommendations of SCR and RMCR on education, finance and infrastructure**

Area	SCR	RMCR
Education	Initiation of evaluating the content of the school text book to prevent religious intolerance and caste bias	Enactment of comprehensive law detailing minorities' educational rights
	Creation of local community study centre	Amendment of the National Minority Educational Institutions Commission to widen its functions and responsibilities
	Setting up of high quality government schools in Muslim concentration areas	Revision of Madrasa Modernisation Scheme
	Creation of mechanism to link madrasas with higher secondary school board to enable students to shift to mainstream education	Lower eligibility criteria for admission and lower rate of fees available to SCs and STs applicable to minorities
	Mapping of Urdu speaking population and provision of primary education in Urdu in areas where Urdu speaking population is concentrated.	Selection of at least one institution in states and Union Territories with substantial Muslim population to ensure it promotes education at all levels
	Technical and educational training for non-matriculates, skill development initiatives of Industrial Training Institutes (ITIs) in Muslim concentrated area, making madrasa-educated children eligible for such programmes	Earmarking 15 per cent seats in all non-minority educational institutions for minorities (10 per cent for Muslims, 5 per cent for other minorities). If difficult, 8.4 per cent (6 per cent for Muslims, 2.4 per cent for other minorities)
	University Grants Commission to evolve a system that allocation is linked to diversity in recruitment	Provide enhanced aid to Muslim-run schools and colleges
	Creation of alternative admission criteria to improve minority recruitment	
	Provision of hostels at reasonable cost to minority students	
	Teacher training programme for sensitisation of marginalised communities	
	Running Urdu medium schools	
	Setting up of exclusive schools for girls	
Finance	Policy formulation in the micro-credit schemes of National Bank for Agriculture and Rural Development to enhance participation of minorities	Revision of Central Wakf Council to focus on educational development of Muslims
	Provision of incentives to banks to open more branches in Muslim concentration area	Earmarking proportionate distribution of fund of Maulana Azad Educational Foundation
	RBI's priority sector advances (PSA) reports to include data on 'sanctions or disbursements to minorities' along with the 'amount outstanding'	
	Promotion of Muslims' access in PSA	
Infrastructure	Introduction of schemes with large outlays for welfare of minorities	Development of an effective mechanism for the development and modernisation of industries where minority groups are involved and for training of artisans and workmen
	Sensitisation of service staff regarding social exclusion	
	Facilitation of registration of trusts set up by the community	
	Provision of basic amenities	

Source: SCR, 237-254; RMCR, 150-53.

Policy formulation

Although policy formulation was based on the recommendations of the SCR and the RMCR, it also included a revamped PM's 15PP which had been running independently since 1983. Initially it was launched by Indira Gandhi to: tackle the situation arising out of communal riots; ensure equitable representation of the minority communities in employment under the central and state governments as well as public sector undertakings; and implement community development programmes.⁶³¹ As a part of the new policy approach to the minority communities following the publication of the SCR, in June 2006 the UPA revised and re-launched the PM's 15PP as a flagship measure through executive action. Development projects in areas of minorities' concentration would now ensure that 15 per cent of the outlays under various schemes were earmarked for minorities. All central ministries, departments, state governments, and Union Territory administrations were directed to implement the 15PP. The five central ministries – Human Resource Development, Labour and Employment, Housing and Poverty Alleviation, Rural Development, and Women and Child Development – were given particular responsibilities in the relevant areas. Naturally, these initiatives led to a proliferation of complex and overlapping programmes under different ministries, while the newly created MoMA was given overall coordination role for the MSDP and the scholarship scheme for minority students (see Figure 4.1). Table 6.2 below indicates the complex and diverse range of service delivery policies for minorities launched by the UPA government.

⁶³¹ Planning Commission, *Eleventh Five-Year Plan 2007-2012, Vol 1. Inclusive Growth* (New Delhi: GoI, 2008), 122.

Table 6.2
The multitude of schemes and programmes for minorities under the UPA

Programme	Theme	Name of schemes / programmes	Lead Ministry/department
PM's 15 PP / MSDP	Enhancing opportunities for education	Improving access to school education: Sarva Shiksha Abhiyan (SSA, universalisation of elementary education)	Ministry of Human Resource Development, Department of School Education & Literacy
		Integrated Child Development Services (ICDS)	Ministry of Women & Child Development
		Greater resources for teaching Urdu	Ministry of Human Resource Development
		Modernising Madrasa education	Ministry of Human Resource Development
		Scholarships	Ministry of Minority Affairs
		Improving educational infrastructure through the Maulana Azad Education Foundation	Ministry of Minority Affairs
	Equitable share in economic activities and employment	Self-employment: Swarnajayanti Gram Swarozgar Yojana (SGSY, provision of sustainable income to the rural poor); Swarn Jayanti Shahari Rojgar Yojana (SJSRY, provision of employment to the urban unemployed and poor)	Ministry of Rural Development / Ministry of Housing & Urban Poverty Alleviation
		Upgrading of skills through technical training	Ministry of Labour & Employment
		Credit support: by strengthening National Minorities Development & Finance Corporation (NMDFC)	Ministry of Finance / Ministry of Minority Affairs
	Improving the conditions of minorities	Indira Awaas Yojana (IAY, provision of housing to the rural poor); Integrated Housing and Slum Development Programme (IHSDP); Jawaharlal Nehru National Urban Renewal Mission (JNNURM)	Ministry of Rural Development/ Ministry of Housing & Urban Poverty Alleviation / Ministry of Urban Development
		Urban Infrastructure Development Scheme for Small and Medium Towns (UIDSSMT); National Rural Drinking Water Programme (NRDWP)	Ministry of Urban Development / Ministry of Drinking Water & Sanitation
Special initiatives by Ministry of Minority Affairs		Equity to NMDFC (additional equity contribution to NMDFC for development of Wakfs has been merged with Grant-in-aid to NMDFC)	
		Corpus fund to Maulana Azad Education Foundation	
		Scheme of grants-in-aid for strengthening the infrastructure of Special Central Assistance of NMDFC	Implemented by MoMA through University Grants Commission
		Computerisation of the records of State Wakf Boards Scheme	
		Grant-in-aid scheme to Maulana Azad Education Foundation	
		Maulana Azad National Fellowship for Minority Students scheme	
		Nai Roshni (leadership development of minority women)	
		Seekho aur Kamao (skill development of minorities)	
	Specific institution for minority research	Research/studies, monitoring and evaluation of development scheme including publicity	

Source: Ministry of Women & Child Development, Ministry of Human Resource Development, Ministry of Minority Affairs, Ministry of Rural Development, Ministry of Housing & Urban Poverty Alleviation, Ministry of Labour & Employment, Ministry of Finance, Ministry of Urban Development, Ministry of Drinking Water & Sanitation websites.

Viewed more broadly, the UPA's policy making on service delivery was also shaped by the Eleventh Five-Year Plan (2007-12). In a report by the Planning Commission's Working Group on Empowering the Minorities, submitted in November 2006, the need to recognise the developmental disadvantages of minorities, especially Muslim, was clearly acknowledged.⁶³² As a result, the Eleventh Five-Year Plan accorded the 'highest priority to the development of innovative programmes, expansion of existing schemes, implementation and monitoring of all initiatives for the minorities by making adequate budgetary allocation at every level of governance'.⁶³³ However, proposal for a specific Minority Sub-Plan soon faced opposition in the Planning Commission. Prof. Zoya Hasan, who was chairperson of the Working Group on Empowering the Minorities, recalls:

There was a strong opposition within the Planning Commission. Some people were supporting it but most opposed to it on the ground that this is unconstitutional. *You can have special programmes for SCs and STs, but not for minorities. It is unconstitutional.* That is what they said. That was the reason given. *But the real reason was that they just did not want to do it because they would have had to face the opposition from the SCs and STs, and within the Congress itself, and there were some communal elements.* But the official reason was that it is unconstitutional and the Ministry of Law said any special concern given to the minorities is against the secular basis of Constitution.⁶³⁴

This was in stark contrast to a Scheduled Caste Component Plan, which provided a policy framework to address the backwardness of caste groups, and came with clear directions for service delivery to these communities. Consequently, service delivery for minorities was not to be specifically defined by the Planning Commission's parameters but regulated by the norms and guidelines of the existing Centrally Sponsored Scheme, including the PM's 15 PP. In hindsight, the reluctance to create a specific Minorities Sub-Plan within the institutionalised and heavily regulated framework of national and state planning gave considerable room for manoeuvre to state governments and administrations to determine the implementation of these programmes.

⁶³² Ibid., 122-29.

⁶³³ Ibid., 127.

⁶³⁴ Zoya Hasan, interview, 11 March 2013, New Delhi. Emphasis added.

At the same time, the newly created MoMA was tasked with identifying 90 MCDs for a MSDP.⁶³⁵ In policy-making on the MSDP, its Empowered Committee was given authority to approve the plans of blocks/towns/clusters from state level committees, to change the allocation of the blocks/towns to encourage better performing blocks/towns/villages, and to monitor implementation. In identifying the 90 MCDs, the Empowered Committee measured backwardness according to two criterion: the religion-specific socio-economic indicators at the district level, and basic amenities indicators at the district level.⁶³⁶

To sum up: in formulating new policies to address the Muslim ‘development deficit’, policymakers came up against a strong institutionalised opposition to special programmes for religious minorities. As a result, they were inclined to support positive action but principally through executive action. At the same time, these policies suffered from a serious lack of executive ownership and clear coordination, producing contradictory and overlapping programmes without adequate monitoring, evaluation or sensitivity to the needs of the targeted recipients.⁶³⁷ It is against this backdrop that we examine the decision-making process and the policy tools used in the face of institutional resistance.

Decision-making

This section examines closely three policy areas – education, access to credit, and the MSDP. It highlights how the UPA compensated for its constitutional and political inability to provide reservations for religious minorities in education and other state

⁶³⁵ The proposal on identification of MCDs was first considered by the Committee of Secretaries and forwarded to Cabinet for consideration. Finally, it was approved on 17th May 2007. Ministry of Minority Affairs, ‘Minority Community Welfare Efforts Got a Boost during the Year’, *PIB*, 21 February 2014.

⁶³⁶ Ministry of Minority Affairs, *Guidelines for Implementing of Multi-Sectoral Development Programme During Twelfth Five-Year Plan* (New Delhi: GoI, 2012), 2-3.

⁶³⁷ Centre for Equity Studies, *Promises to Keep: Investigating Government Responses to Sachar Committee Recommendations* (New Delhi, 2012), xix, 45-48; Jawed Alam Khan, *Policy Priorities for Development of Muslims in the 11th Plan: An Assessment* (New Delhi: Centre for Budget and Governance Accountability, 2012), 11; Abusaleh Shariff, *Inclusive Development Paradigm in India: A Post-Sachar Perspective* (New Delhi: US-India Policy Institute, 2012), 10; Council for Social Development, Zoya Hasan and Mushirul Hasan, eds., *India Social Development Report 2012*, especially contributions in Part II. Anurag Thakur also confirmed the need for ‘better coordination with the state to implement all those schemes which are there for the benefit of minorities’. Anurag Thakur, interview, 21 February 2013, New Delhi.

services by adopting new policy tools to enhance service delivery to the Muslim community.

Education – provision of scholarships to religious minorities

Soon after the creation of MoMA, the Minister of Finance in the 2006-07 Budget Session announced the distribution of 20,000 merit-cum-means-based scholarships to minority students.⁶³⁸ This was also underpinned by the Cabinet's approval for the revamped PM's 15 PP in June 2006, and the tabling of SCR in Parliament in November 2006. Anticipating opposition from political parties, particularly the BJP, and from state governments, the UPA used executive action to limit the need to bargain with other policy actors. As reservations in education for religious minorities were considered unconstitutional, and carried the risk of being challenged, the provision of scholarships 'which have passed the constitutional test' was used to overcome institutional opposition – both political and administrative.⁶³⁹ The Cabinet Committee on Economic Affairs chaired by the Prime Minister gave approval to expand the provision of scholarships which had long been available to lower caste groups (in addition to reservation in educational institutions).⁶⁴⁰ Following this executive action the merit-cum-means scholarship scheme was approved for religious minorities in June 2007,⁶⁴¹ the post-matric scheme in November 2007,⁶⁴² and the pre-matric scheme in April 2008.⁶⁴³ While all these scholarships were to be implemented from the financial year 2007-08, the reasons behind this staged approval are somewhat unclear, though state

⁶³⁸ Ministry of Finance, *Budget 2006-2007: Speech of P. Chidambaram* (New Delhi: GoI, 28 February 2006). Available at: <http://indiabudget.nic.in/ub2006-07/bs/speecha.htm> [accessed on 31 January 2014].

⁶³⁹ The government's decision on scholarships for religious minorities gained legal ground following judgements of the Bombay, Gujarat, and Delhi High Courts which rejected four petitions that questioned the constitutionality of the merit-cum-means scholarship provision for minority students. The Bombay High Court did not rule that scholarship schemes for minorities are constitutionally invalid nor do they discriminate against majority students. The decision appears to be based on Article 15 (4) of the Constitution which provides that the state can make any special provisions for the advancement of any SEBCs of citizens. The decision of the Bombay High Court was supported by the judgment of the Gujarat High Court. See Zoya Hasan, *Congress after Indira: Policy, Power, Political Change (1984-2009)* (New Delhi: Oxford University Press, 2012), 175, 188.

⁶⁴⁰ According to Baru, the former media advisor to Prime Minister in UPA (I), the biggest expansion of government-funded scholarship took place during Dr. Manmohan Singh's administration. The Prime Minister's effort was influenced by his own modest background which enabled him to complete his higher education in India and England with scholarships. See Sanjaya Baru, *The Accidental Prime Minister: The Making and Unmaking of Manmohan Singh* (New Delhi: Penguin, 2014), 153-54.

⁶⁴¹ Cabinet Committee on Economic Affairs, 'Scheme of Merit-Cum-Means Based Scholarship to Students Belonging to Minority Communities', *PIB*, 21 June 2007.

⁶⁴² Cabinet Committee on Economic Affairs, 'Scheme of Post-Matric Scholarship for Students Belonging to Minority Communities', *PIB*, 30 November 2007.

⁶⁴³ Cabinet Committee on Economic Affairs, 'Scheme of Pre-Matric Scholarship to Students Belonging to Minority Communities', *PIB*, 30 January 2008.

assembly elections – in Goa, Gujarat, Himachal Pradesh, Manipur, Punjab, Uttarkhand, and Uttar Pradesh (in February 2007) – might have influenced the timing. In any case, it appears the use of scholarships as a policy tool was chosen because of its promotional value, low cost and high visibility as the number of scholarships was relatively small in relation to the total pupil population.⁶⁴⁴

Finance – access to credit

In light of the SCR recommendation to promote Muslims' access to PSA, the Eleventh Five-Year Plan report also acknowledged Muslims' poor access to bank credit, and suggested that all public sector banks should have targets for PSA to minorities, especially Muslims. As a result, measures were deemed necessary to 'create awareness about various credit schemes, organise entrepreneurial development programmes, and bring transparency in reporting on credit availability'.⁶⁴⁵ Government recommendations included the opening of more branches, emphasis on transparency, promoting awareness of available schemes, an entrepreneurship development programme, micro-finance, enhanced authorised share capital of NMDFC, and Priority Sector Lending (PSL). PSL specified that a portion of bank lending be made to a number of specific sectors, such as agriculture, micro-credit, education and housing. Therefore, in a broader context, PSL to minorities aimed at more rounded development of the whole economy rather than limited development in the financial sector. This was particularly important for Muslims because large numbers are engaged in self-employment.

A circular issued by the RBI in June 2002 required that 'all banks are advised to initiate steps to enhance/augment flow of credit under Priority Sector to artisans and craftsmen as also to vegetable vendors, cart pullers, cobblers etc., and [those] belonging to the minority communities (Buddhists, Christians, Muslims, Sikhs, and Zoroastrians)'.⁶⁴⁶ In April 2003, a master circular was issued containing the formats of the half yearly/quarterly statement showing PSA granted to the members of the

⁶⁴⁴ 'Despite improved coverage 1 out of each 4.55 enrolled Muslim child in classes I-VII and 1 out of every 7.7 Muslim children in the entire age group obtained a scholarship. As importantly, the per capita allocation for awarded pre-matriculation scholarship (across all minority groups) was only Rs. 1,009.25 a year for the 2010-2011 year. This is even less than each of the previous years in the 11th Plan: Rs. 1,173.60 for 2009-2010 and Rs. 1,213.48 for 2008-2009.' Centre for Equity Studies, *Promises to Keep*, vii.

⁶⁴⁵ Planning Commission, *Eleventh Five-Year Plan 2007-2012*, 128.

⁶⁴⁶ Reserve Bank of India, Reg. Priority Sector Advances – Credit Flow to Minority Communities, UBD.POT..PCB.No. 51/09.09.01/2001-02 (20 June 2002).

specified minority communities *vis-à-vis* overall PSA, a list of MCDs,⁶⁴⁷ and a list of circulars consolidated in the master circular.⁶⁴⁸ In addition this document suggested corrective measures to be taken by the relevant banks. It highlighted the importance of each bank having a special cell to ensure the smooth flow of credit to minority communities, and recommended that lead banks in MCDs should appoint an officer responsible exclusively for dealing with the credit flow to minority communities; that monitoring data on credit assistance provided to members of minority communities should be submitted to the RBI, Ministry of Finance and Ministry of Welfare on a half-yearly basis; that progress should be monitored by District Consultative Committees and the State Level Bankers Committees; that bank staff should receive training on the various schemes for welfare of minorities, while sensitisation workshops should be organised for bank officials; and that banks should ensure good publicity about government anti-poverty programmes, particularly about MCDs.⁶⁴⁹ Furthermore, monitoring was to be strengthened by directing primary cooperative banks to submit half-yearly statements on the progress made in deployment of credit to minority communities.⁶⁵⁰

After the UPA came to power in 2004, there was no discernable change or new direction in the regulations and master circulars issued until 2007. In a 2005 master circular, a section was added to state that ‘Lead Banks of the MCDs will have to exercise the pro-active role expected of them to ensure that the minority communities, particularly those who are poor and illiterate have access to bank credit for taking up productive activities’.⁶⁵¹ However, this section was inserted as a recommendation, without any enforcing mechanism. Following the approval of the revised PM’s 15PP in June 2006, a circular was issued to commercial banks and the urban cooperative banks to issue necessary instructions to their branch offices that sufficient care should be taken to ensure an equitable proportion of credit to minorities within the overall targets of priority sectors and the sub-targets of 10 per cent earmarked for weaker sections.

⁶⁴⁷ MCDs was first prepared in 1987 using a single criterion of minority population of 20 per cent or more based on Census 1971, and in 2001 it was decided to identify districts on the basis of minority population as per Census 2001 and backwardness parameters to ensure service delivery to the disadvantaged.

⁶⁴⁸ Reserve Bank of India, Master Circular, Priority Sector Lendings – Credit Flow to Minority Communities, RPCD NO. SP.BC. 87/09.10.01/2002-03 (23 April 2003).

⁶⁴⁹ These points are repeated in subsequent master circulars until the 2013 version.

⁶⁵⁰ Reserve Bank of India, Priority Sector Advances – Credit Flow to Minority Communities, UBD.CO. BPD./ 52/09.09.01/2002-03 (13 June 2003).

⁶⁵¹ Reserve Bank of India, Master Circular, Priority Sector Advances – Credit Flow to Minority Communities, RPCD NO. SP.BC.07 /09.10.01/2005-06 (1 July 2005).

Following the tabling of the SCR in November 2006, and in light of its findings, in January 2007, the central government circulated a proposal to banks to reserve a 6 per cent share of loans for minorities.⁶⁵² The BJP inevitably condemned this proposal as ‘in contravention of prudent banking norms’, ‘communalising a secular financial system’, and suggested that it was motivated by concerns regarding the state assembly elections.⁶⁵³ ‘The Prime Minister’s refrain of “first claim” of Muslims on India’s development resources’, a BJP spokesman claimed, ‘is being systematically implemented in phases by communalising sector after sector.’⁶⁵⁴ The RBI and Indian Banks’ Association also expressed strong reservations on the ground that banks’ lending practices are based on the borrower’s creditworthiness and not his/her caste or creed.⁶⁵⁵ Nevertheless, the Minister of Finance issued an executive order to the RBI to amend the priority sector norms to include minority communities under ‘lending to weaker sections’.⁶⁵⁶ As a result of this executive order, religious minorities were included in the RBI list of weaker sections, and hence, entitled to secure loans from domestic banks – both government-owned and private – which were mandated to lend 10 per cent of their total loans to ‘weaker sections’. The move was reflected in the master circular directing scheduled commercial banks to ensure ‘minority communities receive a fair and equitable portion of the credit within the overall target of the priority sector’.⁶⁵⁷ The centre pushed through further positive action by identifying additional MCDs, and almost immediately the RBI circulated this list to relevant banks to ensure equitable credit flow to minorities in the MCDs. In the following month, the RBI directed the scheduled commercial banks to issue necessary instructions to controlling offices and branch offices to monitor the credit flow to minorities in the final list of 121 MCDs.

Overall, the RBI was pro-active in directing banks located in MCDs to ensure credit flowed to minority communities. It issued at least four important regulations and master circulars in 2007 – in contrast to one a year in 2001, 2004, 2005, 2006, and two

⁶⁵² Anita Bhoir, ‘Minority Loans against RBI Policy’, *Times of India*, 19 January 2007 (electronic edition).

⁶⁵³ State assembly elections were scheduled throughout February 2007 in Goa, Gujarat, Himachal Pradesh, Manipur, Punjab, Uttarkhand, and Uttar Pradesh.

⁶⁵⁴ Shyam Jaju, *BJP*, 17 January 2007. Available at: http://www.bjp.org/index.php?option=com_content&view=article&id=5302&catid=68:press-releases&Itemid=494 [accessed on 16 February 2014].

⁶⁵⁵ Anita Bhoir, ‘RBI Opposes Priority Loans to Minorities’, *Times of India*, 17 February 2007 (electronic edition).

⁶⁵⁶ ‘RBI Widens Priority Sector Lending’, *The Economic Times*, 2 May 2007 (electronic edition). The banking industry had been providing PSL to minorities, but clearly, minorities were not included in the ‘lending to weaker sections’ of the priority sector norms in the pre-UPA period.

⁶⁵⁷ Reserve Bank of India, Master Circular, Priority Sector Lending – Credit Flow to Minority Communities, RPCD NO. SP.BC. 12 /09.10.01/2007-08 (5 July 2007).

each in 2002 and 2003. This policy drive was further backed up with the Minister of Finance's executive order to widen the RBI's definition of 'weaker sections'.⁶⁵⁸ Yet, while the provision of credit to religious minorities gained momentum, to what extent this facility was utilised by minorities, especially Muslims, will be assessed in the implementation cycle of the policy process.

MSDP

As one of the largest development initiatives since Independence, the MSDP was launched to address the chronic under-development of MCDs. Following the findings of the SCR that a majority of the Muslim population resides in states with poor infrastructure and amenities, and required the focused intervention of government in infrastructural development, the MSDP aimed to fill the gaps in the existing government schemes by providing additional resources, and take-up of new projects for the welfare of minorities (e.g. in education, skills development, health, sanitation, roads, and drinking water). An inter-ministerial task force was constituted under the chairmanship of Bhalchandra Mungekar, a member of the Planning Commission, to devise an appropriate strategy and action plan for developing areas of minority concentration. As mentioned above, backward districts (in terms of socio-economic and basic amenities indicators) were selected with a 'substantial minority population' of at least 25 per cent of all five minorities, with no specific targets for Muslim concentration. However, by making the district the unit of programme implementation, observes Hasan, 'funds could be spent anywhere and a project could be set up anywhere where Muslims are not present in substantial numbers, and yet it [would] meet the criteria regardless of its

⁶⁵⁸ However, the Master Circulars issued from 2008 to 2013 are the same as the 2007 version, with a mere addition in the 2013 version that a sub-target of 10 per cent of Adjusted Net Bank Credit or Credit Equivalent Amount of Off-Balance Sheet Exposures will be mandated for lending to weaker sections. Reserve Bank of India, Master Circular, Priority Sector Lending – Credit Flow to Minority Communities, RPCD NO. SP.BC. 12 /09.10.01/2007-08 (5 July 2007); Reserve Bank of India, Master Circular, Priority Sector Lending – Credit Flow to Minority Communities, RPCD NO. SP.BC. 6/09.10.01/2008-09 (1 July 2008); Reserve Bank of India, Master Circular, Priority Sector Lending – Credit Flow to Minority Communities, RPCD.SP.BC.No.5/09.10.01/2009-10 (1 July 2009); Reserve Bank of India, Master Circular, Priority Sector Lending – Credit Flow to Minority Communities, RPCD.SP.BC.No.4/09.10.01/2010-11 (1 July 2010); Reserve Bank of India, Master Circular, Priority Sector Lending – Credit Flow to Minority Communities, RPCD.GSSD.BC.No. 1/09.10.01/2011-12 (1 July 2011); Reserve Bank of India, Master Circular, Priority Sector Lending – Credit Flow to Minority Communities, RPCD.GSSD.BC.No. 2/09.10.01/2012-13 (2 July 2012); Reserve Bank of India, Master Circular, Credit Facilities to Minority Communities, RPCD.GSSD.BC.No. 2/09.10.01/2013-14 (1 July 2013).

benefits going to the intended beneficiaries'.⁶⁵⁹ Despite the Secretary of MoMA admitting that the unit of planning needed to be more tightly focused below the district level, and the Planning Commission's Eleventh Plan Working Group on Empowering the Minorities recommending the unit be changed to the block,⁶⁶⁰ the district was used as the unit of implementation. Following the submission of the *Implication of the Geographical Distribution of Minorities in India: Report, 2007*⁶⁶¹ to the Prime Minister in November 2007, the MSDP was approved by the Cabinet Committee on Economic Affairs in March 2008.⁶⁶² Thereafter, the Empowered Committee in MoMA initiated the process by receiving proposals from states and approving proposed programmes and schemes in MCDs.

Implementation and evaluation

Education – provision of scholarships targeted at religious minorities

In this section we analyse the state-wise take-up of the scholarship scheme. In a federal structure, the performance of the state government is the critical variable. As critics have argued, the scheme was accompanied by many problems which included: the low utilisation of funds, limited awareness among parents, complex and cumbersome procedures for applicants (domicile, income, opening of bank accounts, income, and religion certificate), poor institutional mechanisms, lack of administrative funds earmarked for implementing the scheme, and state governments' failure to prioritise the minority agenda.⁶⁶³ Moreover, despite the high take-up against the target set by the Eleventh Five-Year Plan, that target itself was very low in proportion to the numbers of

⁶⁵⁹ Zoya Hasan and Mushirul Hasan, 'Assessing UPA Government's Response to Muslim Deprivation', in Council for Social Development, Zoya Hasan and Mushirul Hasan, eds., *India Social Development Report 2012* (New Delhi: Oxford University Press, 2013), 245.

⁶⁶⁰ Hasan, interview, 11 March 2013, New Delhi.

⁶⁶¹ Inter-Ministerial Task Force, *Implication of the Geographical Distribution of Minorities in India: Report, 2007* (New Delhi: Planning Commission, 2007).

⁶⁶² Cabinet Committee on Economic Affairs, 'Multi-Sectoral Development Programme for Minority Concentration Districts', *PIB*, 27 March 2008. Every new scheme under MSDP has to be approved by the Cabinet Committee on Economic Affairs after consultation among MoMA, Ministry of Finance and Planning Commission. For the decision of Cabinet Committee on Economic Affairs there is no official document (e.g. Office Memorandum).

⁶⁶³ See Centre for Equity Studies, *Promises to Keep*; Council for Social Development, Zoya Hasan and Mushirul Hasan, eds., *India Social Development Report 2012*; Khan, *Policy Priorities for Development of Muslims in the 11th Plan*.

Muslim students enrolled in educational institutions.⁶⁶⁴ Yet, despite these shortcomings, the beneficiary-oriented scholarship scheme appeared to be one notable success in an affirmative action programme bedevilled by poor implementation and monitoring.⁶⁶⁵ But did implementation vary according to the political party in power in the states?

The data available on MoMA website covers the period from 2008 to 2013. The degree of implementation (in percentages) was calculated by comparing the numbers given for the ‘target’ and the ‘implementation’ achieved in government data. The result was further divided into high (more than 100 per cent), medium (50 to 99 per cent) and low (below 50 per cent).⁶⁶⁶ The findings indicate significant variation across states in the take-up of pre-matric, post-matric, and merit-cum-means scholarship. To see if implementation varied with the ideological outlook of the governing party, Table 6.3 below identifies the ruling state parties.

⁶⁶⁴ Centre for Equity Studies, *Promises to Keep*, 26-7.

⁶⁶⁵ Weak monitoring of the government outlays on development programmes generally was highlighted by the Minister of Finance in a budget speech when he noted that ‘robust economic growth has thrown up many new challenges, among them the need to put in place effective monitoring, evaluation and accounting system for the large sums of money that are disbursed by the Central to State Governments, districts level agencies and other implementing agencies. I think we do not pay enough attention to outcomes as we do to outlays; or to physical targets as we do to financial targets.’ Ministry of Finance, *Budget 2008-2009: Speech of P. Chidambaram* (New Delhi: GoI, 29 February 2008). Available at: <http://indiabudget.nic.in/ub2008-09/bs/speecha.htm> [accessed on 6 December 2014].

⁶⁶⁶ The data for provision of merit-cum-means in 2008-09 has not been provided by the government. Therefore, this period was excluded from the data. The figure of 100 per cent + implementation would appear to suggest that in some states the targets were either deliberately exceeded, or perhaps set too low for the financial year.

Table 6.3
States and political parties in distribution of scholarships (mid 2008-mid 2013)

Degree of implementation	Pre-matric	Political parties	Post-matric	Political parties	Merit-cum-Means	Political parties
High (100% +)	Kerala	CPI(M)/INC	Karnataka	BJP/BJP	Sikkim	SSP/SDF
	West Bengal	CPI(M)/TMC	Mizoram	MNF/INC	Tamil Nadu	DMK/AIADMK
	Karnataka	BJP/BJP	Kerala	CPI(M)/INC	Kerala	CPI(M)/INC
	Tamil Nadu	DMK/AIADMK	Tamil Nadu	DMK/AIADMK	Karnataka	BJP/BJP
	Maharashtra	INC/INC	West Bengal	CPI(M)/TMC	Jammu and Kashmir	PDP/National Conference
	Andhra Pradesh	INC/INC	Andhra Pradesh	INC/INC	Rajasthan	BJP/INC
	Rajasthan	BJP/INC	Uttar Pradesh	BSP/SP	Uttar Pradesh	BSP/SP
	Uttar Pradesh	BSP/SP	Gujarat	BJP/BJP	Bihar	JD(U)/ JD(U)
	Mizoram	MNF/INC	Rajasthan	BJP/INC	West Bengal	CPI(M)/TMC
	Madhya Pradesh	BJP/BJP	Punjab	INC/SAD		
	Punjab	INC/SAD				
	Jammu and Kashmir	PDP/National Conference				
	Bihar	JD(U)/ JD(U)				
	Odisha	BJD/BJD				
	Delhi	INC				
Medium (50-99%)	Manipur	INC/INC	Manipur	INC/INC	Madhya Pradesh	BJP/BJP
	Meghalaya	INC/INC	Madhya Pradesh	BJP/BJP	Gujarat	BJP/BJP
	Chhattisgarh	BJP/BJP	Maharashtra	INC/INC	Manipur	INC/INC
	Himachal Pradesh	BJP/INC	Bihar	JD(U)/ JD(U)	Punjab	INC/SAD
	Haryana	INC/INC	Jharkhand	JMM/BJP	Mizoram	MNF/INC
	Jharkhand	JMM/BJP	Sikkim	SSP/SDF	Haryana	INC/INC
	Daman&Diu	INC	Himachal Pradesh	BJP/INC	Andhra Pradesh	INC/INC
	Chandigarh	INC	Chhattisgarh	BJP/BJP	Puducherry	INC
	Sikkim	SSP/SDF	Jammu and Kashmir	PDP/National Conference	Jharkhand	JMM/BJP
	Assam	INC/INC	Assam	INC/INC	Delhi	INC
					Nagaland	NPF/NPF
					Goa	INC/BJP
					Assam	INC/INC
					Maharashtra	INC/INC
					Chhattisgarh	BJP/BJP
					Himachal Pradesh	BJP/INC
					Odisha	BJD/BJD
					Uttarakhand	BJP/INC
					Meghalaya	INC/INC
					Tripura	CPI(M)/ CPI(M)
					Chandigarh	INC
Low (50% -)	Tripura	CPI(M)/ CPI(M)	Haryana	INC/INC	Daman&Diu	INC
	Puducherry	INC	Puducherry	INC	Andaman&Nicobar	INC
	Dadra&Nagar Haveli	INC	Dadra&Nagar Haveli	INC	Arunachal Pradesh	INC/INC
	Andaman&Nicobar	INC	Odisha	BJD/BJD	Dadra&Nagar Haveli	INC
	Nagaland	NPF/NPF	Delhi	INC	Lakshadweep	INC
	Uttarakhand	BJP/INC	Tripura	CPI(M)/ CPI(M)		
	Goa	INC/BJP	Chandigarh	INC		
	Arunachal Pradesh	INC/INC	Goa	INC/BJP		
	Gujarat	BJP/BJP	Lakshadweep	INC		
	Lakshadweep	INC	Daman&Diu	INC		
			Andaman&Nicobar	INC		
			Uttarakhand	BJP/INC		
			Meghalaya	INC/INC		
			Nagaland	NPF/NPF		
			Arunachal Pradesh	INC/INC		

Source: For full names of political parties, see abbreviations. The data for this table was derived from MoMA website, compiled by author.

Among the high implementation states, Uttar Pradesh ranked near the top, unsurprisingly given its large Muslim population. Kerala, Karnataka, and Tamil Nadu also performed equally well. In Karnataka, notwithstanding the fact the BJP was in power from 2008 to 2013, the take-up rate was also high. A similar pattern can be seen in Madhya Pradesh and Odisha, ruled by the BJP and its ally (Biju Janata Dal - BJD), with a high record in the provision of pre-matric scholarships. Interestingly West Bengal and Bihar also achieved high rates of implementation. West Bengal showed high implementation in all three scholarship schemes, while Bihar scored high in the pre-matric and merit-cum-means scholarships, and achieved a medium level of implementation for the post-matric scheme.

State capacity, ‘the ability to monitor the progress of reform, coordinate the actions of different players, and mobilise administration for the achievement of goals’,⁶⁶⁷ perhaps explains the variations in policy performance. Under this definition, Gujarat clearly scored high on state capacity, but the take-up of schemes was lower than in states with much less effective administrations. Table 6.3 indicates that while West Bengal and Bihar ranked high in implementation of all scholarship schemes – only medium achievement in post-matric in Bihar – Gujarat achieved high implementation only in the post-matric. It should be noted that the Gujarat state government led by Narendra Modi refused to provide pre-matric scholarships to minorities on the ground that this would be discriminatory. However, the Gujarat High Court ruled that provision of scholarships to Muslim students is based on their educational backwardness on account of their poverty and economically weak position, and hence justified. In reply, the Gujarat state government filed an affidavit in the Supreme Court arguing that the Sachar Committee was illegal and unconstitutional as it was set up by the UPA to investigate the socio-economic and educational status of Muslims only, and ignored other religious minorities. The state government also argued that it had a similar state-sponsored programme for all students from backward communities – irrespective of their religion.⁶⁶⁸ The SCR, according to the State Government of Gujarat, had neither legal nor constitutional justification, and central government policies based on the

⁶⁶⁷ Vikram K. Chand, ‘Context, Complexity, and Contingency: Understanding the Process of Reforming Public Service Delivery in India’, in Vikram K. Chand, ed., *Public Service Delivery in India: Understanding the Reform Process* (Oxford: Oxford University Press, 2010), 29.

⁶⁶⁸ Utkarsh Anand, ‘Gujarat to Supreme Court: Sachar Panel Illegal, Only to Help Muslims’, *The Indian Express*, 28 November 2013 (electronic edition).

recommendations of the SCR, including the provision of scholarships to religious minorities, were *ultra vires*.⁶⁶⁹

West Bengal, Bihar, and Gujarat are contrasting examples of state capacity, political will, and institutional resistance in policy implementation. Despite the strong capacity of the Gujarat state government, political opposition to the scheme and the institutionalised resistance against measures in favour of Muslims played a crucial role in poor implementation. Conversely, despite poor state capacity in Bihar and West Bengal, the take-up was impressive, perhaps aided by the fact, as we have seen in Chapter Five in the case of West Bengal, that these schemes nurtured an important political constituency.

Finally, in assessing policy implementation, the historical background of the state is also relevant. Karnataka and Gujarat, for instance, were both ruled by the BJP, but showed a considerable divergence in performance. As noted in Chapter Three, states in the south, particularly Karnataka, had recognised Muslims as backward classes before the pre-Mandal period, and provided 4 per cent reservations to religious minorities in education and employment. Among the 16 backward castes recognised by the state government in 1977, Muslims were recognised broadly as a single category with a quota provided exclusively for them. Therefore, in southern states Muslims have been entitled to reservation in central government services as well as state level reservation. In Gujarat, with no such tradition or history of interpretation of the OBC criteria, implementation remained weak.

The argument that policy implementation is more related to political commitment and determination than to the label of the political party in power is further supported by the Congress in Andhra Pradesh, and other Congress-led states, including the Union Territories. Andhra Pradesh showed high implementation in pre-matric and post-matric scholarships, with medium implementation in merit-cum-means. However, the Maharashtra state government, also led by Congress, over-achieved in pre-matric, while it demonstrated medium implementation in post-matric and merit-cum-means.

⁶⁶⁹ 'Supreme Court Declines to Stay Centre's Scheme for Minority Students in Gujarat', *NDTV*, 6 May 2013 (electronic edition). Despite the affidavit filed by the Gujarat state government, the Supreme Court supported the Gujarat High Court's verdict that scholarship scheme cannot be equated with reservation for it was an 'affirmative action' of a non-discriminatory nature.

Surprisingly, the Union Territories, ruled directly by the centre, showed the weakest implementation in all schemes. This can be partly attributed to the small number of minorities in some of the Union Territories, or lack of policy focus in these urban regions, or alternatively, the generally high rates of education and income found in these localities.⁶⁷⁰

Finance – access to credit

We have noted that the UPA pursued a pro-active lending policy towards minorities, especially Muslims, but the actual take-up of these loans did not substantially increase. In the absence of a more systematic review of this data, and the shortcomings of monitoring and evaluation, here we focus on the debates which took place within the Rajya Sabha on the issue. The government was continuously questioned on whether positive action based on proportionality was actually legal and tantamount to quotas. Responding to a point made by a MP from Tamil Nadu, Minister of Finance P. Chidambaram played down the issue, declaring that:

There is no particular direction that loans should be given in some areas and loans should not be given in some areas. It is true that in areas where there is a large concentration of minority communities, banks have been advised that their lending must lean towards the minority communities which are concentrated in those areas. That does not mean that minority community borrowers in any other area will not get a loan.⁶⁷¹

Throughout the debate, the Minister of Finance emphasised that the banks had been ‘advised’ to provide lending to minorities. But nowhere was there any mention of regulatory mechanisms to combat institutionalised resistance in the banking sector. In fact, in the Rajya Sabha debates from 2004 onwards on the subject, the responses of the Minister of Finance or other government members were to highlight the directions to RBI on guidelines, or assert that substantial allocations of loans to minorities had been made. Whenever a specific question was raised about the exact figure, or by what percentage the provision of PSL had increased compared to the previous year, the government fell back on rhetoric such as the ‘RBI has advised banks to ensure equitable

⁶⁷⁰ For instance, according to Census 2011, the literacy rate in Chandigarh was 86.05 per cent and the city’s per capita income ranked third highest in the national ranking of 2011-12. ‘Per Capita Income: Chandigarh: 3rd’, *Financial Express*, 1 May 2012 (electronic edition); Planning Commission, *Final Population Total (PCA) – India: Data-Sheet Based on Census 2011*, December 2013. Available at: http://planningcommission.gov.in/data/datatable/1203/table_308.pdf [accessed on 1 May 2014].

⁶⁷¹ *RSD*, 19 December 2006.

flow of credit to minority communities'.⁶⁷² From 2004 onwards it is hard to find any debate that specified the percentage of PSL for each minority community. Sometimes the debates were deliberately interrupted.⁶⁷³ For instance, on 19th December 2006, Brinda Karat (CPI (M), West Bengal) pointed out that while the amount of PSA had increased during the UPA administration, the percentage had decreased compared to that under the NDA government. She asserted that the decrease in percentage was a reflection of blatant discrimination against minorities, particularly Muslims. When she argued, on the basis of the SCR's findings, that a large number of self-employed Muslims could not survive without bank credit, she was interrupted by the Chairman. The answer to her query from the Minister of Finance is noteworthy:

P. Chidambaram: [as regard to 15PP], an appropriate percentage of PSL in all categories is targeted for minority communities. As I understand, it does not say 15 per cent of credit must go to the minorities. It is 15 per cent of outlays of scheme that must be targeted towards minorities and an appropriate percentage of credit must go to the minorities.

Brinda Karat: What is that appropriate thing? Please quantify.

P. Chidambaram: I cannot quantify. What it means is that they must step up sharply the lending to minorities and that is precisely what we are going to do.⁶⁷⁴

As the Minister continued to prevaricate, Karat criticised him by saying:

What is this? Is this the way to answer a question? Sir, every time when the Finance Minister gets up he teaches us lessons, which we do not need to learn from him...*we want to know what the percentage is.*⁶⁷⁵

Despite interruptions from the Chairman, and other MPs, after several further attempts Karat eventually managed to ask the Minister of Finance about the 15 per cent of credit earmarked for minorities. In response, the Minister of Finance confirmed the government's position by stating that '*we are not earmarking any percentage*' and the debate was abruptly ended by the Chairman.

The RBI began providing figures for PSL from 2007-08. Table 6.4 below illustrates that as a result of the Finance Minister's executive order, the percentage of

⁶⁷² The data presented in the Rajya Sabha debate on 3 August 2010, provided by the Minister of State in the Ministry of Finance, included only information on amounts, not what percentage of the total those amounts represented.

⁶⁷³ For instance, see *RSD*, 19 December 2006; *RSD*, 12 March 2007.

⁶⁷⁴ *RSD*, 19 December 2006.

⁶⁷⁵ *Ibid.* Emphasis added.

PSL provided to minority communities steadily increased, reaching 15 per cent by the end of the UPA (II) administration.

Table 6.4
Provision of PSL to minority communities

Year	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Proportion (percentage)	10.6	12.24	13.01	14.16	14.55	14.59

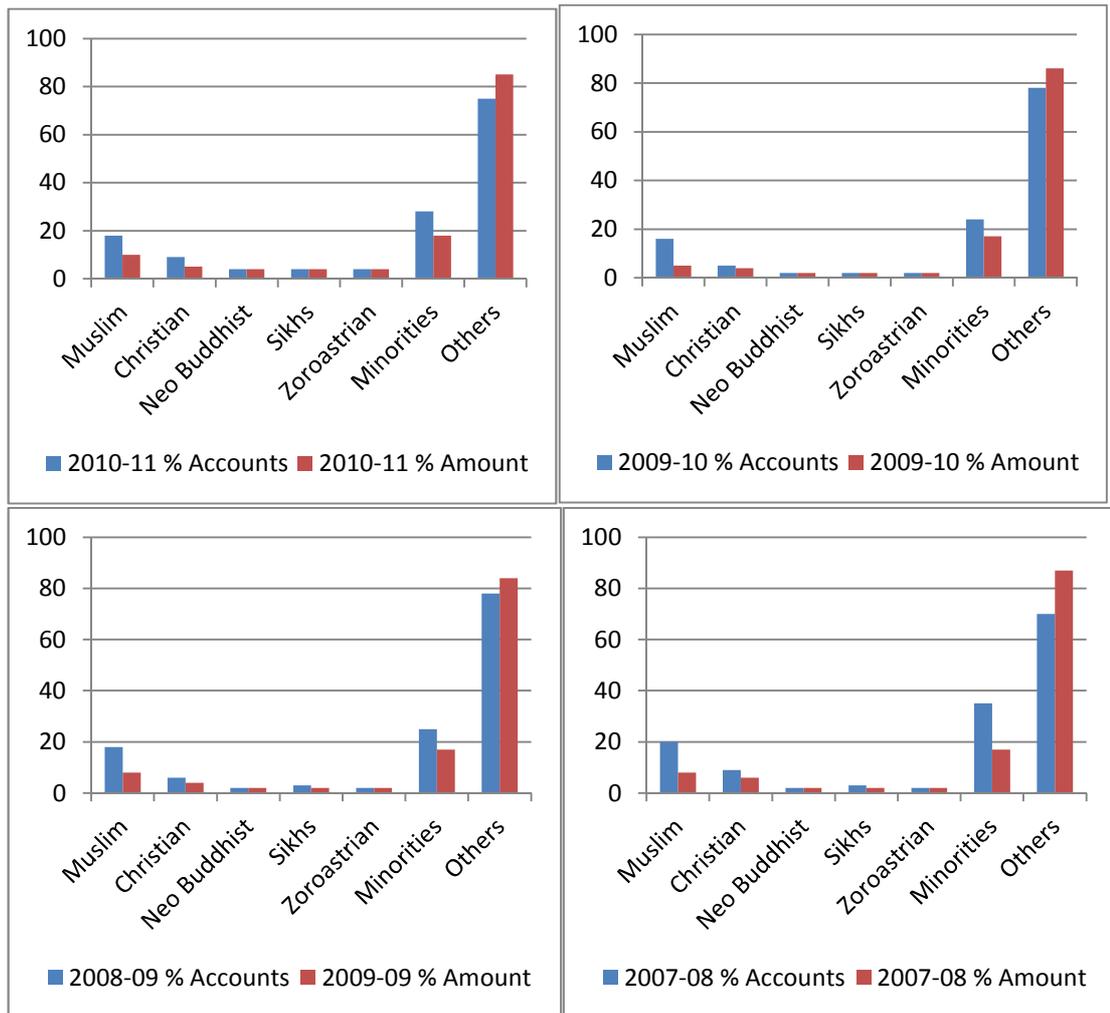
Source: Ministry of Minority Affairs, 'Implementation of Recommendations of Sachar Committee', *Press Information Bureau*, 21 February 2014.

However, the data was not classified according to religion, despite the RBI having issued a pro-forma instruction to submit a report on lending to religious minorities. The first religion-specific data reveal that for the year 2013-14 up to September 2013, the proportions of PSL to minorities were as follows: Muslims (47.01 per cent), Christians (21.58 per cent), Sikhs (27.49 per cent), Buddhists (2.15 per cent), and Parsis (1.77 per cent).⁶⁷⁶ Notwithstanding the increase, it remains difficult to estimate the real proportion of PSL provided to Muslims between 2007 and 2012. In the absence of religion-specific distribution of PSL data, it is worth looking at the PSA in 121 MCDs by scheduled banks between 2008 and 2011. Figure 6.1 below indicates that while the percentage of accounts for Muslims increased in 2007-08 and 2008-09, the share declined in 2009-10 and 2010-11, and hence the share decreased over the period as a whole. Since the figures are cumulative for each year, the declining share of the Muslim community is correlated to an increase for other communities. While these figures clearly have limitations, they do indicate that the share allocated to Muslims declined during that period.⁶⁷⁷

⁶⁷⁶ Ministry of Minority Affairs, 'Implementation of Recommendations of Sachar Committee', *PIB*, 21 February 2014.

⁶⁷⁷ Shariff, *Six Years after Sachar*, 87. According to the field survey conducted in Barabanki in Uttar Pradesh, a state where 19 per cent of the total Muslim population in the country reside, none of the 160 respondents had been provided credit through PSL for minorities or the 15PP. Jawed Alam Khan and Pooja Parvati, 'Government's Commitment towards Development of Muslims: A Post-Sachar Assessment of Uttar Pradesh and Haryana', in Council for Social Development, Zoya Hasan and Mushirul Hasan, eds., *India Social Development Report 2012*, 259.

Figure 6.1
PSA in 121 MCDs by scheduled banks



Source: Abusaleh Shariff, *Six Years after Sachar: Review of Socially Inclusive Policies in India since 2006* (New Delhi: US-India Policy Institute, 2012), 88.

Although the percentage of PSL provided to minorities steadily increased, the situation for each religious community still remains unclear. The failure to generate data on religious minorities could be attributed to the political risks it might entail, but it also may have something to do with the gaps in the instruction provided by the RBI, which states that ‘the [monitoring] data on assistance provided to members of minority communities should be furnished to RBI and to the Government of India, Ministry of Finance, and Ministry of Welfare, on a half yearly basis’ by the relevant banks.⁶⁷⁸

⁶⁷⁸ This phrase was repeated in master circulars issued at least from 2003 to 2010. Reserve Bank of India, Master Circular, Priority Sector Lending – Credit Flow to Minority Communities, RPCD NO. SP.BC. 87 /09.10.01/2002-03 (23 April 2003); Reserve Bank of India, Master Circular, Priority Sector Lending – Credit Flow to Minority Communities, RPCD NO. SP.BC. 37 /09.10.01/2004-05 (29 September 2004); Reserve Bank of India, Master Circular, Priority Sector Lending – Credit Flow to Minority Communities, RPCD NO. SP.BC.07 /09.10.01/2005-06 (1 July 2005); Reserve Bank of India, Master Circular, Priority

However, it is unclear who was to process this data into a consolidated data set. Interestingly, during the UPA's tenure little effort was invested in improving monitoring of these services to enhance service delivery, and the problems that arose in employment data (see Chapter Five) were also ever present in finance.⁶⁷⁹

Once again the case of Gujarat demonstrates persistent institutional resistance in service delivery. Over the period 2009-12, the banks in Gujarat failed to achieve the target set for loans for minorities. In 2011-12, they provided only 3.52 per cent of the total PSA to minorities.⁶⁸⁰ Minorities have claimed that their applications for loans were rejected by the banks because they live in 'blacklisted areas of Ahmedabad'.⁶⁸¹ On the

Sector Lending – Credit Flow to Minority Communities, RPCD NO.SP.BC.09 /09.10.01/2006-07 (5 July 2006); Reserve Bank of India, Master Circular, Priority Sector Lending – Credit Flow to Minority Communities, RPCD NO. SP.BC. 12 /09.10.01/2007-08 (5 July 2007); Reserve Bank of India, Master Circular, Priority Sector Lending – Credit Flow to Minority Communities, RPCD NO. SP.BC. 6/09.10.01/2008-09 (1 July 2008); Reserve Bank of India, Master Circular, Priority Sector Lending – Credit Flow to Minority Communities, RPCD.SP.BC.No.5/09.10.01/2009-10 (1 July 2009); Reserve Bank of India, Master Circular, Priority Sector Lending – Credit Flow to Minority Communities, RPCD.SP.BC.No.4/09.10.01/2010-11 (1 July 2010).

⁶⁷⁹ The Department of Financial Services in the Ministry of Finance, and the RBI, did not often specify the date a datasheet is generated, and it is common to find typos, misrepresentation, omissions, and lack of data on implementation monitoring. With regard to access to credit, the direction of the Ministry of Finance to include minorities in the 'weaker section' of the RBI norm was substantive executive action to push through positive change, but it turned out to be ineffective in solving the core of the problem, since it failed to introduce any enforcing mechanism, or to combat discrimination in the banking structure. Overall, the failure centred on two problems: the weak monitoring mechanism of the RBI, and the reluctance of the relevant banks to submit data. First, to meet the objective of generating data on PSL provided to religious minorities, a form of statement showing PSA granted to the members of the specified minority communities *vis-à-vis* overall PSA had been sent to relevant banks by the RBI since the pre-UPA period. The form was designed to report the figures for Buddhists, Christians, Muslims, Sikhs and Zoroastrians, and carried the instruction that 'monitoring data on credit assistance provided to members of minority communities should be submitted to RBI, Ministry of Finance, and Ministry of Welfare on a half yearly basis'. In other words, data generation on religious lines was not a newly introduced measure by the UPA, and banks were already aware of the reporting system. However, there had been no enforcing mechanism to monitor the performance of relevant banks, and even after the UPA came to power, no noticeable changes were introduced. While the RBI was active in issuing circulars and instructions to relevant banks, neither the RBI nor the government made efforts to strengthen the monitoring system – the key measure to improve service delivery. While the government took a positive step in publicising data on the proportion of PSL given to religious minorities from 2012, the data generation process on the proportion of PSL provided to all religious minorities from 2007 onwards remains unclear. Second, although the RBI issued master circulars and guidelines every year to scheduled commercial banks in regard to credit facilities to minority communities, along with pro-forma instructions to submit an elaborate report on lending to minorities (on religious lines), in the absence of any monitoring mechanism the relevant banks continued to be inactive and reluctant to report and share data with RBI and central ministries on PSL for minorities. As a result, religion-specific data became available only from 2012, although it remains to be investigated whether the RBI did in fact collect religion-specific data from banks, but was reluctant to make it public.

⁶⁸⁰ Dena Bank, *Minutes of 133rd State Level Review Meeting for Gujarat State for the Year Ended March 2012* (Ahmedabad: State Level Bankers Committee, 24 May 2012), 15. Available at: <http://www.slb Gujarat.com/newdata/133-slrmmnts.pdf> [accessed on 4 March 2014].

⁶⁸¹ 'The first question that banks ask is about the area in which an applicant lives and then, on the basis of the area of residence, they take a decision on the application for loan. There are certain areas such as

other hand, the bankers argued that the failure to reach the target was due to the small amount sought by minority communities, while loan refusals were due to the absence of guarantors, proper documents and the capacity to repay. Despite the Finance Minister's executive order and the guidelines and circulars, the practice noted in the SCR, whereby some banks had identified 'negative geographical zones', continued in Gujarat. As one Ahmedabad-based lawyer put it: 'He [an applicant] may have all the necessary documents but if he lives in a blacklisted area, he may find it difficult to get finance.'⁶⁸²

Although a more comprehensive assessment needs to be undertaken, our analysis of the limited data available in the public domain suggests that efforts to improve service delivery in the area of finance faced considerable institutional opposition. Executive action by the UPA government led to a steady increase in PSL provision to all minorities, but these efforts were insufficient to overcome institutional resistance. The absence of robust mechanisms for monitoring and constant evaluation of government and RBI data resulted in ineffective use of such data for policy change. As a result, as of August 2014, no disaggregated data on the percentage of PSL for each minority group had been made public.⁶⁸³

MSDP

The MSDP programme incorporated a wide range of programmes aimed at improving the conditions of minorities, especially Muslims. Whilst it is important to examine the outcome of each scheme, our objectives here are to assess how MSDP policy was designed, presented and funded. Given that the MSDP was a flagship measure in the overall policy framework of the UPA, what does it tell us about the policy process and the modes or resistance to this policy?

Juhapura and Jamalpur which have been blacklisted.' Bhavesh Shah, 'Banks Fail to Reach Target for Loans to Minorities', *DNA*, 29 May 2012.

⁶⁸² Ibid.

⁶⁸³ Shariff also highlighted that 'neither RBI nor the Finance Ministry has reviewed or made public the reports on the access of development funds to the minorities although such data are collected as a matter of routine by RBI across India. The disaggregated information on the share of PSA for the minorities is in fact not being made accessible to the public at large.' Shariff, *Six Years after Sachar*, 84.

According to the Eleventh Five-Year Plan, the MSDP was to ‘adopt an area-based approach’⁶⁸⁴ with an emphasis on both infrastructure development and beneficiary-oriented programmes. This focus was confirmed by minutes of Empowered Committee meetings which directed the state governments to implement schemes under the MSDP to development of the area rather than the development of a minority or a particular community. From August 2008 to July 2011, in 39 out of 47 meetings, MoMA repeatedly emphasised the need for implementation of the scheme to focus on area *development* rather than *minorities*.⁶⁸⁵ In the Eleventh Five-Year Plan, based on the 2001 Census, 90 districts were identified as MCD using criteria of ‘backwardness’,⁶⁸⁶ gradually rising to 121 districts. Table 6.5 below identifies these districts within the relevant states and, where available, the proportion of the minorities within the district: Muslims were the largest minority in 64 districts, Christians 14, Buddhists 9, Sikhs 1, and data for 33 is unavailable.⁶⁸⁷

A number of points are worth noting about this data. First, though Muslims are in an overall majority in these districts, the MCDs cover only 47.66 per cent of the community.⁶⁸⁸ Second, given the significant urban concentration of the Muslim population, these localities were excluded from the scheme. Third, the geographical dispersal of the Muslim community – in contrast to Christians, Sikhs and Buddhists who are more concentrated – makes the benefits of a district-based approach less effective than if the programme were targeted specifically at the community. Fourth, Table 6.6 below indicates that as more MCDs were added the percentage of Muslims decreased. The government’s effort to increase the number of MCDs using the above

⁶⁸⁴ Planning Commission, *Eleventh Five-Year Plan 2007-2012*, 128.

⁶⁸⁵ Out of 47 meetings, in the minutes of 8th - 35th, and 37th - 47th meeting, it is stated that ‘the fact that these districts were not just MCDs, having a substantial minority population, but also comprising of other communities who suffer from the same backwardness and deprivation, should not be lost sight of. It was important to keep in mind that the large presence of minorities may have resulted in the identification of such districts for appropriate developmental intervention, but the scheme, *while giving priority to villages/areas having a substantial minority population, was intended to benefit the district as a whole.*’ For instance see Ministry of Minority Affairs, *Minutes of the 8th Meeting of Empowered Committee*, 19 December 2008. Available at: http://www.minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/8thEC.pdf [accessed on 3 May 2014]. Emphasis added.

⁶⁸⁶ This included, for the religion-specific socio-economic indicators at the district level, literacy rate, female literacy rate, work participation rate, and female work participation rate; while the basic amenities indicators at district level comprised percentage of households with pucca walls, percentage with safe drinking water, and percentage with electricity. Planning Commission, *Eleventh Five-Year Plan 2007-2012*, 128.

⁶⁸⁷ Ministry of Minority Affairs, *India Map Showing Minority Concentration Districts*, 14 June 2011. Available at: http://www.minorityaffairs.gov.in/all_india_map [accessed on 15 January 2015].

⁶⁸⁸ Shariff, *Six years after Sachar*, 78.

Table 6.5
Proportion of minorities in 121 MCDs as per Census 2001

	States	Districts	Muslims	Christians	Sikhs	Buddhists
1	Andamans	Nicobars	N/A			
		Andamans				
2	Andhra Pradesh	Hyderabad	N/A			
3	Arunanchal Pradesh	Tawang	0.58	0.79	1.08	74.72
		East Kameng	0.67	25.45	0.08	1.23
		West Kameng	1.55	3.30	0.57	44.38
		Lower Subansiri	0.84	24.51	0.05	0.29
		Changlang	0.93	17.49	0.04	34.08
		Tirap	0.75	50.04	0.10	0.67
		Papum Pare	4.36	29.98	0.22	2.73
4	Assam	Kokrajhar	20.36	13.72	0.01	0.17
		Dhubri	74.29	0.76	0.01	0.02
		Goalpara	53.71	7.87	0.01	0.02
		Bongaigaon	38.52	2.07	0.06	0.04
		Barpeta	59.37	0.32	0.02	0.01
		Darrang	35.54	6.47	0.03	0.12
		Marigaon	47.59	0.10	0.01	0.01
		Nagaon	50.99	0.93	0.13	0.05
		Cachar	36.13	2.17	0.04	0.05
		Karimganj	52.30	0.87	0.01	0.03
		Hailakandi	57.63	1.00	0.00	0.11
		Kamrup	24.78	1.75	0.19	0.07
		North Cachar Hills	15.23	54.57	0.05	0.28
5	Bihar	Araria	41.14	0.06	0.02	0.05
		Kishanganj	67.58	0.22	0.04	0.03
		Purnia	36.76	0.17	0.05	0.00
		Katihar	42.53	0.21	0.09	0.00
		Sitamarhi	21.21	0.02	0.01	0.01
		Pashchim Champaran	21.25	0.20	0.02	0.05
		Darbhangha	22.73	0.02	0.01	0.00
6	Delhi	North east Delhi	27.24	0.43	1.05	0.27
		Central	N/A			
7	Goa	South Goa	N/A			
8	Haryana	Gurgaon	N/A			
		Sirsa	0.63	0.15	27.13	0.03
9	Himachal Pradesh	Lahul&Spiti	N/A			
		Kinnaur				
10	Jammu & Kashmir	Leh (Ladakh)	13.78	0.29	0.43	77.30
11	Jharkhand	Ranchi	12.52	9.10	0.27	0.05
		Gumla	4.44	31.56	0.04	0.02
		Sahibganj	31.26	6.33	0.03	0.00
		Pakaur	32.36	5.86	0.06	0.01
12	Karnataka	Dakshina Kannada	N/A			
		Bidar	19.69	2.87	0.04	8.13
		Gulbarga	17.60	0.59	0.02	4.91
13	Kerala	Wayanad	26.87	22.48	0.00	0.01
		Malappuram	N/A			
		Ernakulam				
		Kottayam				
		Idukki				
		Pathanamthitta				
		Kozhikode				
		Kasaragod				
		Thrissur				
		Kannur				
		Kollam				
		Thiruvananthapuram				
		Palakkad				
Alappuzha						
14	Madhya Pradesh	Bhopal	22.86	1.11	0.62	1.12

15	Maharashtra	Buldana	12.78	0.11	0.07	13.73
		Hingoli	10.45	0.05	0.05	14.99
		Parbhani	15.97	0.09	0.05	10.03
		Washim	10.96	0.12	0.05	14.76
		Akola	N/A			
		Mumbai				
		Aurangabad				
		Mumbai (Suburban)				
Amravati						
16	Manipur	Senapati	0.41	78.41	0.10	0.82
		Tamenglong	1.28	94.88	0.06	0.01
		Churachandpur	1.13	93.54	0.05	0.02
		Ukhrul	0.63	95.16	0.07	0.06
		Chandel	1.96	92.23	0.11	0.05
		Thoubal	23.85	1.41	0.03	0.01
17	Meghalaya	West Garo Hills	15.23	54.57	0.05	0.28
18	Mizoram	Mamit	1.75	80.53	0.04	13.66
		Lawngtlai	0.31	44.66	0.10	52.17
19	Orissa	Gajapati	0.31	33.47	0	0.38
20	Pondicherry	Mahe	N/A			
21	Rajasthan	Ganganagar	N/A			
22	Sikkim	North Sikkim	0.95	3.96	0.36	55.09
		East	N/A			
		West				
		South				
23	Tamil Nadu	Kanniyakumari	N/A			
24	Uttar Pradesh	Bulandshahar	21.07	0.13	0.16	0.07
		Budaun	21.33	0.11	0.09	0.16
		Barabanki	22.04	0.08	0.12	0.09
		Kheri	19.10	0.12	2.64	0.66
		Shahjahanpur	17.86	0.11	2.14	0.20
		Moradabad	45.54	0.23	0.23	0.06
		Rampur	49.14	0.38	3.21	0.12
		Jyotiba Phule Nagar	39.38	0.28	0.37	0.02
		Bareilly	33.89	0.26	0.80	0.20
		Pilibhit	23.75	0.11	4.59	0.11
		Bahraich	34.83	0.09	0.32	0.14
		Shrawasti	25.60	0.05	0.07	0.05
		Balrampur	36.72	0.08	0.08	0.18
		Siddharthnagar	29.43	0.06	0.06	0.39
		Bijnor	41.71	0.11	1.56	0.11
		Saharanpur	39.11	0.17	0.71	0.13
		Muzaffarnagar	38.09	0.09	0.54	0.07
		Meerut	32.55	0.25	0.88	0.09
Baghpat	24.73	0.09	0.09	0.03		
Ghaziabad	23.79	0.27	0.64	0.10		
Lucknow	20.52	0.34	0.63	0.12		
25	Uttaranchal	Hardwar	33.05	0.21	1.20	0.05
		Udham Singh Nagar	20.59	0.31	11.45	0.12
26	West Bengal	North 24 Parganas	24.22	0.23	0.12	0.07
		Kolkata	20.27	0.88	0.34	0.14
		Koch Bihar	24.24	0.09	0.01	0.02
		Uttar Dinajpur	47.36	0.54	0.01	0.01
		Dakshin Dinajpur	24.02	1.47	0.01	0.01
		Maldah	49.72	0.25	0.01	0.00
		Murshidabad	63.67	0.23	0.01	0.00
		Birbhum	35.08	0.24	0.01	0.01
		Bardhaman	19.78	0.23	0.32	0.02
		Nadia	25.41	0.64	0.02	0.01
		Howrah (Haorah)	24.44	0.15	0.09	0.03
		South 24 Parganas	33.24	0.76	0.02	0.03

Source: Ministry of Minority Affairs

criteria resulted in a reduction in the Muslim share of the population benefiting from the scheme while increasing the coverage of other minorities (Christians, Sikhs and Buddhists). The criteria for the creation of MCDs and their subsequent expansion has led some critics to suggest that the area-based approach did not always seriously address the concerns of Muslim (and other minorities’) under-development because ‘programme implementation can take place in such a way that the state religious groups are excluded from accessing the services’.⁶⁸⁹

The Post-Sachar Evaluation Committee in its review of the MSDP was highly critical of the performance of the scheme in targeting Muslim deprivation. It identified a number of concerns. These

ranged from the fact that it is largely an area development scheme and does not focus on individual families...and as the minorities are not uniformly concentrated in districts, the schemes under the programme can be carried out without really benefitting minorities. Only about 30 per cent of the Muslims...can benefit from targeting 90 districts as implementation unit for MSDP; non-inclusion of a large section of Muslims in Below Poverty Line (BPL) list keeps them away from the benefits of many schemes.⁶⁹⁰

The Committee’s finding largely confirmed the evidence collected by NGOs and advocacy organisations that the MSDP had been in general badly designed as a means of addressing the needs of poor Muslims.⁶⁹¹

Table 6.6
Share of minority in total minority population in MCD

Minority districts	Total minority (millions)	Muslims (%)	Christians (%)	Sikhs (%)	Buddhists (%)	Zoroastrians (%)
India	189.5	72.92	12.71	10.14	4.20	0.04
121 MCDs	81.7	80.64	13.44	2.01	3.85	0.06
90 MCDs	58.2	89.96	5.67	1.87	2.50	0.00
41 MCDs	45.9	93.31	3.44	0.91	2.32	0.03

Source: Shariff, *Six Years after Sachar*, 78.

Note: In the first and last rows, the sum of share of minorities is slightly more than 100 per cent due to reduction in the number of decimal places (rounding error).

⁶⁸⁹ Ibid., 79.

⁶⁹⁰ *Post-Sachar Evaluation Committee* (New Delhi: GoI, 2014), 148.

⁶⁹¹ Ibid. Space precludes a more detailed assessment. The Committee’s findings are reviewed in the Conclusion.

The list of 90 MCDs, identified in the revised 15PP, covered only 37.9 per cent of the Muslim population, but this rose to 47.66 per cent as the number of MCDs increased to 121.⁶⁹² As the minutes of Empowered Committee meetings make clear:

These districts have a substantial minority population, but also have other sections of the society who suffer from the same backwardness and deprivation, *as the identification of the district as backward have four parameters which are for the whole district.* The initiative is, therefore, a joint effort of the Centre and the States/Union Territories for inclusive growth/development, accelerating the development process and improving the quality of life of the people. MSDP aims at focused development programme for backward MCDs to help reduce imbalances and speed up development.⁶⁹³

On the question of whether Muslims in MCDs were able to secure equitable access to various government programmes, much more rigorous analysis is required. As noted above, the government had decided to adopt the norms and guidelines of Centrally Sponsored Scheme in implementing the MSDP. Table 6.7 below lists the schemes for minorities in MCDs, with the budget allocations during the Eleventh Five-Year Plan.

Table 6.7
Budget allocation by union government for minorities in eleventh five-year plan

Schemes	Amount (Rs Crore)	Share (percentage)
Basic Services to Urban Poor (BSUP)	31431.08	29.73
IHSDP	8147.59	7.71
Urban Infrastructure and Governance (UIG)	26495.95	25.06
UIDSSMT	7825.81	7.40
IAY	8216.426	7.77
NRDWP	14045.31	13.28
ITI	163	0.15
SJSRY	192	0.18
Madrassa Modernisation Programme	450	0.43

Source: Jawed Alam Khan, *Policy Priorities for Development of Muslims in the 11th Plan: An Assessment* (New Delhi: Centre for Budget and Governance Accountability, 2012), 12.

Four schemes – the JNNURM, which was an umbrella scheme, and included BSUP, IHSDP, UIG, UIDSSMT – constituted 69.9 per cent of the total funds allocated for minorities. Launched in December 2005, as the largest initiative of the government

⁶⁹² Ibid., 78.

⁶⁹³ For instance see Ministry of Minority Affairs, *Minutes of the 48th Meeting of Empowered Committee*, 2 September 2011. Available at:

http://www.minorityaffairs.gov.in/sites/upload_files/moma/files/48thECminutes.pdf [accessed on 3 May 2014]. Emphasis added.

for the planned development of cities, JNNURM aimed to improve urban infrastructure and provide services to the urban poor. As more Muslims reside in urban areas than in the countryside, and the poverty ratio among urban Muslims is high,⁶⁹⁴ this flagship city re-development programme should have disproportionately benefited community development. However, upon closer examination, it appears minorities, particularly Muslims, were almost non-existent in areas where the JNNURM was implemented.⁶⁹⁵ Moreover, most of the allocations made under the JNNURM only reported the number and costs of projects sanctioned, not the beneficiary or data on minorities.⁶⁹⁶ Thus, the use of Centrally Sponsored Scheme guidelines in implementing the JNNURM was a major missed opportunity: it resulted in the failure to develop adequate policy tools to address the exclusion of Muslims in one of the largest development schemes sponsored by the central government.⁶⁹⁷ In effect, the MSDP became a mechanism for increased funding for existing programmes rather than a qualitatively new departure from approaches pursued by previous governments.

With the exceptions of JNNURM, IAY, SJSRY, and SGSY, other schemes in Table 6.7 were beneficiary-driven and aimed at poverty reduction. Yet, once again, large numbers of Muslims were excluded from these schemes because their names were omitted from the BPL list. Although the SCR had pointed out that many poor Muslims

⁶⁹⁴ SCR, 158.

⁶⁹⁵ According to Jawed Alam Khan, 'MoMA provides the data on financial allocation made for minorities by JNNURM on its website but without any physical outcome. When I tried to probe it in states like Uttar Pradesh, West Bengal, Bihar and Haryana, the officials were unable to provide any data on Muslims/minorities.' Interview, 11 April 2014, New Delhi. In the word of an official in Bihar: 'there is no exclusion of any section from these schemes, but no targeting of minorities too'. Centre for Equity Studies, *Promises to Keep*, 34.

⁶⁹⁶ It is in stark contrast to the budget statement for SCs and STs of the amount allocated under different ministries. In the guidelines of JNNURM there is neither provision for religious minorities nor a budget reporting mechanism.

⁶⁹⁷ 'Most of the Centrally Sponsored Schemes that are part of the [15PP] have not been altered in any way (by way of bringing about changes in the scheme guidelines) to cater to the specific disadvantages and needs of the community. The state and district level implementing agencies do not have adequate clarity on the share of allocations available towards the programme given the lack of disaggregated data in most schemes'. Khan, *Policy Priorities for Development of Muslims in the 11th Plan*, 19. Another example of rigidity adopted in using Centrally Sponsored Schemes in government programme is the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) – the largest and most ambitious social security and public works programme in the world – according to the Ministry of Rural Development. In MGNREGS only 13 per cent of Muslims were included while they constitute 36 per cent of the population and 45 per cent of the job card holders. But a field survey conducted in Mewat (74 per cent Muslim population) in Haryana revealed a worse scenario that people were unwilling to work through MGNREGS due to low wages and subsequent delays which contributed to the low take-up of the scheme. Centre for Equity Studies, *Promises to Keep*, vii-viii; Khan and Parvati, 'Government's Commitment towards Development of Muslims', 260.

do not have BPL cards,⁶⁹⁸ this shortcoming was poorly accounted for in policy design or execution, particularly in poverty reduction programmes, which were still being designed to benefit those in possession of the cards.⁶⁹⁹ But such failure in policy design and execution should be understood in a broader context: the last update of the BPL list was conducted by the government in 2002 although it should have taken place in 2007 and 2012. In the absence of the BPL census for 2007 and 2012, the government initiated a new census named ‘Socio Economic and Caste Census’ in June 2011.⁷⁰⁰ However, as of August 2014, the final results of this census had not been published.⁷⁰¹

As well as poor policy design and execution, expenditure under SSA, SGSY, and ICDS was badly publicised and monitored. While many government schemes were aimed at area development, the few beneficiary-driven ones (IAY, SJSRY, and SGSY) provided limited opportunity for Muslims.⁷⁰² The absence of any fund allocation report for these schemes makes it difficult to assess whether Muslims have benefited at all. Similarly, the NRDWP reports data by state but it is difficult to estimate the number of minorities who benefited. The ITI also provides state data on targets and achievements, but does not specify which minority communities benefit.⁷⁰³ The funds for the Madrasa Modernisation Programme, the promotion of Urdu, and Haj subsidies combined were less than one per cent of the total allocation. Overall, the budget allocated to MoMA for the various schemes merely combined the existing allocation under different schemes and ministries.

⁶⁹⁸ ‘Muslims are often not able to avail of the reservation benefits available to OBCs as the officials do not issue the requisite caste certificates...many eligible Muslim OBCs were not included in the official list which results in denial of several benefits to the community’. SCR, 24.

⁶⁹⁹ See Prashant K. Trivedi, ‘Rural Power Structure, State Initiatives, and the Muslims: Divergent Experiences in Four States’, in Council for Social Development, Zoya Hasan and Mushirul Hasan, eds., *India Social Development Report 2012*, 239.

⁷⁰⁰ Ministry of Rural Development, ‘Socio-Economic and Caste Census, 2011 is not a BPL Survey, Says Rural Development Minister’, *PIB*, 8 August 2011. According to the Minister of Rural Development, this census was to generate a rank listing of rural households based on automatic inclusion criteria and deprivation indicators, and to be sent to state governments to determine the BPL households in states. The outcome of this census is particularly important for Muslims whose large population is excluded in the BPL list for caste impacts on inclusion into BPL list and provision of BPL certificates. Also the result of this survey is crucial because the government delayed its action on replying to Supreme Court query in regard to provision of 4.5 per cent sub-quota in the existing OBCs quota in employment and education to Muslims and Christians until the survey was complete. ‘With the knowledge of proportion of SCs in the Muslim and Christian communities, the government wants to use the outcome as evidence in its reply to the Supreme Court.’ Jawed Alam Khan, interview, 11 April 2014, New Delhi.

⁷⁰¹ As of 27 August 2014, only draft list of 274 districts out of 640 is available. See <http://www.secc.gov.in/state> [accessed on 27 August 2014].

⁷⁰² Khan, *Policy Priorities for Development of Muslims in the 11th Plan*, 19.

⁷⁰³ *Ibid.*, 5 ‘If [ITIs] are to be build, there is no robust system to ensure that these will be located in Muslim localities’. Centre for Equity Studies, *Promises to Keep*, viii.

Yet even with this limited allocation MoMA's funds remained poorly utilised. Table 6.8 below shows the fund utilisation by MoMA.

Table 6.8
Fund utilisation by MoMA during the eleventh five-year plan

Year	BE	RE	Actual expenditure	Utilisation (%)
2007-08	500.00	350.00	196.65	39.33
2008-09	1000.00	650.00	619.02	61.90
2009-10	1740.00	1740.00	1709.425	98.24
2010-11	2600.00	2500.00	2008.87	77.26
2011-12	2850.00	2750.00	2283.415	80.12
Total (2007-12)	8,690	7,990	6,817.38	78.45

Unit: Rs. Crore.

Source: Ministry of Minority Affairs, *Statement Indicating BE, RE and Actual Expenditure for the Year 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 & 2013-14*. Available at: http://www.minorityaffairs.gov.in/sites/upload_files/moma/files/BE_RE&Exp_2006-2012.pdf [accessed on 25 August 2014].

Note: BE: Budget Estimate, RE: Revised Estimate. Utilisation has been calculated based on the BE.

During the eleventh plan, the Ministry spent only Rs 6,817 crore (78 per cent), and surrendered Rs 1,872 crore. MoMA attributed this underspend to state governments:

Unfortunately in the Eleventh Five-Year Plan, and the first year of the Twelfth Five-Year Plan, we could not spend the amount earmarked for MSDP, because states have to send the proposals, but they didn't send proposal in time. So we were not able to process them. The major responsibility is with the states. We had the money, we could have transferred it, but most of the states did not send the project. *They are not interested in these projects. State governments say it is central government projects, let them have it. They sometimes have their own state projects. States' bureaucracy was the source of [the] problem.*⁷⁰⁴

The same explanation is found in the report of the Steering Committee on Empowerment of Minorities of the Planning Commission which concluded that 'whole amount allocated could not be spent due to non-submission of complete and adequate proposals by the States/Union Territories, late submission of utilisation certificates by the States/Union Territories, [and the] promulgation of code of conduct for elections in some States'.⁷⁰⁵ The non-submission of proposals was also noted in Parliament: 'four

⁷⁰⁴ K. Rahman Khan, interview, 12 February 2013, New Delhi, emphasis added. Low utilisation of funds was also discussed in the standing committee report on social justice and empowerment. See, Ministry of Minority Affairs, *Standing Committee on Social Justice and Empowerment (2011-2012): the 27th Report* (New Delhi: Lok Sabha Secretariat, 2012), 29-33.

⁷⁰⁵ Planning Commission, 'Report of the Steering Committee on "Empowering of Minorities" for the Twelfth Five-Year Plan', 14. Available at:

states, viz. Arunachal Pradesh, Delhi, and Madhya Pradesh, Sikkim have not submitted their district plans'.⁷⁰⁶

Data, monitoring and evaluation

Many of the shortcomings in service delivery could have been anticipated by effective regular monitoring of data, constant evaluation, and reassessment of targets. Yet, throughout the fieldwork it was repeatedly stated by government officials and policymakers that it is against the spirit of the Constitution to generate data on religious lines. Even schemes designed for minorities, particularly those 'officially' sanctioned to earmark a certain portion of benefits to them, do not clarify the actual number of recipients among religious minorities. None of the monitoring data on schemes with flow of funds to MCDs⁷⁰⁷ specifies the actual recipient.⁷⁰⁸ Furthermore, the data by state on schemes under various ministries is incomplete as many states fail to file proper status/monitoring reports with the ministry.

In general, monitoring data on government schemes for minorities is inaccessible and poorly organised. The situation with the budget data is not an exception; rather, it can be convincingly argued that Indian government data is fragmented, sometimes deliberately misrepresented and incomplete. While the expenditure data are relatively well-structured and produced at regular intervals, they fail to show how the funds were utilised and whether they benefited the intended recipients. The government's inactivity is well illustrated by an answer given in a Rajya Sabha debate by the Minister of State for MoMA. Asked whether benefits from the schemes had reached the minorities, he responded that 'funds are released as per the norms'.⁷⁰⁹ Parliamentary debates on monitoring are almost non-existent, and the remarks made by policymakers often give the impression that the government considers

http://planningcommission.nic.in/aboutus/committee/strgrp12/sc_emp_minorties.pdf [accessed on 4 February 2014].

⁷⁰⁶ See *RSD*, 7 December 2009; *RSD*, 14 December 2009.

⁷⁰⁷ The schemes include BSUP, IHSDP, UIG, UIDSSMT, and NRDWP.

⁷⁰⁸ The weak monitoring system and improvement of monitoring mechanism was noted in the standing committee report on social justice and empowerment. See, Ministry of Minority Affairs, *Standing Committee on Social Justice and Empowerment (2011-2012)*, 48, 50-1, 67, 69; Centre for Equity Studies, *Promises to Keep*, xix.

⁷⁰⁹ *RSD*, 19 March 2012.

funds released and benefit to minorities as one and the same thing.⁷¹⁰ As a result of this inertia, of the various schemes under the PM's 15 PP, not a single one reported the targets/outlays for minorities, or the religious status of the recipients.⁷¹¹ Data that does exist, on the other hand, is very difficult to access, due to the absence or complexity of systematic reporting mechanisms on the various ministry websites, and because the many different schemes are homed in different ministries with no consolidated or coordinated presentation of statistics. This is despite the fact that when the MSDP was launched, the Cabinet Committee on Economic Affairs announced that 'a suitable monitoring system would be put in place. An independent in-depth evaluation would be made after two years to assess the need for any mid-term correction.'⁷¹² At the end of the Eleventh Five-Year Plan, the monitoring effort made by the government proved symbolic: it only generated data by state on financial and physical progress in the MSDP, without specifying the religious identity of the recipients.⁷¹³

However, as a result of these weaknesses some policy changes have been made in the Twelfth Five-Year Plan. In July and October 2011, MoMA held consultations with experts, academics and intellectuals from minority communities. Based on these consultations, and the recommendations of the Working Group on Empowerment of Minorities in the Planning Commission, MoMA formulated new proposals for the

⁷¹⁰ The Minister of Minority Affairs, Salman Khurshid, stated in the Rajya Sabha debate that 'implementation of the scheme of MSDP for MCDs is reviewed regularly by the government with the state government/Union Territory administration concerned' (*RSD*, 7 December 2009). He further added that 'the implementation of MSDP is monitored at the district, State/Union Territory and centre at regular intervals to ensure that the budgeted funds are utilised fully', (*RSD*, 15 November 2010). It was confirmed by the former chairman of NCM that 'So far as the MSDP is concerned, the monitoring is confined to how much money is given and how much money is spent. Whether it really has gone to the minorities or not, it is not their concern.' Wajahat Habibullah, interview, 11 April 2014, New Delhi.

⁷¹¹ Monitoring reports of SSA, SGSY, IAY, SJSRY, ITIs, operationalisation of Anganwadi centres under ICDS do not specify religious identity of beneficiaries.

⁷¹² Cabinet Committee on Economic Affairs, 'Multi-Sectoral Development Programme for Minority Concentration Districts', *PIB*, 27 March 2008. Despite the poor monitoring, the monitoring mechanism of the PM's 15PP was also delineated in the Planning Commission's Eleventh Five-Year Plan report that 'the procedure for monitoring the outcomes of these multiple initiatives is clearly laid out. It will be done on a half-yearly basis by the Committee of Secretaries and the Cabinet.' Planning Commission, *Eleventh Five-Year Plan 2007-2012*, 124. However, Zoya Hasan was adamant that as far as MSDP is concerned, 'importantly, the government did not put in place a proper assessment and monitoring system other than a Planning Commission Steering Committee for this purpose.' *Congress after Indira*, 174.

⁷¹³ Ministry of Minority Affairs, 'MSDP for MCDs: Financial Progress Report as on 31/12/2013 for the Projects Approved during 11th Plan (Rs. In Lakh)'. Available at:

http://www.minorityaffairs.gov.in/11_plan [accessed on 3 May 2014]; Ministry of Minority Affairs, 'MSDP for MCDs – Approval for 11th Plan: Physical Progress Report for Period ending 31/12/2013'.

Available at:

http://www.minorityaffairs.gov.in/sites/upload_files/moma/files/Physical%2011th%20plan_0.pdf [accessed on 3 May 2014].

Planning Commission. In addition, MoMA received recommendations from the National Advisory Council (NAC) on education and employment schemes, and made revisions to the MSDP guidelines. As a result the Twelfth Five-Year Plan (2012-17) demonstrates a more concentrated effort on proportionality. The Steering Committee of Planning Commission recommended that for the Twelfth Five-Year Plan the government should adopt the ‘block’ as a unit of planning, allowing for better targeting of minorities; and the population criterion to identify MCDs should be reduced from 25 per cent to 15 per cent.⁷¹⁴ A noticeable shift can be seen in the minutes of the Empowered Committee, with a new focus on proportionality. As the minutes of the Committee note:

Secretary...[of] Ministry of Minority Affairs emphasised that the benefits accrued by the implementation of MSDP should go to the Minority Community properly. Therefore, not only location of the assets in the areas having substantial minority population is important, but it is also equally important to see that the assets created are actually imparting benefits to the minorities. He requested the state governments to propose the locations accordingly.⁷¹⁵

In the twenty-five meetings of the Empowered Committee that took place since September 2012, this focus on proportionality and targeted benefit has been mentioned in at least twenty-four occasions.⁷¹⁶

Despite these official changes, institutionalised opposition to special treatment for Muslims remains strong. At the end of 2011, the Centre for Budget and Governance Accountability initiated a process to prepare a memorandum for the 2012 Budget Session on the Twelfth Five-Year Plan, with the aim of bringing government’s attention to the need for specific planning intervention to address Muslim backwardness.⁷¹⁷

⁷¹⁴ It is stated that ‘MSDP programmes have left out huge minority areas including towns, urban conglomerates and isolated villages/hamlets. These should be brought within the ambit of MSDP.’ Planning Commission, ‘Report of the Steering Committee on “Empowering of Minorities” for the Twelfth Five-Year Plan’, 24.

⁷¹⁵ This section is repeated in minutes of 58th – 83rd meetings. For instance, see Ministry of Minority Affairs, *Minutes of the 58th Meeting of Empowered Committee*, 27 September 2011. Available at: http://www.minorityaffairs.gov.in/sites/upload_files/moma/files/minutes_0.PDF [accessed on 3 May 2014].

⁷¹⁶ In the minutes of the 62nd meeting uploaded on the MoMA website, the scanned file of page 4, which may contain the same paragraph, is missing. In the light of other meetings, it is assumed that focused effort on proportionality must also have been mentioned in the 62nd meeting.

⁷¹⁷ Some of the key initiatives in this memorandum include focused effort on 1) strengthening the 15PP on the lines of the Scheduled Caste Sub-Plan (SCSP) and Tribal Sub-Plan (TSP) along with reforms in the budgetary processes and institutions, 2) creating a separate budget statement on the 15PP along with

Following the endorsement of the memorandum by MPs, the Centre held a meeting with the Minister of Minority Affairs in May 2012. After the Minister's positive response, in July and August 2012, the principal secretary to Prime Minister invited the line ministries, which fall under 15PP, to provide beneficiary data on religious minorities. But this request was refused.⁷¹⁸ To what extent the changes in the Twelfth Five-Year Plan are likely to be transformed into reality remains to be seen.

Conclusion

This chapter has focused on limited case studies – scholarships, credit and MSDP – aimed at improving service delivery for socio-economically disadvantaged Muslims. These policy initiatives were very different but encountered similar problems. In general, they were beset by poor design, ambiguous executive control, weak implementation,⁷¹⁹ chronic under-funding, bewildering complexity and overlap, and above all, weak mechanisms of monitoring, evaluation and targeting of religious beneficiaries.⁷²⁰ The absence of the latter, as we have noted, was all the more surprising given that in policy announcements monitoring was regularly mentioned as an essential requirement of service delivery.⁷²¹ In large measure, these shortcomings stemmed from

earmarked budget heads in the detailed demands for grants like SCSP and TSP, 3) annual reports of all ministries/departments should provide disaggregated religious group-wise data on Muslim beneficiaries in schemes, public employment, and access to credit, 4) creating effective institutional mechanisms (Minority Welfare Department at district and state levels) and providing adequate staff for effective implementation at the state level, and 5) expanding the coverage of the MSDP beyond the 90 MCDs to ensure service delivery to the community. *Memorandum to Honourable Prime Minister on Key Interventions for Muslims in 12th Plan* (New Delhi: Centre for Budget and Governance Accountability, 2011).

⁷¹⁸ Jawed Alam Khan, interview, 11 April 2014, New Delhi.

⁷¹⁹ In Andhra Pradesh not a single district was identified under the MSDP, *RSD*, 30 November 2009. In the case of Bihar, the strict selection criteria for MCDs failed to cover towns where there are sizeable populations of minorities, *RSD*, 17 August 2010.

⁷²⁰ The guideline of the PM's 15PP stated that 'considering the complexity of the programme and its wide reach, wherever possible, Ministries/Departments concerned will earmark 15 per cent of the physical targets and financial outlays for ministries.' However, in the explanation of how the scheme should be implemented, ambiguous terminology such as 'a certain percentage' gave leeway to administrators in interpretation and hence in implementation. Under the Eleventh Five-Year Plan, monitoring of all existing and new interventions was emphasised, and hence MoMA had to ensure that other concerned ministries and departments monitored the implementation of the 15PP. The monitoring mechanism for implementation of the PM's 15 PP appeared to be strengthened in 2009 through the government's approval that two members from the Lok Sabha, one from the Rajya Sabha, and two from the Legislative Assembly, be nominated by state government for inclusion in the State Level Committee. Despite these recommendations, the monitoring data for religious minorities has not been made public.

⁷²¹ In 2009, under pressure, MoMA hurriedly assigned a task of monitoring the implementation of schemes for minorities to the National Productivity Council, an autonomous organisation under Ministry

UPA's reluctance to develop its policies for disadvantaged Muslims as a special programme *à la* SCs and STs. As any such special programme was equated by UPA's opponents (and some of its own supporters) – political as well as administrative – with reservations and special treatment, the government was compelled to use executive discretion rather than primary legislation. But as the UPA leadership struggled to explain satisfactorily the distinction between positive action and reservations, as we saw in the Minister of Finance Chidambaram's response to a parliamentary question, opposition to the schemes mounted nationally and within the states. While there have been some notable successes, for instance the take-up of the scholarship scheme, and the UPA's executive action also created an enabling environment in which pro-minority policy actors could mobilise and influence policy, such as the revisions for the Twelfth Five-Year Plan, the overall picture is one of determined political and institutional resistance. As the UPA's commitment to positive action for Muslims after 2007 waned, the potential momentum for a new critical juncture to create a new paradigm of equality of opportunity for religious minorities had been lost. The familiar pattern of historical path dependence was all too evident in symbolic implementation and political distancing from these policies long before May 2014.

Chapter Seven

UPA, Muslims and communal violence bill

Introduction

Equal protection under the law for racial, ethnic, religious and other minorities is considered a fundamental right, and in the 1980s and 1990s, western democracies increasingly adopted legislation that outlawed specific forms of hate crime targeted at minorities.⁷²² In India, special legislative provisions for vulnerable groups, such as the anti-discrimination measures in the Protection of Civil Rights Act (1955) and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989), have provided strong legal protection and security to caste groups in the wake of violence. In contrast, though religious minorities, especially Muslims, have been the target of violence during communal riots, they (and other) religious minorities lack equivalent protection. Hindu-Muslim riots and anti-Muslim pogroms have become the defining feature of post-1947 collective violence in India, and the regular recurrence of such events presents a serious challenge to the principles of secularism and religious tolerance. Recognising this fact, the UPA government promised to ‘enact a model comprehensive law to deal with communal violence’.⁷²³

In this chapter we undertake a detailed case study of the UPA’s efforts to legislate a model anti-communal violence bill by focusing on draft bills produced in 2005 and 2011 and the policy process thereafter. We highlight how UPA’s efforts to produce ‘top-down’ legislation were frustrated by the institutionalised opposition to such a measure – political, administrative and judicial – and how they supported a Muslim civil society network that sought to build momentum for the bill. The goal of a new, normative legislation that could have significantly increased the penalties for committing communal violence, however, continued to elude the UPA. Faced with

⁷²² Nathan Hall, Abbee Corb, Paul Giannasi, John Grieve, eds., *The Routledge International Handbook on Hate Crime* (New York: Routledge, 2014).

⁷²³ National Common Minimum Programme of the Government of India. Available at: <http://pmindia.nic.in/cmp.pdf> [accessed on 11 April 2012].

opposition within its own ranks, the Congress-led UPA eventually opted for symbolic implementation.

Agenda-setting

After 2004, the UPA government was determined to prevent Gujarat-type anti-minority massacres. Historically, in the aftermath of violence, state and central governments have usually taken actions, some stronger than others, to deal with riots. State government and police have often been partisan in controlling the violence, managing the post-conflict situations, and providing relief and rehabilitation.⁷²⁴ Discrimination against Muslims has been most visible in the use of force, preventive arrests, treatment of persons detained, investigation, and the detection and prosecution of cases registered during riots.⁷²⁵ Thus, the Gujarat riots resulted in the death of 2,000 Muslims and the displacement of 150,000 into relief camps, in significant part due to the ambiguous attitudes of the authorities and their failure to control the violence.⁷²⁶

Following the Gujarat riots, the United States Commission on International Religious Freedom designated India in its 'Countries of Particular Concern' list in 2002 and 2003.⁷²⁷ However, India was removed from this list in 2005 on the grounds that the

⁷²⁴ See, Steven I. Wilkinson, *Votes and Violence: Electoral Competition and Ethnic Riots in India* (Cambridge: Cambridge University Press, 2004); Colin Gonsalves, 'Institutionalised Communalism in the Police Force: The Breakdown in the Criminal Justice System', *International Covenant on Civil and Political Rights* 1:3 (June 2002); Dipankar Gupta, *Justice before Reconciliation: Negotiating a 'New Normal' in Post-Riot Mumbai and Ahmedabad* (New Delhi: Routledge, 2011). Gupta notes that not only in the aftermath of the Gujarat riot, but also in other riots in history of India, the authorities have neglected to help the riot victims, see especially Ch. 5.

⁷²⁵ For the state's response to outbreak of communal riots, see Asghar Ali Engineer, 'Communal Violence and Role of Police', *EPW* 29:15 (9 April 1994), 835-40; Peter van der Veer, *Religious Nationalism: Hindus and Muslims in India* (Delhi: Oxford University Press, 1996); Ornit Shani, *Communalism, Caste and Hindu Nationalism: The Violence in Gujarat* (Cambridge: Cambridge University Press, 2007); Kadayam Suryanarayanan Subramanian, *Political Violence and the Police in India* (London: Sage Publications, 2007); and Thomas Blom Hansen, *The Saffron Wave: Democracy and Hindu Nationalism in Modern India* (Princeton: Princeton University Press, 1999).

⁷²⁶ Zoya Hasan, 'Mass Violence and Wheels of Indian [In]justice', in Amrita Basu and Srirupa Roy, eds., *Violence and Democracy in India* (Oxford: Seagull Books, 2006), 201-2. It should be noted that the data on the death toll and the missing vary among sources. According to data provided by the Government of Gujarat, 254 Hindus and 790 Muslims were killed, 223 missing, 2548 injured, 919 were rendered widows, and 606 children orphaned during the riots. *RSD*, 11 May 2005.

⁷²⁷ U.S. Commission on International Religious Freedom, *Annual Report of the United States Commission on International Religious Freedom*, May 2002; U.S. Commission on International Religious Freedom, *Annual Report of the United States Commission on International Religious Freedom*, May 2003. In 2004, there was disagreement among members of the commission on the inclusion of India in 'countries of

UPA had pledged to tackle anti-religious discrimination and to bring domestic legislation addressing increasingly active anti-religious discrimination following 9/11. The Congress-led UPA's NCMP promised:

...to preserve, protect and promote social harmony and to enforce the law without fear or favour to deal with all obscurantist and fundamentalist elements who seek to disturb social amity and peace.⁷²⁸

Earlier, the Congress manifesto had promised to 'enact a model comprehensive law to deal with communal violence'⁷²⁹ by stating that:

The Congress will adopt all possible measures to promote and maintain communal peace and harmony, especially in sensitive areas. It will enact a comprehensive law on social violence in all its forms and manifestations, providing for investigations by a central agency, prosecution by Special Courts and payment of uniform compensation for loss of life, honour and property.⁷³⁰

Although the SCR focused on the socio-economic conditions of the Muslim community, it also expressed concerns about the lack of a sense of security among Muslims. This insecurity felt by the Muslim community, the SCR noted, was due to the lackadaisical attitude of governments in controlling the outbreak of communal riots, inaction in punishing the guilty, particularly state officials, and the attitude of the police and the media in reporting the involvement of Muslims in violence. It also acknowledged that a bare minimum of compensation is awarded to the riot victims, and highlighted the particular delay in payments when the victims are Muslims.⁷³¹ The heightened fear of insecurity among Muslims has occasioned increasing ghettoisation. The SCR also attributed the bias within the police and law and order agencies to the lack of an adequate Muslim presence in the police force.⁷³² While the concern about

particular concern' list. See U.S. Commission on International Religious Freedom, *Annual Report of the United States Commission on International Religious Freedom*, May 2004. Available at <http://www.uscirf.gov/reports-briefs/annual-report> [accessed on 13 November 2013].

⁷²⁸ National Common Minimum Programme. Available at: <http://pmindia.nic.in/cmp.pdf> [accessed on 11 April 2012].

⁷²⁹ Ibid.

⁷³⁰ Indian National Congress, *Manifesto 2004*. Available at: <http://www.indian-elections.com/partymanifestoes/party-manifestoes04/congress.html> [accessed on 13 November 2013].

⁷³¹ SCR, 13.

⁷³² Ibid., 14. See also Harsh Mander, 'Inside Gujarat's Relief Colonies: Surviving State Hostility and Denial', *EPW* 41:51 (23 December 2006), 5235-39.

fear for security of the Muslim community is rightly emphasised, the committee avoided specific recommendation on this matter.⁷³³

Policy formulation and decision-making

In terms of the policy cycle, whilst the agenda-setting stage was clearly identifiable, the process of policy formulation spanned both UPA (I) and UPA (II). In fact it began properly with the introduction of legislation in Parliament.⁷³⁴ There seem to have been limited consultations before the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill (2005) was introduced in the Rajya Sabha on 5th December 2005. In moving the bill, the Minister of Home Affairs claimed its aims were to:

...empower the State Governments and the Central Government to take measures to provide for the prevention and control of communal violence which threatens the secular fabric, unity, integrity and internal security of the Nation and rehabilitation of victims of such violence and for matters connected therewith or incidental thereto.⁷³⁵

These aims were so broad that turning them into legislation would stoke the ire of opponents and supporters alike. The key challenge facing the government was not only to build effective political support for the measure among the states and national parties, but to draft the legislation in a way which distinguished it from existing statutes. Thus, the bill created a new offence of communal violence, identified the target groups, enhanced the powers to control communally disturbed areas, increased the

⁷³³ While both the SCR and the RMCR did not provide recommendations in regard to protection of religious minorities (for it was not a part of their terms of reference), one member of Ranganath Misra Commission, also a jurist, confirmed his view on having a separate law to deal with communal violence because, according to him, the 'IPC is not enough, it is too old. It is based on the social situation at that time. The system of criminal procedure in the country which regulates the working of the IPC is very defective. The Code of Criminal Procedure was replaced with new version in 1973 but the new Code of Criminal Procedure is old wine in new bottle. It still regulates the working of IPC. And this regulatory law is more outdated, worse than the substantive law. IPC is not going to help check communal violence.' Tahir Mahmood, interview, 12 April 2014, New Delhi.

⁷³⁴ In India the mere introduction of a bill in Parliament is not the end point of the policy formulation process as far as the government is concerned, but often the beginning of long drawn-out policy formulation stage, with repeated resubmissions of bills following amendments and revisions by the government. As this bill extended over two Parliaments, we will consider the policy process under UPA (I) and UPA (II).

⁷³⁵ Bill 115, *The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005*, Ministry of Home Affairs, 2005, MGIPMRND-3981RS(S4). Hereafter *The Communal Violence Bill, 2005*.

accountability of officials involved in the management of communal violence, and provided for more effective rehabilitation and relief for the victims than hitherto. Not unnaturally, these radical innovations faced significant challenges.

The bill sought to create a new framework for tackling communal violence. First, it redefined ‘communal violence’ as ‘any act of omission or commission which constitutes a scheduled offence’.⁷³⁶ Second, the target group was to include not only religious communities but ‘any group, caste or community’.⁷³⁷ Third, new powers were given to state governments to declare an area ‘communally disturbed’ when ‘criminal force or violence is committed against any group, caste or community resulting in death or destruction of property; [when] such use of criminal force or violence is committed with a view to create disharmony or feelings of enmity, hatred or ill-will between different group, caste or communities; and unless immediate steps are taken there will be danger to the secular fabric, integrity, internal security of India’.⁷³⁸ All three conditions had to be satisfied for an area to be declared communally disturbed. Fourth, new enhanced powers were also given to District Magistrates to empower them to prevent and control communal violence.⁷³⁹ Fifth, the powers of the centre to deal with states in situations of communal violence were further strengthened: the centre could ‘draw the attention of the State Government to the prevailing situation in [violence afflicted] area’ and ‘direct the State Government to take all immediate measures to suppress such violence or use of criminal force’.⁷⁴⁰ If the centre’s voice were ignored, it could issue ‘a notification declaring any area within a State as a “communally disturbed area”’, and deploy armed forces ‘on a request having been received from the State Government to do so’.⁷⁴¹ Sixth, penalties to be imposed on public servants were enumerated. These included police officers and any public officer who failed to provide protection to victims, to record any information pertinent to the commission of any scheduled offence or to investigate or prosecute any scheduled offence.⁷⁴² Finally, an elaborate institutional mechanism – at the district, state and national level – was outlined for providing relief and rehabilitation to victims of communal violence.⁷⁴³

⁷³⁶ For a list of scheduled offences, see *The Communal Violence Bill, 2005*, The Schedule.

⁷³⁷ *Ibid.*, Section 3 (1).

⁷³⁸ *Ibid.*

⁷³⁹ *Ibid.*, Section 5 (1).

⁷⁴⁰ *Ibid.*, Section 55 (1).

⁷⁴¹ *Ibid.*, Section 55 (3).

⁷⁴² *Ibid.*, Section 17 (1).

⁷⁴³ *Ibid.*, Sections 38 - 48.

Following its introduction in the Rajya Sabha, the draft bill was referred to the Standing Committee on Home Affairs.⁷⁴⁴ While the Standing Committee sought comments from experts, state governments, political parties, and civil society, there was strong opposition to the measure in Parliament. Almost all political parties, including the BJP, BJD, SP, BSP, CPI (M), and RJD, opposed the bill because it threatened states' rights, especially the right to control law and order. In the words of Devendra Prasad Yadav (RJD): 'We do not want the central government to encroach upon the rights of a state. Law and order is a State subject.'⁷⁴⁵ As Bhartruhari Mahtab (BJD) candidly admitted: 'no political party today wants police to become neutral. Nobody wants police to become independent in one way or other, each and every party is enjoying power either in some state or at the Centre.'⁷⁴⁶

Despite this opposition the UPA was determined to pass the measure. The Minister of Home Affairs, Shivraj Patil, insisted that the 'bill is before the Standing Committee and we are expecting [that] the bill should be passed immediately'.⁷⁴⁷ He highlighted that 'everybody will be surprised that the bill is going to be very good for controlling the communal violence in the country', emphasising its key provisions, including the compensation for riot victims. Referring to the system of compensation as 'path-breaking', Patil noted it was the 'responsibility of the society to see that there is no communal violence and if anybody suffers in the communal violence, compensation should be given to him'. In response to the states' objection over the increased powers of the centre to intervene, he offered a consensual approach:

...we are not going to thrust this idea on the country without obtaining the cooperation of the State Government[s]. If you want that this should be done, we will do it. Otherwise, we will keep it aside, and try to persuade them...It needs the concurrence of the State Governments. Our intention is not to impose this on the state governments without their concurrence. If there is concurrence, then something can be done...Supposing something happens in a State that is not controllable, then the only remedy available with the Union Government is to remove

⁷⁴⁴ The bill went through a number of reincarnations by December 2013. It was renamed as 'The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill (2009)', 'The Communal and Sectarian Violence Bill (2010)', 'The Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill (2011)', and most recently, 'The Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill (2013)'. Of the many drafts, only the 2005 and 2011 versions were made public.

⁷⁴⁵ *LSD*, 18 May 2006.

⁷⁴⁶ *Ibid.*

⁷⁴⁷ *Ibid.*

that Government from its position and impose President's Rule to take action. This is the extreme step. If one area is disturbed in a particular State, then by taking this extreme step you are disturbing the entire state. Furthermore, if this extreme step is taken, then also objections are raised about it. This is the reason that it cannot be done very quickly.⁷⁴⁸

Even after the minister's request that the members consider his statement carefully, no follow-up discussion took place until the report of the Standing Committee of Home Affairs was laid before Parliament on 13th December 2006. Chaired by Sushma Swaraj of the BJP, the Standing Committee made no substantive recommendations.⁷⁴⁹ Although the Cabinet gave its approval for the enactment of legislation in March 2007, and notice was given several times (March 2007, December 2008 and February 2009) in the Rajya Sabha for consideration and passing of the bill, and for moving official amendments, it was not reintroduced. In fact, while the bill was pending there were several major incidents of communal violence: Mau (2005), Lucknow, Aligarh, and Vadodara (2006); and Bangalore, Gorakhpur, Mewat-Parbhani, and Indore (2007)⁷⁵⁰ followed by debates in the Rajya Sabha.⁷⁵¹ But these debates took place without any substantive discussion on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill (2005). Indeed, despite the UPA's declarations that the bill was part of its core agenda, there was no debate on its provisions until the end of the Fourteenth Lok Sabha.⁷⁵²

⁷⁴⁸ Ibid.

⁷⁴⁹ The Standing Committee Report did not raise objection to the main objective of the bill, to empower the government to prevent and control communal violence. It only recommended minor amendments to the definition, adding or deleting some phrases, and the inclusion of a woman member in the State Council. Department-Related Parliamentary Standing Committee on Home Affairs, *122nd Report on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005* (New Delhi: GoI, 2006).

⁷⁵⁰ *RSD*, 23 November 2006; *RSD*, 14 March 2007.

⁷⁵¹ *RSD*, 4 May 2005 (Kerala riot); *RSD*, 11 May 2006 (communal violence in Goa, Uttar Pradesh and bomb blasts in Uttar Pradesh, Delhi, Jammu and Kashmir and other parts of the county); *RSD*, 16 May 2006 (communal violence in Gujarat); *RSD*, 14 March 2007 (major incidents of communal nature in Karnataka, Uttar Pradesh, Maharashtra, Madhya Pradesh); *RSD*, 21 March 2007 (data on state-wise details of number of communal incidents and the casualties from 2006 to 2007 was presented); *RSD*, 11 December 2008 (a question on if centre has sought reports from states on communal violence was raised); *RSD*, 1 December 2010 (state-wise details of the incidents of communal violence during the last three years). These debates were moved by politicians who belonged to CPI (M), CPI, JD (U), BJP, RSP (Revolutionary Socialist Party), and the Congress. On three occasions (11 May 2006, 16 May 2006, 11 December 2008), the debates were initiated by Congress members and the Minister of Home Affairs Shivraj Patil provided statistics on the communal situation on 16 May 2006.

⁷⁵² Although some debates did take place in Lok Sabha during the first UPA (I) but none focused on the way in which the bill should be revised. The civil society network showed more engaged participation in discussion of the contents of the bill.

The bill, Muslim organisations and civil society networks

From 2007 onwards, as we have seen in Chapter Four, the momentum in policy change was arrested by the broader political developments affecting the UPA; the bill was no longer perceived as a 'core' part of the UPA's agenda, and hence marginalised in parliamentary debates. In the absence of policy focus on the bill, the Muslim civil society network was brought into the policy process.

The first national consultation of Act Now for Harmony and Democracy (ANHAD), a socio-cultural organisation set up in response to the 2002 Gujarat riots, was held on 16th June 2007. At this meeting, jurists, academics, activists, and legal experts concluded that the bill was 'so flawed that it cannot be remedied by amending a few components'.⁷⁵³ In this consultation, former Chief Justices and judges, including Justice Rajinder Sachar, criticised the UPA for failing to provide the promised 'comprehensive legislation' to fill the legal vacuum. The bill was characterised as 'entirely misplaced in its intent', as it empowered the centre and state governments, but not citizens or victims of communal violence.⁷⁵⁴ Ironically, the contributors felt the enhanced powers could be misused to intimidate minorities rather than protect them. Second, it was suggested the bill inadequately defined the 'scheduled offence' because communal violence was often a targeted mass crime synonymous with genocide and, increasingly, aggravated acts of sexual violence directed at women of the targeted community. Genocide and sexual violence, therefore, were considered essential elements of communal violence in contemporary India. M. Ahmadi, a former Chief Justice of the Supreme Court, suggested that provisions related to genocide should be modelled on the Protection of Human Rights Act (1993). The proposed measure was also heavily criticised for affording limited protection to victims while continuing to provide significant loopholes for officials and administrators against acts of commission and omission. Amongst other groups, the NCM proposed that the language of the bill should be accessible to lower level state functionaries, the word 'communal' should be

⁷⁵³ 'Communal Crimes Bill 2005 Rejected by Jurists, Academicians and Activists', *The Milli Gazette*, 16 June 2007.

⁷⁵⁴ Mander raised a more fundamental issue, namely, 'do the framers of the bill, or the members of the Union Cabinet who approved its submission to Parliament, genuinely believe that Narendra Modi in 2002, or indeed the administrations of Delhi, Nellie, Bhagalpur or Mumbai, when these also burnt in the past in raging communal fires, did not act because they did not have enough power to do so? Was the failure a result of disempowerment, or of criminally *mala fide* public authority in each of these cases?.' Harsh Mander, 'Resisting State Complicity in Communal Crimes: Missed Opportunities in UPA Bill', *EPW* 40:35 (31 December 2005), 5527.

replaced with 'sectarian', and a uniform scale of compensation should be paid within thirty days of each incident.⁷⁵⁵ Rejecting the bill in its entirety, the participants requested that the central government set up a Drafting Committee to formulate a new bill with the active participation of civil society.⁷⁵⁶

It appears that despite these recommendations and pressures, the UPA government remained lukewarm in pushing forward with the legislation. There seems to have been little movement on the bill until early 2009. 'In UPA (I)', recalls a member of NAC, 'there was no process around the bill. The government brought its own draft in 2005. From 2005 to 2009 all we had was civil society opposition to the bill.'⁷⁵⁷ In a context in which serious debates on the bill were missing from Parliament, the active engagement of civil society in discussion and the submission of recommendations to government played a crucial role in the decision-making process. The efforts made

⁷⁵⁵ National Commission for Minorities, 'Suggestions of National Commission for Minorities on Communal Violence Bill 2005'. Available at: http://www.ncm.nic.in/ncm_hindi/Suggestions-of-NCM-on-Communal-Violence-Bill-2005.html [accessed on 4 December 2013]. As a palliative and an interim remedy, compensation is essential to allow the survivors of communal violence to restore their lives. Yet, despite its importance, compensation is one of the least used measures, and there exists a significant gap in the responses to this measure between governments and victims. Usually local officials determine a count of the dead at the end of the riots, but the methods they use and the accuracy of the results have always been contested. Also, as only those people who are identified by the government through the submission of adequate documents can receive a monthly pension, while those who cannot prove their status have no access to compensation. The lack of a comprehensive law which clearly outlines the responsibility and duties of the state to compensate the victims is a major gap in the existing legislation. Generally, compensation is released as an *ex-gratia* payment from central and state governments and distributed to the victims only after a long delay. Sometimes, this delay leads to a number of petitions in the High Court. For instance, the interim report by the Judiciary Inquiry Commission on the 1989 Bhagalpur riot, in which the Muslim community was the major victim, recommended compensation of Rs 3.5 lakh as an *ex-gratia* payment from central government and Rs 2,500 as a monthly pension from the state. Although the central government followed the recommendation, the state government did not disburse the amount for nine months. In addition, only 300 survivors were paid monthly pensions while 844 victims were identified by the report, and the pension was subsequently stopped for reasons unknown. The lack of a uniform scale of compensation for death or injury in cases of communal violence leaves victims, particularly Muslim survivors in misery and the miserly level of compensation leads to a loss of confidence, discouraging them from returning to their original homes while leaving them with no access to alternative shelter as it is the case in the aftermath of Gujarat riots, see Mumtaz Alam Falahi, 'Nitish Government Spends Huge Sum on Bhagalpur Panel, Victims Hapless', *Two Circles*, 13 July 2010.

⁷⁵⁶ 'Communal Crimes Bill 2005 Rejected by Jurists, Academicians and Activists', *The Milli Gazette*, 16 June 2007 (electronic edition).

⁷⁵⁷ Farah Naqvi, interview, 16 April 2014, New Delhi. The annual reports of Ministry of Home Affairs from 2004 to 2009 provide few insights into the progress of the bill. In essence they emphasise five aspects: that the government decided to enact a model comprehensive bill; that the bill was referred to the parliamentary standing committee on Home Affairs; that three seminars were held to discuss the bill; that the government was in consultations; and the Union Home Minister's attempt to pass the bill in parliament were unsuccessful. See, Ministry of Home Affairs, *Annual Report 2004-05* (New Delhi: GoI, 2005), 8, 129; Ministry of Home Affairs, *Annual Report 2005-06* (New Delhi: GoI, 2006), 120; Ministry of Home Affairs, *Annual Report 2006-07* (New Delhi: GoI, 2007), 5, 106; Ministry of Home Affairs, *Annual Report 2007-08* (New Delhi: GoI, 2008), 105; Ministry of Home Affairs, *Annual Report 2008-09* (New Delhi: GoI, 2009), 49-50.

through civic engagement appeared to counterweigh the state's 'top-down' process, and seems to have been reflected in the 59 amendments cleared by the Cabinet in December 2009.

As we saw in Chapter Four, the nuclear deal with the US, the subsequent vote of confidence against the government and the loss of key coalition partners, as well as the loss of major state elections in 2007, are often cited as the reasons for this backtracking.⁷⁵⁸ Yet, these considerations and the exigencies of coalition politics proved less of a barrier for major constitutional initiatives on SCs, STs, OBCs, and women.⁷⁵⁹ The policy process around the 2009 amendments before and after the Lok Sabha elections remains obscure: it appears unclear whether the amendments were shared with relevant institutions, political parties, and state governments; nor is the immediate reaction of the political parties public knowledge.⁷⁶⁰ What is clear, however, is that the UPA followed the familiar twin-track approach of announcing amendments to the 2005 draft barely a few months before the closing of the Fourteenth Lok Sabha. However, the problem was not simply that the provisions in the draft bill were weak and inappropriate; rather, the embedded culture of institutionalised resistance in the policy process, and political and institutional opposition, acted to frustrate the legislation.

Policy formulation: UPA (II)

In its 2009 election manifesto the Congress committed itself to 'ensuring the right to compensation and rehabilitation for all victims of communal, ethnic and caste violence on standards and levels that are binding on every government'. The 'Indian National Congress', the party's manifesto continued, 'will propose a law that empowers the National Human Rights Commission (NHRC) to monitor investigation and trial in all cases of communal and caste violence'.⁷⁶¹ While the 2004 manifesto had dealt with 'social violence', the 2009 manifesto delineated more precisely the target of the

⁷⁵⁸ See Sanjaya Baru, *The Accidental Prime Minister: The Making and Unmaking of Manmohan Singh* (New Delhi: Penguin, 2014), especially Chs. 11, 12.

⁷⁵⁹ See Ch. 5 and Conclusion.

⁷⁶⁰ This interpretation appears justified given that several key informants interviewed were unable to shed any light on the hiatus.

⁷⁶¹ Indian National Congress, *Lok Sabha Elections 2009 Manifesto*. Available at: <http://aicc.org.in/pdf/manifesto09-eng.pdf> [accessed on 2 December 2013].

proposed bill as ‘communal, ethnic and caste violence’. Now more emphasis was given to victims’ right to compensation and rehabilitation, and the NHRC was to be responsible for monitoring investigations and trials.

Soon after the UPA won the 2009 general elections, Sabir Ali (Janata Dal (United) - JD (U) Bihar), asked about the status of the bill in the Rajya Sabha.⁷⁶² Questioned whether the government proposed to enact the bill, the Minister of State for Home Affairs simply pointed to the events following the introduction of the bill in 2005. Despite an attempt by Bihar MPs to raise the issue,⁷⁶³ the Minister defended the position of central government by responding that police and public order were states’ jurisdiction, and guidelines to promote communal harmony had already been circulated to states and Union Territories in 2008. Concurrently, in the Lok Sabha the Congress MP, P. C. Chacko, confirmed the party’s intent to adopt and implement the bill in full measure.⁷⁶⁴

Prior to the closing of the Fourteenth Lok Sabha, in early 2009, the UPA announced 59 amendments to the 2005 draft. The most notable amendment was that it gave the central government exclusive power to constitute a ‘Unified Command’ following communal violence. The central government’s obligation to constitute a ‘Unified Command’ was substituted for the 2005 draft which stated both ‘the central or state government *may* constitute’ a Unified Command. The 2009 provisions was changed to ensure that ‘the central government *shall* constitute’ a Unified Command whenever central forces were deployed to control communal riots.⁷⁶⁵ In addition, while the previous draft only allowed the central government to intervene and issue instructions to the state in the case of death or destruction of property, the 2009 amendments empowered it to intervene even where there has been no loss of life.⁷⁶⁶ Thus, the centre was empowered to deploy forces at sites where communal violence were likely to occur, or had occurred; it was also enabled to prevent further riots, even if state governments with anti-minority leanings were unwilling to act. If the central government were to play a partisan role, and choose not to deploy forces, the state

⁷⁶² RSD, 15 July 2009.

⁷⁶³ RSD, 2 December 2009.

⁷⁶⁴ LSD, 5 June 2009.

⁷⁶⁵ *The Communal Violence Bill, 2005*, Section 55 (4); *The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2009*, Ministry of Home Affairs, 2009, Section 55 (4).

⁷⁶⁶ (*The Communal Violence Bill, 2009*) *ibid.*, Section 55.

governments would still be able to act independently. But despite these provisions, the 2009 amendments failed to make major revisions.⁷⁶⁷

After the Fifteenth Lok Sabha election, the Union Cabinet cleared the bill for introduction in Parliament in December 2009. The decision came a week after the government tabled the Action Taken Report (ATR) on the Liberhan Commission Report on the 1992 demolition of the Babri Masjid on 24th November 2009. The ATR contained the promise that government would bring in the bill at the earliest opportunity.⁷⁶⁸ By tabling the long-awaited report in Parliament and the action promised, the government appeared to have signalled its intent on the legislation. Vijay Bahuguna (Congress) welcomed the government's move by stating that the 2009 amendments to the bill:

...would enable the centre to intervene in a situation of communal violence without waiting for orders from the Unified Command, district magistrate or state government. The state government will no longer have authority to set [up] Unified Command in situation of communal violence.⁷⁶⁹

The need to empower central government was articulated by the Minister of Law, M. Veerappa Moily, who noted that during incidents, such as those in Gujarat and Odisha (2002 and 2007), 'the nation had to be a mute spectator. Sometimes, the party in power becomes [the] party in what is happening.'⁷⁷⁰

Predictably, however, political parties, particularly the BJP, condemned the bill and the power it would give to central government. A senior BJP leader, Arun Jaitley, claimed that the measure was a major encroachment on the federal structure of the country, and expressed 'serious doubts about the legislative competence of Parliament on a subject which deals with law and order'.⁷⁷¹ Parties on the Left, including the SP, BSP and CPI, chose not to take an official stance on the bill because they were unaware

⁷⁶⁷ Most importantly, the amendments failed to protect victims and still maintained protection for perpetrators of violence.

⁷⁶⁸ 'Memorandum of Action Taken on the Report of the Liberhan Ayodhya Commission of Inquiry'. Available at: <http://data.ndtv.com/downloads/atr.pdf> [accessed on 24 December 2013].

⁷⁶⁹ *LSD*, 8 December 2009.

⁷⁷⁰ 'Can't be Mute Spectator: Moily Defends Bill on Communal Riots', *Times of India*, 5 December 2009 (electronic edition).

⁷⁷¹ 'BJP Slams Government for Approving Communal Violence Bill', *Outlook*, 4 December 2009 (electronic edition).

of the specific amendments. As noted earlier, it remains unclear whether the amendments were shared with these parties.

The bill, National Advisory Council and civil society networks – UPA (II)

After the clearance of the amendments by the Cabinet, ANHAD held a second round of national consultations with more than 200 participants across India to discuss possibilities and make recommendations. One outcome of this process was the formation of a core group for more engaged interaction with the government. These participants played crucial roles as policy network actors at the regional level, organising public meetings across India to discuss the bill. The Delhi core group held consultations with the Minister of Law, ministry officials, and the sub-group of the NAC to discuss amendments to the bill.⁷⁷² Additional national consultations were also held, with seminars and conferences at the regional level. The engagement of the networks of Muslim activists, academics, and jurists with the policy process marked a new departure from the traditional passivity of such groups. It represented a groundswell of ‘bottom-up’ mobilisation of Muslim activists.

Prompted by the suggestions made by civil society networks and communal violence, the NAC Working Group proceeded to draft a new bill.⁷⁷³ A year later, The Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill (2011) was published online to garner further public feedback. Among the provisions, several were noteworthy.

First, the bill made a crucial distinction between the dominant and non-dominant groups as the targets of communal violence. Groups were identified by religion, language, or caste (SCs or STs), with the aim of providing equal treatment to non-dominant groups under the law.⁷⁷⁴ This distinction was established to correct the

⁷⁷² ‘Proposed Amendments to the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005’, *Counter currents*, 24 June 2010. Available at:

<http://www.countercurrents.org/hashmi260610.htm> [accessed on 1 May 2014].

⁷⁷³ National Advisory Council, *Press Release*, 14 July 2010. Available at:

http://nac.nic.in/press_releases/14_july_2010.pdf [accessed on 2 November 2013].

⁷⁷⁴ *Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011*, National Advisory Council, 2011. Hereafter *The Communal Violence Bill, 2011*. Section 3 (e). The bill defined a ‘group’ as ‘a religious or linguistic minority, in any State in the Union of India, or SCs and STs within the meaning of clauses (24) and (25) of Article 366 of the Constitution.’

institutional bias against groups, considered particularly vulnerable at the state level. Second, it provided a more comprehensive definition of ‘communal and targeted violence’ as ‘any act or series of acts, whether spontaneous or planned, resulting in injury or harm to the person and or property, knowingly directed against any person by virtue of his or her membership of any group’.⁷⁷⁵ Third, the range of offences in the new legislation included ‘sexual assault’.⁷⁷⁶ Fourth, to make officials and administrators more accountable for dereliction of duty, the bill proposed the punishment of public servants, with imprisonment for two years, extendable to five years, and liability to a fine.⁷⁷⁷ In contrast to the 2005 draft, which provided legal immunity from prosecution to central or state governments and public servants if any action had been taken in ‘good faith’ or was ‘intended to be done under the Act’, the 2011 version significantly reduced the possibility for the exercise of discretion or institutional bias. Fifth, the bill introduced the idea of ‘breach of command responsibility’ – the exercise of superior command – to cover public servants, non-state actors, and heads of associations.⁷⁷⁸ Sixth, as in the previous legislative proposal, the new bill proposed to create new national and state authorities to give advice and recommendations, and to monitor the investigation, prosecution, trial of offences and provision of relief in order to ensure ‘public functionaries act’ in the wake of communal violence.⁷⁷⁹ Seventh, the Indian Penal Code (IPC) was superseded by not allowing the defence of ‘sovereign immunity’⁷⁸⁰ – a defence which hindered questioning or prosecution of state officials. Finally, relief and rehabilitation was to be awarded not only to religious and linguistic minorities, SCs and STs, but also to non-religious and linguistic minorities, non-SCs and non-STs affected by the communal violence. State Assessment Committees were to assess the extent of injury to life and property and all aspects of reparation and restitution, including the quantum of compensation and other measures to be taken in the wake of communal and targeted violence. Compensation was to be awarded within thirty days of the incident, and the amount of compensation for death and rape was specified. The failure of public servants to take all reasonable steps to ensure the provision of relief measures was defined as a dereliction of duty.⁷⁸¹

⁷⁷⁵ *The Communal Violence Bill, 2011*, Section 3 (c).

⁷⁷⁶ *Ibid.*, Section 7.

⁷⁷⁷ *Ibid.*, Section 117.

⁷⁷⁸ *Ibid.*, Section 14, 15, 118, 119.

⁷⁷⁹ *Ibid.*, Sections 20-54.

⁷⁸⁰ *Ibid.*, Section 73 (2).

⁷⁸¹ *Ibid.*, Section 13 (xi). There has been no law or guidance for people who are internally displaced due to acts of violence. Remedy and reparation for the victims have been left to state governments.

In the new NAC draft, dereliction of duty by public officials was placed at the heart of the bill. In the words of a member of NAC Working Group:

The bill not only held the public officials accountable but structurally gave them confidence and liberation from political control...[it would empower] public officials to turn around to a political master and say 'No, you want me to do something, but I will not do it. Why? Because when it comes to facing prison sentence it is me, not you!' So the bill was to hold both of them accountable and liberate them from political control, because it is political control that commits and manipulates the communal violence. This is why we need a law.⁷⁸²

Response to the draft bill

The draft bill was submitted to the Ministry of Home Affairs on 25th July 2011, along with the suggestions received. It was to be cleared before the Cabinet with a view to its introduction in Parliament, but the government avoided an official announcement on the measure.⁷⁸³ Thus, when the draft was made public, some jurists opposed it on the grounds that India already had more laws than anywhere else in the world.⁷⁸⁴ In a similar vein, the sociologist Dipankar Gupta criticised it as an unwelcome development:

The bill is stupid and useless. It is only a way of passing the buck. The basic point of the bill should be that when anyone is in power, and if something happens under his watch, the person should be responsible. But that is not the case here. There is nothing wrong with our laws and we don't need any new bill. The main problem is not the bill, but the politicians and those who are ruling. Across the world, very strong administrative support and riots always go together. The Communal Violence Bill does not raise this issue. What is its point?⁷⁸⁵

⁷⁸² Naqvi, interview, 16 April 2014, New Delhi.

⁷⁸³ 'NAC submitted a completely new draft (from the 2005 Bill). It was a recommendation to government. It is the government to...[come up with] its own version as a law. We gave the recommendation but the government never came up with its own version of the bill in a robust manner,' *ibid*.

⁷⁸⁴ The former Chief Justice, and former Chairperson of the NHRC, J.S. Verma, who was proactive after the Gujarat riot, argued that no law can eradicate communalism, hence there is a 'need to identify the lacunae in the present laws, if any, and make amendments'. Justice B. N. Srikrishna, a former Supreme Court judge and Chair of the Mumbai riot inquiry report, said that 'there is no need for an elaborate separate Act for that. Large-scale communal riots like in Mumbai or Gujarat do not happen on the spur of the moment. These are the result of elaborate preparations. There should be an effective method of tagging known communal elements and for swooping down on them with preventive arrests in case of intelligence inputs...What is needed is pre facto not post facto activism. The Bill suggests no such quick reactive machinery'. The Supreme Court advocate Harish Salve also pointed out that existing legislation is sufficient to deal with communal violence, but emphasised good investigation and quick trial. In his words: 'Communities cannot be tried under criminal law. This law will only polarise the vote.' See Priya Sahgal, 'Sonia's New Riot Act', *India Today*, 9 July 2011 (electronic edition); Seema Chishti, 'Justice Verma and Srikrishna Red-Flag NAC Draft Anti-Communal Violence Bill', *Indian Express*, 25 June 2011 (electronic edition).

⁷⁸⁵ Dipankar Gupta, interview, 12 March 2013, New Delhi.

The main criticisms from the BJP and other political parties were based on three grounds. First, most parties and state governments criticised the bill as a serious encroachment on the federal structure of India. Second, the BJP in particular argued that it was anti-majority, since it could be invoked only when minorities were attacked.⁷⁸⁶ Finally, the BJP objected to the fact that the measure was drafted by the NAC, a body without constitutional or parliamentary status, and without consultation with state governments.⁷⁸⁷

Responding to these criticism the Congress spokesperson, Manish Tewari, defended the party's position:

Jaitley is giving the bill a communal twist and deliberately trying to spread misinformation. I am a Hindu from Punjab which makes me a minority and a protected species under this bill...if there is a riot instigated by a minority community in any state, then they will be dealt with in accordance with ordinary law. If instigated by the majority in any state, then this bill would apply in addition to IPC.⁷⁸⁸

The Minister of Minority Affairs, Salman Khurshid, also confirmed that 'an attempt to emphasise protection for a minority...is consistent with affirmative action under the Constitution. These are not departures from equality but the very effective implementation of equality.'⁷⁸⁹

Decision-making: UPA (II)

UPA (II)'s efforts to manage the policy formulation process soon ran into the ground. While the bill was embroiled in political, executive and judicial quagmires, the Prime Minister called a meeting of the NIC – a national platform for states, MPs, ministers, and senior government officers. The agenda of the 2011 meeting included communalism, discrimination against minorities, civil disturbances, and the

⁷⁸⁶ Arun Jaitely, 'An Analysis of the Communal Violence Bill as Drafted by NAC', *BJP*, 26 May 2011. Available at: http://www.bjp.org/index.php?option=com_content&view=article&id=6859:an-analysis-of-the-communal-violence-bill-as-drafted-by-nac&catid=111:interview-a-articles&Itemid=1067 [accessed on 2 December 2013].

⁷⁸⁷ The NAC is an 'advisory', not administrative, body that conducted a range of consultations with civil society on key measures which included the Right to Food Bill, the MGNREGS, and the RTI Act. Naqvi, interview, 27 February 2013, New Delhi.

⁷⁸⁸ Sahgal, 'Sonia's New Riot Act'.

⁷⁸⁹ *Ibid.*

radicalisation of youth;⁷⁹⁰ and despite requests from attendees to discuss the implications of the bomb blast in Delhi the previous week, the government placed The Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill (2011) at the top of the agenda. Opening remarks made by the Prime Minister confirmed the UPA's commitment to the new legislation:

We...need to recognise that members of minority communities often have a perception of being unfairly targeted by law enforcement agencies in the aftermath of unfortunate incidents. While law must take its own course, we need to ensure that our investigating agencies are free from bias and prejudice of any kind.⁷⁹¹

However, a close examination of the record of the proceedings reveals that discussion of the bill was hastily conducted, and the NIC meeting was used by the government to 'displace blame' onto other policy actors.

At the NIC the bill was opposed by the BJP-ruled states. Party leaders in the Rajya Sabha and Lok Sabha, Arun Jaitley and Sushma Swaraj, argued that it would 'encourage' rather than curb communal violence by increasing the divide between majority and minority communities.⁷⁹² West Bengal, ruled by the Congress' ally, TMC, failed to back the measure. It was also opposed by most political parties – the BJP, SAD, JD (U), CPI (M), BJD, RJD, and All India Anna Dravida Munnetra Kazhagam (AIADMK) – and states because it made a distinction of victims on the basis of religion and language, and because it would erode the rights of the states in dealing with law and order. The CPI (M) explained its opposition on the grounds that 'the existing legal framework is adequate to deal with all kinds of law and order situations including the communal disturbances'.⁷⁹³ Naveen Patnaik (Odisha) pointed to 'many objectionable provisions, which impinge on the autonomy of the states'.⁷⁹⁴ Similar objections were expressed by Chief Ministers of Madhya Pradesh, Punjab, and most states in the North-east. The Chief Ministers from Gujarat (Narendra Modi), Bihar (Nitish Kumar), Uttar Pradesh (Mayawati), West Bengal (Mamata Banerjee), Tamil Nadu (J. Jayalalithaa), Punjab (Parkash Singh Badal), Rajasthan (Ashok Gehlot), and Kerala (Oommen

⁷⁹⁰ Ministry of Home Affairs, *National Integration Council: Verbatim Record of the Proceedings* (New Delhi: GoI, 2011), 1-2.

⁷⁹¹ *Ibid.*, 6.

⁷⁹² *Ibid.*, 21-2, 25-7.

⁷⁹³ *Ibid.*, 13.

⁷⁹⁴ *Ibid.*, 8.

Chandy) abstained from supporting the measure. Kumar expressed concern that the bill would create an impression that the majority community was ‘always responsible for communal incidents’,⁷⁹⁵ while Mayawati refused to make an official comment for she had not read the draft, criticising the centre for seeking the states’ views without sending them the draft. The bill was supported by only four participants: John Dayal, a member of the NAC and NIC, and three social activists, including Asghar Ali Engineer.⁷⁹⁶ Perhaps most significantly, the absence of leading Chief Ministers from the NIC sent a clear message. As a result of this opposition, the Prime Minister had to give assurances in his concluding remarks that the UPA had no intention of disturbing the federal structure by enacting the legislation.⁷⁹⁷ The following day Home Secretary R. K. Singh reconfirmed the government’s commitment to keep the federal framework, and to engage in several rounds of consultation with states.⁷⁹⁸

It would appear that by placing The Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill (2011) at the top of the NIC meeting agenda the government was signalling – as well as showcasing – its intent. However, the path taken by the UPA before that meeting was a clear indication of its ambivalence on minority issues.⁷⁹⁹ As pointed out by Mayawati, the draft bill had not been circulated to political parties and state governments before the NIC meeting; and given the stiff opposition and criticism since its introduction in 2005, it was perhaps to be expected that Congress would proceed cautiously.⁸⁰⁰

⁷⁹⁵ ‘Nitish Kumar Concerned over Provisions of Communal Violence Bill’, *Times of India*, 10 September 2011 (electronic edition).

⁷⁹⁶ John Dayal, ‘Fate of Communal Violence Bill Questionable’, *Beyond Headlines*, 22 September 2011 (electronic edition).

⁷⁹⁷ Ministry of Home Affairs, *National Integration Council*, 114.

⁷⁹⁸ ‘Government to Consider Views on Communal Violence Bill’, *India Today*, 10 September 2011 (electronic edition).

⁷⁹⁹ Asaduddin Owaisi, interview, 6 March 2013, New Delhi; see also *LSD*, 6 March 2013.

⁸⁰⁰ The government’s ambivalent approach on the bill during the NIC meeting was confirmed by key informants. ‘The fact that the bill was not shared with political parties before the meeting gave me the feeling that the Home Ministry itself was interested in sabotage. The point of NIC meeting was to ensure that it is roundly-criticised and never get consensus.’ Habibullah, interview, 11 April 2014, New Delhi. Indeed, a second key informant noted: ‘Nobody from the government defended the bill. The meeting was designed to kill the bill and not move forward.’ Vrinda Grover, interview, 15 April 2014, New Delhi. A third interviewee commented: ‘The opportunity was used to discredit rather than to defend and uphold the bill. Not owning its own bill, the government held the meeting, just allowing NAC version to be critiqued by the political opposition. It was an act of bad faith.’ Naqvi, interview, 16 April 2014, New Delhi. John Dayal, a member of NIC, substantiates this interpretation. See, Dayal, ‘Fate of Communal Violence Bill Questionable’.

Following the NIC meeting, the government avoided any official announcement or parliamentary debate. It is unclear whether the draft bill was circulated to state governments and political parties. Meanwhile, the Rashtriya Swayamsevak Sangh (RSS) amplified the BJP's characterisation of the bill as anti-majority.⁸⁰¹ At a seminar held by the Advocates for Dharma, leading judiciary and police officers forcefully argued that such a measure was both undesirable and unacceptable. K. T. Thomas, a former judge of the Supreme Court, asserted that the bill would not stand the scrutiny of the Supreme Court because it contravened Article 21 of the Constitution.⁸⁰² Arguing that it would damage 'national unity and integrity [and] divide society and disrupt social harmony', he said it would lead to 'disintegration'.⁸⁰³ Such powerful institutionalised resistance was also evident in the words of Joginder Singh, a former Director of the Central Bureau of Investigation. He termed the measure as 'absolutely stupid'. He insisted that India had never discriminated against minorities, and such a 'bill [was] more appropriate to Pakistan than to India'.⁸⁰⁴

Despite the launch of the third national consultation by ANHAD on 21st April 2012, and occasional campaigns by activists for the bill to be tabled, the government made no official move until August 2013, when communal violence erupted in Muzaffarnagar, leading to the displacement of over 50,000 Muslims.⁸⁰⁵ The Minister of Minority Affairs urged the Prime Minister to take immediate action,⁸⁰⁶ and he vowed that perpetrators would be given the strictest punishment.⁸⁰⁷ In the light of the Muzaffarnagar violence, the executive committee of the All-India Muslim Personal Law

⁸⁰¹ 'No Need for Communal Violence Bill, Says RSS', *Economic Times*, 15 October 2011 (electronic edition).

⁸⁰² Article 21 states that 'no person shall be deprived of his life or personal liberty except according to procedure established by law'.

⁸⁰³ The remark of the former Judge K. T. Thomas should be distinguished from those of former Chief Justice J. S. Verma and Justice B. N. Srikrishna, in that while the former rejected the bill on the basis of principle and ideology, the latter emphasised increasing victims' access to justice by making amendments to existing laws.

⁸⁰⁴ "Communal Violence Bill 'Not Needed'", *The Hindu*, 24 October 2011 (electronic edition).

⁸⁰⁵ The riot resulted in 62 casualties and forced 51,000 to flee their homes to temporary camps. 'Creating a Robust Accountability System', *The Hindu*, 27 December 2013 (electronic edition).

⁸⁰⁶ 'Muzaffarnagar Riots: Rahman Khan Meets Prime Minister, Calls for Steps to Ensure Safety of People', *Zee news*, 11 September 2013 (electronic edition).

⁸⁰⁷ Neelabh Srivastava, 'Muzaffarnagar Riots: Guilty will be Punished, Says Prime Minister', *Outlook*, 16 September 2013 (electronic edition).

Board demanded the bill's early enactment.⁸⁰⁸ The 2013 annual meeting of the NIC was held on 23rd September 2013 but the bill was not on the agenda.⁸⁰⁹

Three months after Muzaffarnagar, the government finally tabled the bill in the Winter Session of Parliament in December 2013.⁸¹⁰ Before the session, the Home Secretary called for a meeting with the state Home Secretaries and Secretaries of central Ministries of Law, Social Justice, Minority Affairs, and DoPT.⁸¹¹ Not unexpectedly, the Home Secretaries from BJP-ruled states vehemently opposed the initiative. While the decision to convene the meeting may have seemed to indicate that the government was serious, one Home Ministry official candidly admitted that:

though the communal violence bill is being taken up on a priority basis, tabling it in parliament is more a statement of intent by the ruling dispensation. The government wants to showcase its commitment to enacting a tough law against communal violence, whether or not it gets the support of other parties.⁸¹²

This symbolic approach was further underpinned by the institutionalised opposition to the bill expressed in letters received from Chief Ministers of Gujarat, Tamil Nadu, West Bengal and Odisha. Banerjee castigated the proposal as a 'political vendetta', denouncing it as 'totally anti-federal and unconstitutional'.⁸¹³ Similarly, Jayalalithaa warned that 'any hasty attempt to bring in such legislation without wide consultation amongst all political parties and stakeholders would be a completely undemocratic move'.⁸¹⁴ Reiterating her objection to the 2011 draft, and her position in the 2011 NIC meeting, she argued that the changes were 'cosmetic at best' and that 'many of the serious issues with the earlier draft bill still remain[ed]'. On the day the Winter Session was scheduled to begin, 5th December 2013, Narendra Modi, the BJP's prime ministerial candidate in the forthcoming general elections, questioned the UPA's

⁸⁰⁸ 'Muslim Body Raps Uttar Pradesh Government for Muzaffarnagar Riots', *Hindustan Times*, 22 September 2013 (electronic edition).

⁸⁰⁹ Ministry of Home Affairs, 'Press Conference by Union Home Minister', *PIB*, 10 October 2013.

⁸¹⁰ 'Government Prepares to Table Communal Violence Bill in Winter Session of Parliament', *India Today*, 20 October 2013 (electronic edition).

⁸¹¹ Bharti Jain, 'BJP, Non-Congress States to Oppose Communal Violence Bill in Parliament', *Times of India*, 3 December 2013 (electronic edition).

⁸¹² *Ibid.*

⁸¹³ 'Mamata Slams Centre for Reviving Communal Violence Bill', *Outlook*, 30 November 2013 (electronic edition).

⁸¹⁴ 'Jaya Asks Prime Minister not to Move Communal Violence Bill in Parliament', *Outlook*, 2 December 2013 (electronic edition).

timing, terming the new proposal as ‘ill-conceived, poorly drafted and a recipe for disaster’.⁸¹⁵

Following Modi’s letter, the Minister of Home Affairs, Sushil Kumar Shinde, declared that ‘we will definitely pass the bill. The bill will be passed in this session. Modi is doing his work; we will do ours.’⁸¹⁶ The Minister of Minority Affairs, K. Rahman Khan, also confirmed that ‘it is our duty to pass the bill, as it will be of benefit to the people. Only certain states are opposing this bill. I think there is no basis to Modi’s argument. His comments are unfortunate.’⁸¹⁷ Yet, despite these comments, media reports suggested that the bill underwent some dramatic modifications. Some of the major changes included:⁸¹⁸ the deletion of the distinction between minority and the majority groups; the rejection of the provision to create a new national authority; a reduction in the compensation for death caused by communal violence from Rs 15 lakh to Rs 7 lakh; reinstatement of the district magistrate and commissioner of police as the competent authority in a communally disturbed area; and limitation of the target group to ‘religious or linguistic minorities’.⁸¹⁹ The government’s response appears to have been shaped by what was politically feasible. As a senior official from the Ministry of Home Affairs observed ‘the reworked draft bill ensures that the centre does not override the states’ powers, dispelling the so-called anti-federal concerns raised by BJP as well as parties like AIADMK, TMC and BJD’.⁸²⁰

At the beginning of the Winter Session of Parliament, which opened on 5th December 2013, the UPA became preoccupied with passing the Lokpal and Lokayuktas Bill following reversals in the state elections in Delhi, Chhattisgarh, Madhya Pradesh

⁸¹⁵ Narendra Modi, ‘Letter: Shri Narendra Modi to Prime Minister on Revised Prevention of Communal Violence Bill, 2013’, *BJP*, 5 December 2013. Available at: http://www.bjp.org/index.php?option=com_content&view=article&id=9241:letter-shri-narendra-modi-to-pm-on-revised-prevention-of-communal-violence-bill-2013&catid=68:press-releases&Itemid=494 [accessed on 8 December 2013].

⁸¹⁶ ‘Communal Violence Bill: Congress, BJP Spar over Modi’s Critical Letter, Tweets’, *Business Standard*, 5 December 2013 (electronic edition).

⁸¹⁷ *Ibid.*

⁸¹⁸ At the time of writing (August 2014) the revised version of the UPA’s Communal Violence Bill had not been made public.

⁸¹⁹ ‘Centre Makes Communal Violence Bill Community Neutral: Sources’, *IBN*, 5 December 2013; ‘Communal Violence Bill under Attack, UPA Amends it to Include All Religious Groups’, *Indian Express*, 6 December 2013; ‘Relief for Babus in Reworked Draft of Communal Violence Bill’, *Times of India*, 7 December 2013 (electronic editions). The exclusion of SCs and STs from the target group created uproar inside and outside Parliament.

⁸²⁰ Bharti Jain, ‘Bowling to Pressure, Government Reworks Communal Violence Bill’, *Times of India*, 6 December 2013 (electronic edition).

and Rajasthan.⁸²¹ It appeared that passage of the Lokpal and Lokayuktas Bill, and the determination of the BJP and dissidents within Congress (over the creation of a new state of Telangana) to disrupt Parliament would crowd out the time for the bill. Fearing that it might be lost, Muslim organisations tried to increase the pressure on the government. The Jamiat Ulama-i-Hind held a conference in Delhi to demand the bill's enactment, attended by thousands of Muslims and around 200 clerics from India and neighbouring countries.⁸²² Regionally, there were Muslim-led protests against victimisation and exclusion: victims of the Muzaffarnagar riots and lawyers from the Aligarh Muslim University Lawyers Forum demanded immediate clearance of the bill.⁸²³ Unexpectedly, on 16th December the bill was cleared by the Cabinet – after further revisions, including a greater role for the NHRC to monitor the performance of civil servants in preventing and controlling riots. The Minister of Home Affairs announced that he would table the bill in Parliament the following day, despite uproar from the states and political parties.⁸²⁴ Nitish Kumar, Bihar Chief Minister, welcomed the government's move, emphasising that the centre should be empowered to intervene in cases of communal riots.⁸²⁵ On the increased role of the NHRC, however, the Chairman of that body, Justice K. G. Balakrishnan, lamented that it would place an added burden on the commission.⁸²⁶ He later also noted that the monitoring the work of civil servants during riots was outside the purview of the institution,⁸²⁷ and that collecting information on the violence and issuing advice to the states were excluded by the Protection of Human Rights Act.⁸²⁸ The NHRC's reluctance to take on the new role for which it was cast was perhaps due to legal limitations and lack of capacity: the

⁸²¹ Ralegan Siddhi, 'Anna Hazare's Hunger Strike Enters Second Day, Government Ready to Pass Lokpal Bill', *India Today*, 10 December 2013 (electronic edition).

⁸²² Rakhi Chakrabarty, 'Jamiat Slams Mulayam, Manmohan for Communal Violence', *Times of India*, 16 December 2013 (electronic edition).

⁸²³ 'Muslim Votes Only if Communal Violence Bill Cleared', *Firstpost*, 17 December 2013 (electronic edition).

⁸²⁴ It remains unclear whether the draft bill planned to be tabled was the same version as that announced in response to letters received from Chief Ministers. Media reports indicate that the new draft bill would empower the NHRC to monitor the performance of civil servants in preventing and controlling riots. 'Cabinet Clears Communal Violence Bill', *Indian Express*, 17 December 2013 (electronic edition).

⁸²⁵ 'Bihar Chief Minister Nitish Kumar Supports Communal Violence Bill', *Times of India*, 17 December 2013 (electronic edition).

⁸²⁶ 'NHRC's Burden will Increase if Communal Violence Bill Passed: Justice K G Balakrishnan', *Economic Times*, 19 December 2013 (electronic edition).

⁸²⁷ The Chairman of NHRC argued 'it would be impossible in practical terms for NHRC to do so. The Commission strongly urges that this section be deleted.' Bharti Jain, 'NHRC Refuses to Monitor Bureaucrats under Anti-Riots Bill', *Times of India*, 21 December 2013 (electronic edition).

⁸²⁸ *Ibid.*

institution had lobbied for the inclusion of SCs and STs as a target group under the bill.⁸²⁹

In the event, the final Winter Session of the Fifteenth Lok Sabha was unproductive. It transacted very little legislative business as a result of disruptions, walkouts and unparliamentary behaviour which included, among other things, the use of pepper spray by one MP from Andhra Pradesh.⁸³⁰ In the turmoil which gripped Parliament and Indian politics in the run up to the 2014 Lok Sabha elections, the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill (2013) was its most high profile casualty. The bill was again taken up for introduction in the resumed Winter Session in February 2014 but deferred due to the Opposition's stalling. In the words of a Supreme Court advocate, who was a former member of the drafting committee in the NAC:

The government did not have the political will. The opposition did not want this law. We should have been able to calculate and factor all that in. But we couldn't do that and it was a huge loss. There was the inability of the NAC to grasp the significance and to strategically accept these points. It led us to the failure and the new bill never made it to Parliament. We are going to be handicapped in the absence of such a law.⁸³¹

Conclusion

The inability to control and manage effectively acts of collective communal violence is one of the major weaknesses of Indian democracy.⁸³² Following the election of the UPA in 2004, its commitment to enact model anti-communal violence legislation was a key component of its efforts to deliver a new framework of equality of opportunity for religious minorities. Such legislation, like the protective legislation for SCs and STs

⁸²⁹ Ibid.

⁸³⁰ 'Telangana Bill: Pepper Spray, Knives out as Parliament Plunges to its Lowest', *India Today*, 13 February 2014 (electronic edition).

⁸³¹ Grover, interview, 15 April 2014. Again the annual reports of the Ministry of Home Affairs during the second UPA provide only cursory and factual commentary on the progress of the bill. See, Ministry of Home Affairs, *Annual Report 2009-10* (New Delhi: GoI, 2010), 67; Ministry of Home Affairs, *Annual Report 2010-11* (New Delhi: GoI, 2011), 93-4; Ministry of Home Affairs, *Annual Report 2011-12* (New Delhi: GoI, 2012), 70; Ministry of Home Affairs, *Annual Report 2012-13* (New Delhi: GoI, 2013), 70; Ministry of Home Affairs, *Annual Report 2013-14* (New Delhi: GoI, 2014), 93.

⁸³² See Amrita Basu and Srirupa Roy, eds., *Violence and Democracy in India* (Calcutta: Seagull Books, 2007); Martha Craven Nussbaum, *The Clash Within: Democracy, Religious Violence, and India's Future* (Cambridge, MA: Belknap Press, 2007).

against caste violence, had the potential to create a new normative order by increasing the penalties for committing acts of communal violence.

However, as our detailed analysis of the bill's progress from 2005 onwards demonstrates, the UPA's commitment to the legislation was limited and half-hearted: it was characterised by ambivalence, non-decisions at crucial points, and efforts at symbolic implementations, particularly before the 2009 and 2014 Lok Sabha elections. Thus, after the introduction of the bill in Parliament in 2005, the government referred it to the Standing Committee, and then made one feeble attempt by introducing 59 amendments before the general election in 2009. After 2009, its response to the bill was mainly reactive, until a new version was drafted by the NAC and discussed at the NIC meeting, without adequate consultations with state governments or political parties. Displacing blame on to state governments and other political parties, the Congress itself was ambiguous in its support: the party's approach was high on political symbolism in pursuing a policy that was difficult, if not impossible, to implement. Symbolic implementation in the face of strong institutionalised resistance against religious minorities, especially Muslims, reasserted the familiar pattern of historical path dependence. It also reconfirmed that after mid-2007, when the UPA had to rebalance its political coalition, the momentum for converting the contestational juncture for the settlement of minorities' aspirations created by the election of the government into a critical juncture had been lost.

The UPA era ended with 'competing equalities' for SCs and STs, on the one hand, and religious minorities, on the other, largely in place. Despite the removal of SCs and STs as beneficiaries in the final draft of the bill, if the earlier versions had been enacted, they would have received additional protection as well as that afforded by the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989). Throughout the policy process Dalit groups acquiesced to the bill, and only voiced their concerns when they were *excluded* as a target group – in stark contrast to their active engagement when the government wanted to open SC and ST reservations in employment to religious minorities (See Chapter Five). Today, SCs and STs thus have special legal protection, but such protection eludes religious minorities.⁸³³

⁸³³ See Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (Berkeley: University of California Press, 1984), 305-26.

One notable feature of the development of the bill was the emergence of Muslim civil groups and networks around the proposed legislation. This activism led to a contestation of the ‘top-down’ policy approach and, ultimately, a significant input into the drafting of the UPA (I) and UPA (II) bills. The increased engagement of civil society and Muslim groups, and the growth of Muslim-centric political parties, could be seen as an outcome of the democratisation of the policy process, a healthy development for future policy in this area.⁸³⁴ Equally, it could be understood as the intensification of long-standing demands for more equal protection and security from the state against what Brass has called the ‘institutionalised riot system’.⁸³⁵

Ultimately what symbolised UPA’s inability to pass the bill was not its performance in Parliament but the Muzaffarnagar riots. As Zoya Hasan, a noted academic commented:

Congress wants to do things for minorities, but only up to a point. Up to a point and no further. When it faces opposition, [it is] one step forward and two steps backward. That is the policy.⁸³⁶

In December 2013, while the debate on the bill was proceeding, Rahul Gandhi, heir apparent of the Nehru-Gandhi dynasty, visited the Muzaffarnagar relief camps. Asked by a refugee whether a Muslim could be an Indian ‘You are very much an Indian’, he snapped.⁸³⁷ But despite the subsequent request by Muslim leaders to pass the bill, neither Rahul nor Sonia Gandhi made any substantive comments on the proposal.⁸³⁸

⁸³⁴ It will be further discussed in the Conclusion.

⁸³⁵ Paul Brass, *The Production of Hindu-Muslim Violence in Contemporary India* (Seattle: University of Washington Press, 2003), 15.

⁸³⁶ Zoya Hasan, interview, 11 March 2013, New Delhi.

⁸³⁷ ‘Muzaffarnagar Riot Victims should Return Home, not Play into the Hands of Rioters: Rahul Gandhi’, *Times of India*, 22 December 2013 (electronic edition).

⁸³⁸ Subodh Ghildiyal, ‘Muslims want Congress to Pass Communal Violence Bill’, *Times of India*, 24 December 2013 (electronic edition).

Conclusion

Introduction

This thesis has attempted to answer one of the main puzzles of the last UPA administration from 2004-14: namely, why a government which came to power on a commitment of ‘delivering full equality of opportunity for religious minorities’⁸³⁹ struggled to implement these policies. What were the political forces and institutional factors that frustrated the implementation of these policies? Why, in spite of the UPA’s manifesto commitment, is its record on core policy initiatives, especially with reference to India’s Muslims, unconvincing?

The thesis does not aim to evaluate the vast range of UPA policy initiatives targeted at religious minorities during the decade that the administration was in power. Such an undertaking, as explained in Chapter Two, would be beyond the scope of this work. Instead a limited assessment was undertaken of the initiatives aimed at improving Muslim employment opportunities and service delivery, areas where it was possible to investigate the complete policy process. In particular the objective of this research has been to arrive at a better understanding of the underlying modes of institutional and political resistance to such policies, especially when directed towards Muslims.

Conventional political science responses to UPA policies on religious minorities emphasise electoral incentives, the instrumental determinants of electoral power in India that limited the potential of policy change. These mainstream explanations by leading specialists such as Wilkinson⁸⁴⁰ have been supplemented by accounts rooted in normative political theory that highlight the role of political ideology (Bajpai),⁸⁴¹ social justice (Verma),⁸⁴² and social exclusion (Hasan).⁸⁴³ These explanations, as we noted in

⁸³⁹ National Common Minimum Programme of the Government of India. Available at: <http://pmindia.nic.in/cmp.pdf> [accessed on 11 April 2012].

⁸⁴⁰ Steven I. Wilkinson, ‘The UPA and Muslims’, in Lawrence Sáez and Gurharpal Singh eds., *New Dimensions of Politics in India: The United Progressive Alliance in Power* (London: Routledge, 2012), 68-78.

⁸⁴¹ See Rochana Bajpai, ‘Beyond Identity? UPA Rhetoric on Social Justice and Affirmative Action’, in Lawrence Sáez and Gurharpal Singh, eds., *New Dimensions of Politics in India: The United Progressive Alliance in Power* (London: Routledge, 2012), 79-95.

⁸⁴² Vidhu Verma, *Non-Discrimination and Equality in India: Contesting Boundaries of Social Justice* (London: Routledge, 2012).

Chapters One and Two, provide some meaningful insights into the UPA policy process. However, their principal shortcoming is an inability to ‘pry open the black of policy change’⁸⁴⁴ and offer a more rounded account of policy formulation and implementation to explain why some policies were selected and other not, why different modes of implementation were adopted, and why some policies were pursued symbolically when there was no prospect of them being realised.

To address this lacuna this thesis develops an institutional policy analysis approach that combines two methodological orientations. First, it examines the policy process on the subject during the UPA administration: how the issue of religious minorities established itself on the policy agenda, policy formulation, decision-making, (non) implementation and evaluation.⁸⁴⁵ Second, this approach is integrated with historical institutionalism and path dependence which privilege the role of institutions in explaining policy outcomes; that is, the contribution of actors and institutions in reproducing recurring patterns of behaviour over time that shape, determine and define particular paths of public policy from which it is difficult to exit.⁸⁴⁶ Thus, historical institutionalism and path dependence, which accord centrality to institutions in explaining outcomes, provide a necessary bridge to our research because the policy process during the UPA government was heavily circumscribed by historical legacies. Institutional structures in India, both at the national and state levels, appear to have played an independent role in determining the fortunes of UPA policies on religious minorities. Our institutional policy analysis approach, therefore, as outlined in Chapter Two, acknowledges historical institutionalism and path dependence as an independent variable and the policy process of the UPA government as the dependent variable. Or to put it differently, the policy process on religious minorities in India is strongly shaped by a form of historical institutionalisation and path dependence from which is difficult to change course. Change is not impossible: rather for change to take place it requires a

⁸⁴³ Zoya Hasan, *Politics of Inclusion: Castes, Minorities, and Affirmative Action* (New Delhi: Oxford University Press, 2009).

⁸⁴⁴ Arjen Boin and Sanneke Kuipers, ‘Institutional Theory and the Public Policy Field’, in Jon Pierre, B Guy Peters and Gerry Stoker eds., *Debating Institutionalism* (Manchester: Manchester University Press, 2013), 43.

⁸⁴⁵ Michael Howlett and M. Ramesh, *Studying Public Policy: Policy Cycles and Policy Subsystems* (Oxford: Oxford University Press, 2003).

⁸⁴⁶ B. Guy Peters, *Institutional Theory in Political Science: The New Institutionalism* (London: Continuum, 2005).

combination of circumstances and political commitment that so far have been found only at the sub-national level (e.g. West Bengal, Kerala, and Karnataka).

UPA, equality of opportunity and Muslims: reassessing the experience

In re-assessing the Congress-led UPA policies on religious minorities, especially Muslims, it is important to recognise the influence of the enduring legacy of India's critical juncture during constitution-making. As Chapters One, Two and Three have demonstrated, and the seminal works of Bajpai,⁸⁴⁷ Verma,⁸⁴⁸ Hasan⁸⁴⁹ and Galanter⁸⁵⁰ have confirmed, the distinction that was created by the constitution-makers between socio-economically disadvantaged Hindu castes and minority religions – a distinction that was central to the idea of modern, post-colonial India in which the political rights of religious minorities found few supporters – subsequently became firmly institutionalised around reservations and the different regimes of 'competing equalities'. The different historical development of these 'competing equalities', we have argued, can be better comprehended if we recognise that they created lasting tensions by providing increasing political and social returns to lobbies of socio-economically disadvantaged castes. Simultaneously, the political claims of religious minorities – poor or otherwise – were progressively sidelined. Direct mobilisation by some religious minorities in the 1980s, 1990s and early 2000s was one response to this marginalisation; UPA efforts after 2004 to address the claims of poor minorities, particularly after 9/11, were another.

In the event, the UPA approach towards religious minorities was shot through by pragmatism, symbolism and gesture politics. The root cause of this ambivalence, a willingness as Hasan has noted, to do something for minorities but only 'up to a point',⁸⁵¹ was not simply the result of electoral considerations, but is to be found in the institutional resistance to these policies from three core constituencies. First, this

⁸⁴⁷ Rochana Bajpai, *Debating Difference: Group Rights and Liberal Democracy in India* (New Delhi: Oxford University Press, 2011).

⁸⁴⁸ Verma, *Non-Discrimination and Equality in India*.

⁸⁴⁹ Hasan, *Politics of Inclusion*.

⁸⁵⁰ Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (Berkeley: University of California Press, 1984).

⁸⁵¹ Zoya Hasan, interview, 11 March 2013, New Delhi.

included the institutionalised SCs, STs and OBCs lobbies that view themselves as the guardians of these caste groups' interests. As we saw in Chapters Four and Five, some of these lobbies opposed the extension of reservations to poor Christians and Muslims. They also rejected the UPA's new architecture for equal opportunities that threatened to undermine the existing institutional arrangements of 'competing equalities'. Second, policies specifically targeted at religious minorities, particularly Muslims, also encountered stiff resistance from within the structures of the state, notably within the civil service and judiciary. These policies, as we have seen in Chapters Four, Five, Six, were either interpreted as at variance with the secular constitutional framework, or inconsistent with the criteria of social justice for reservations and service delivery for socio-economically disadvantaged castes and OBCs. Finally, these policies were firmly opposed by the Hindu Right (and sections of the Congress) on the grounds that they fundamentally compromised the constitutional settlement in challenging the hegemonic nationalist framework which prioritised social justice primarily directed at socio-economically disadvantaged Hindu castes.

Although since the 1990s the OBC category has emerged as a social and political force and, as Fazal⁸⁵² points out, offers Dalit Christians and Muslims the possibilities of accommodation in the reservations net, such progress has been partial and limited to a few states with unique historical traditions. Overall, the distinction between caste and religion still endures; its dilution is firmly resisted by the powerful institutionalised socio-economically disadvantaged caste lobbies. As the substantive evidence presented in Chapters Five, Six and Seven demonstrates, there is still a fundamental cleavage at the core of Indian nation-making between caste and religion. Today, this distinction is being used adroitly by the BJP in its construction of the nation.⁸⁵³ In other words, the divergent paths which Dalits, poor Christian and Muslim

⁸⁵² Tanweer Fazal, 'Between Identity and Equity: An Agenda for Affirmative Action for Muslims', in Gurpeet Mahajan and Surinder S. Jodhka, eds., *Religion, Communities and Development: Changing Contours of Politics and Policy in India* (London: Routledge, 2010), 228-47.

⁸⁵³ After winning the 16th Lok Sabha elections, the BJP-led NDA's new approach to the minorities was articulated by Najma Heptullah, the Minister of Minority Affairs, who observed that 'Muslims are not a real minority in India. Parsis [and] Jains are minorities.' See 'Muslims are not Minorities, Parsis are: Najma Heptullah', *Times of India*, 28 May 2014 (electronic edition). The minister alleged that the concerns of Muslims about security arise primarily out of a 'fear psychosis' that has gripped the community, and claimed Muslims would not have voted for Modi if they were apprehensive. Quoted in Nistula Hebbar, 'My Most Important Task is to Create Confidence and Positivity: Najma Heptullah', *Economic Times*, 27 June 2014 (electronic edition); 'Modi's Ministers on Their First Day at Work', *IBN*, 14 June 2014 (electronic edition). She has also opposed reservations for Dalit Christians and Dalit Muslims on the grounds that they are unconstitutional, asserting that it was the Congress' policy objective.

communities of the same social background since the 1950s have followed point to a major, ineradicable divide at the heart of the idea of modern Indian nationhood.⁸⁵⁴ In the words of Perry Anderson, India has emerged as a ‘caste-iron democracy’.⁸⁵⁵

That the Indian state responds differently to policy demands from similar social classes if they are framed in terms of caste than religion was demonstrated in UPA’s approach to what has been termed Mandal II – the extension of a system of reservations in education for OBCs. The period witnessed the largest expansion of reservations since Mandal.⁸⁵⁶ Rhetorically and conceptually, this change was secured, as Bajpai⁸⁵⁷ has pointed out, by drawing on the discourse of social justice for socio-economically disadvantaged castes. Similarly, as we have demonstrated in Chapter Five, the state was also highly responsive to the BSP’s demand for the Promotion Quota Bill because it was framed in the language of social justice that provided further ‘increasing returns’ to institutionalised caste lobbies. But in contrast, the UPA struggled to articulate successfully in terms of the ‘common good’,⁸⁵⁸ the justification of special measures for religious minorities, especially Muslims. Whether such a discourse can be developed remains to be seen, though what is evident, as Hasan notes, is that there is unevenness in the Indian state’s approach to demands from socio-economically disadvantaged castes – reservations, security or discrimination – and demands from socio-economically disadvantaged religious groups.⁸⁵⁹

Sixty-four years after they were crafted by constitution-makers, ‘competing equalities’ are still largely intact. Despite the efforts of the UPA (I and II) to create a new, level framework of equality of opportunity for all in a modern, complex, socially

She further added that the implementation of all the recommendations of SCR is ‘not necessary’. See ‘Want to Work for Economic Development of Minorities: Najma Heptullah’, *Firstpost*, 27 May 2014 (electronic edition). Similarly, Thawar Chand Gehlot, a Dalit from Madhya Pradesh and the Minister of Social Justice and Empowerment, has also come out strongly against any demands for religion-based reservations because, according to him, backward communities among all religious groups are covered under the OBC category. See Subodh Ghildiyal’s, ‘Minorities 4.5 Per Cent Sub-Quota as Good as Dead?’, *Times of India*, 28 May 2014 (electronic edition); and ‘Govt Opposed to Dalit Status for Converts’, *Times of India*, 10 October 2014 (electronic edition).

⁸⁵⁴ For fuller discussion of this important point, see Gurharpal Singh, ‘Democracy and Religious Minorities in India: A Long-term View’, Inaugural Lecture, delivered at School of Oriental and African Studies, University of London, 30 April 2014 (unpublished), 1-25.

⁸⁵⁵ Perry Anderson, *The Indian Ideology* (London: Verso Books, 2013), 112.

⁸⁵⁶ See Bajpai, ‘Beyond Identity?’; Satish Deshpande, ‘Exclusive Inequalities: Merit, Caste and Discrimination in Indian Higher Education Today’, *EPW* 41:24 (17 June 2006), 2438-44.

⁸⁵⁷ (Bajpai) *ibid.*

⁸⁵⁸ *Ibid.*, 95.

⁸⁵⁹ Hasan, *Politics of Inclusion*, especially Ch. 3.

inclusive and, increasingly, globalised society with multiple forms of discrimination and disadvantage, the institutionalised caste interests that have gained from the constitutional settlement played a major role in undermining such initiatives. The most telling illustration of this (see Chapter Four) was a recommendation by OBC, SC and ST leaderships that the UPA's flagship measure, the Equal Opportunity Commission Bill, should apply to 'religious minorities only'.

Historical institutionalism and path dependence, as explained in Chapter Two, recognise that change is possible if groups or classes opposed to the original settlement are politically mobilised, thereby generating a contestational juncture which, under appropriate conditions, can be transformed into a critical juncture – an opportunity for replacing the original settlement with new institutions. Within the Indian political system with its different sub-national traditions, cultures and histories, the opportunities for change are immeasurably greater outside the Hindi-belt.⁸⁶⁰ As we saw in Chapter Five, Mamata Banerjee's efforts to build a political base in West Bengal as the Minister of Railways produced a virtuous cycle for a change which may, or may not, be sustained. In the south, states with a long history of reservations for backward groups, including religious minorities, such as Kerala and Karnataka, the necessary and sufficient conditions for the delivery of substantive equality of opportunity are far more propitious.⁸⁶¹ In many ways the irony of the UPA's experience in seeking to apply the lessons of the south to national politics was the failure to understand the distinctiveness of social and political conditions that had made these state's policies on religious minorities possible.

Post-Sachar evaluation: towards historical path dependence?

This thesis has been focused primarily on the forms of institutional and political opposition to UPA policies on religious minorities with special reference to Muslims. The review of literature in Chapter One emphasised that a systematic appraisal of these

⁸⁶⁰ For an understanding of different trajectories of the process of democratisation in India and South Asia, see Gurharpal Singh, 'South Asia', in Peter Burnell, ed., *Democratisation through the Looking Glass* (Manchester: Manchester University Press, 2003), 216-30.

⁸⁶¹ See G. Thimmaiah, 'Karnataka Government's Reservation Policies for SCs/STs and OBCs', in V. A. Pai Panandiker, ed., *The Politics of Backwardness: Reservation Policy in India* (New Delhi: Konark Publishers, 1997), 108-160.

policies, their actual impact on the ground for the intended recipients, was largely an unknown territory filled by the reports of advocacy organisations and NGOs with ‘grey literature’. The UPA government during its tenure sedulously avoided such an evaluation. It eventually conceded this demand towards the end of its second term when the Minister of Minority Affairs appointed the Post-Sachar Evaluation Committee headed by Prof. Amitabh Kundu to ‘review and assess the implementation of Justice Rajinder Sachar Committee’s recommendations and Prime Minister’s Fifteen-Point Programme’.⁸⁶² This committee, as we observed in Chapter Four, was finally constituted in August 2013, with the terms of references which included the evaluation of ‘the process of the implementation of decisions of the Government on the recommendations...[of the] Sachar Committee for institutional reforms and programmatic shifts...[and to] Evaluate the outcome indicators in the areas of focus as identified by this [Sachar] Committee’.⁸⁶³ Although the Post-Sachar Evaluation Committee was scheduled to report within six months, before the Lok Sabha elections in May 2014, it submitted its final report at the end of September 2014. This report is yet to be placed in the public domain. Given the paucity of evaluative data, the difficult policy process on the subject, which included, as we saw in Chapter Four, efforts to suppress the release of the RMCR, and the need to provide further official evidence underpinning the argument in the thesis, below we provide a brief summary of the key empirical findings of the report and a short assessment of its contribution to the subject.

Eight years after Sachar, the Post-Sachar Evaluation Committee found ‘definite evidence that community-based discrimination and deprivation have not gone down in many of the social spheres in the country’.⁸⁶⁴ In terms of employment of Muslims in the public sector, for instance, the report’s data confirmed the analysis presented in Chapter Five (see also Appendix 1). ‘The relative employment situation of the Muslims as also other SRCs’, the Committee noted, ‘has not undergone much change since the adoption of the [Justice] SCR...The share of minorities in government employment remains low – less than half of the share of their total population in the country – *despite all effort*’.⁸⁶⁵ Similarly, in assessing poverty levels across SRCs, the committee found no discernible change in the position of the Muslim community between 2004-05 and

⁸⁶² ‘High-power Panel to Review Sachar Panel Report, Fifteen-Point Programme’, *The Hindu*, 18 February 2013 (electronic edition).

⁸⁶³ *Post-Sachar Evaluation Committee* (New Delhi: GoI, 2014), 4.

⁸⁶⁴ *Ibid.*, 11.

⁸⁶⁵ *Ibid.*, 33. Emphasis added.

2011-12;⁸⁶⁶ and though educational attainment within the community improved slightly compared with 2004-05, standards at all levels among all communities had risen during the period.⁸⁶⁷ The Committee's assessment of programmes and institutions designed to deliver the SCR's recommendations was equally critical: the PM's 15 PP schemes were found to 'have too little funds and also tardy utilisation';⁸⁶⁸ the MSDP had been 'implemented in non-minority concentrated blocks';⁸⁶⁹ within the states, 'there was lack of institutional mechanism and implementation staff at the state, districts [and] block levels';⁸⁷⁰ a large proportion of this staff lacked the 'motivation' to undertake these programmes;⁸⁷¹ non-Muslims and non-Buddhists were able to 'corner large share in P(riority) S(ector) L(ending)';⁸⁷² and the absence of monitoring of data at the local level in terms of SRC made it difficult to assess what share of resources had gone to any particular religious community.⁸⁷³ In short, the Committee concluded that '*the political promises and rhetoric for the minority development stands quite in contrast to the effective benefits to minorities from the schemes*'.⁸⁷⁴

However, in spite of the above assessment, and the begrudging recognition by the Committee that the most deprived sections of the Muslim community be brought within the SCs net of reservations,⁸⁷⁵ its main recommendations reaffirmed faith in the SCR: there was a need for a new approach to equality of opportunity that could 'result in transformation of the society';⁸⁷⁶ this approach required 'a paradigm shift in dealing with the problem of unequal access to socio-political spaces in the country';⁸⁷⁷ a cross-party political consensus had to be built for such change;⁸⁷⁸ more information and data about religious minorities were necessary; and the state had to incentivise the promotion of diversity and empower citizens and civil society actors to effect such change.⁸⁷⁹

⁸⁶⁶ Ibid., 48.

⁸⁶⁷ Ibid., 96

⁸⁶⁸ Ibid., 150.

⁸⁶⁹ Ibid., 150-1.

⁸⁷⁰ Ibid., 151.

⁸⁷¹ Ibid.

⁸⁷² Ibid., 134.

⁸⁷³ Ibid., 152.

⁸⁷⁴ Ibid., 151. Emphasis added.

⁸⁷⁵ Ibid., 12.

⁸⁷⁶ Ibid

⁸⁷⁷ Ibid.

⁸⁷⁸ Ibid.

⁸⁷⁹ Ibid.

In many ways the Post-Sachar Evaluation Committee and its recommendations are a product of two different masters: the UPA, which was reluctant to undertake an evaluation of its own policies, and the BJP-led NDA, which is implacably opposed to the politics of ‘minorityism’. The report is not only very poorly crafted but there is a clear dissonance between its analysis and recommendations. Indeed, apart from general observations drawn from secondary literature, there is no serious effort to engage with the causes of non-implementation of policies during the policy process. Remarkably, the issue of the security of the Muslim community is mentioned only in a single paragraph in the main body but identified as the key issue in ‘promoting a sense of security and positive perceptions’.⁸⁸⁰ Overall, the Post-Sachar Evaluation Committee report falls into a well-trodden lineage of standardised institutional responses by the Indian state to the Muslim community dating from Nehru’s time and the Gopal Committee: as a formal response for policy failure and ‘having done nothing for minorities’.⁸⁸¹

Issues for further research

Our research has drawn attention to some key areas in Indian politics that remain under-researched. Here we highlight three areas worthy of further investigation.

The use of data on religious minorities

Foremost among these is to review (see Chapters Five and Six) the collection and construction as well as the use and misuse of official data. In spite of official declarations, appropriate monitoring mechanisms for the regular assessment and progress of policies were poorly developed and operationalised. Frequently, data was misrepresented or inappropriately gathered and processed. In employment and service delivery there does not appear to have been a determined commitment to use data on religious minorities for effective affirmative action, either within the state structures or in making the data more transparent to political and civil society groups committed to improving the equality of opportunity for India’s Muslims. In fact, notwithstanding the Sachar Committee’s recommendation to establish a National Data Bank on the socio-

⁸⁸⁰ Ibid., 163.

⁸⁸¹ Wilkinson, ‘The UPA and Muslims’, 71-2.

economic condition of religious groups, the Post-Sachar Evaluation Committee found that there has been ‘no concerted effort by the Government agencies to collect relevant data...[and] only very limited amount of data are placed in the National Data Bank portal of the Ministry of Statistics and Programme Implementation which are mostly tabulated data from [the] Census and [the] National sample Survey.’⁸⁸²

Further developing institutional policy analysis

Analytically, the thesis combines policy analysis with historical institutionalism and path dependence theory. This hybrid institutional policy analysis better informs the policy process specific to a government and the ways it can be placed in historical context. This approach was developed because of the limited access to the policy process (the lack of transparency in policy formulation, decision-making, implementation, and evaluation) under the UPA – and most previous governments in India – and the need to historically understand the path dependent nature of caste-based institutionalised politics and structures for SCs, STs and OBCs. Such a broad field, as explained in the Introduction and Chapter Two, necessarily required a focus on the formal structure of the policy process and its actors. As a result, limited key case studies were undertaken which could illuminate the ‘black box’ of public policy formation in key areas that had always been highly sensitive for the Indian state. In this respect, the thesis complements the growing field of public policy studies in India which is increasingly drawing on sophisticated tools of public policy analysis to understand issues such as regulatory reform or administrative change.⁸⁸³

Indeed, the thesis has highlighted the strengths and the limitations of this research strategy in a contested policy sector. In the absence of established protocols for detailed policy research in this field in India, it was decided to focus on the formal policy process identified with the policy cycle (Figure 2.1). In two of the case studies (employment and service delivery), the policy process broadly corresponded with the ‘cycle’, though we have noted that sometimes the policy stages were merged. The third case study (communal violence bills) covered the period of both UPA governments but the policy cycle was aborted at the policy-making stage. The evidence and analysis

⁸⁸² *Post-Sachar Evaluation Committee*, 162.

⁸⁸³ See Vikram K. Chand, ed., *Public Service Delivery in India: Understanding the Reform Process* (Oxford: Oxford University Press, 2010).

presented have thrown a new light on decision (and non-decision)-making, the considerations which influenced the actions (and non-actions), and the forms of implementation and evaluation (when indeed it was undertaken).

Other areas for application of institutional policy analysis include social and economic policy, with agrarian policy in particular, potentially providing rich insights into the endurance of patterns of politics around the agricultural lobby.⁸⁸⁴ Our work has also drawn attention on the inter-departmental rivalries that stifled MoMA's autonomy (see Chapters Four, Five, Six and Seven). Institutional policy analysis, thus, has the potential to better illuminate the historical and institutional practices which produce – as well as reproduce – these outcomes, especially the rivalries between functional and specialist departments. Political institutions themselves, notably Parliament, also offer extremely invaluable insights into a re-examination of the role of the key actors in policy formation. And as we noted above, institutional policy analysis has significant scope for operationalisation at the sub-national level in the states where size and historical traditions offer a more variegated experience of social and political policies on minorities.

Much more broadly, institutional path dependent analysis of the status of minorities in India shares several similarities with ideological approaches. Both eschew the more reductionist perspectives offered by methodologies such as rational choice theory. Both seek to offer explanations that uncover the underlying causes in the long-term development of public policy on religious minorities. And both draw attention to the starting point of India's constitution-making, the seminal event which established the foundational framework, or ideological normative order, within which public policy on minorities has been constructed. This thesis and other institutionalist accounts⁸⁸⁵ have drawn attention to the interests that underpin the caste lobbies. Such works alert us to the need for a more nuanced deconstruction of the values, rhetoric and ideas which sustain these interests. This is particularly the case with Dalit caste lobbies and religious minorities which, as has been pointed out, have all too often been painted as the major

⁸⁸⁴ See Ashutosh Varshney, *Democracy, Development, and the Countryside: Urban-Rural Struggles in India* (Cambridge: Cambridge University Press, 1994).

⁸⁸⁵ See Kanchan Chandra, *Why Ethnic Parties Succeed: Patronage and ethnic Head Counts in India* (Cambridge: Cambridge University Press, 2004).

villains in eroding India's democratic values.⁸⁸⁶ Equally, however, ideological path dependent explanations of minority policy in India also need, as we explained in Chapter One, a more informed understanding of the public policy process on minorities in which the legitimization of policy (see in particular Chapter Four) is much more a multi-layered process involving actors, institutions, non-decisions and symbolic and performative politics.

Muslim civil society and political representation

Comparatively, the political and civil support from representatives of the target communities has been one of the key variables in developing substantive equal opportunities policies in developed polities. Hence, in the evolution of equal opportunities policies in local government in England in the early 1980s, for instance, the increasing representation of black and ethnic minority municipal leaders was accompanied by the rise of civic groups and black and ethnic minority workers within municipal government who were able to establish political coalitions for change.⁸⁸⁷ In contrast, the relative weakness in the national political representation of Muslims and Muslim civil society in India has limited the opportunities for change.

Political commentators have noted the progressive decline of Muslim representation in Parliament since the 1980s. Beginning with 21 MPs in 1952, Muslim representation gradually increased, reaching a high point in 1980 but declined thereafter. This decline was most notable in the 1990s and 2000s. Precisely at a time when the arguments for the 'politics of presence' and 'representation' have become mainstream for excluded groups, such as Dalits and women, the representation of Muslims has been moving in the opposite direction, both at the national and state levels. The causes of this decline are many and complex, including the non-selection of Muslim candidates in winnable seats by the major parties⁸⁸⁸ Yet, whatever the causes,

⁸⁸⁶ See, Atul Kohli, *Democracy and Discontent: India's Growing Crisis of Governability* (Cambridge: Cambridge University Press, 1990).

⁸⁸⁷ See Rafaela M. Dancygier, *Immigration and Conflict in Europe* (Cambridge: Cambridge University press, 2010); Wendy Ball and John Solomos, eds., *Race and Local Politics* (Basingstoke: Macmillan, 1990); John Solomos, *Race and Racism in Britain* (Basingstoke: Palgrave Macmillan, 2003).

⁸⁸⁸ Jensenius strongly refutes the conventional view that this decline is a function of winnable Muslim seats being increasingly designated as SC seats by the Delimitation Commission. She draws attention to the more complex interplay of factors, and finds no evidence that 'Muslims have been over-represented in reserved constituencies'. Francesca Refsum Jensenius, 'Was the Delimitation Commission Unfair to Muslims?', *Studies in Indian Politics* 1:2 (2013), 213-29.

the absence of a Muslim caucus in Parliament, as we noted in Chapter Five, militated against the more active promotion of the UPA's policies for the community and the formation of institutions within Parliament, *à la* OBCs, SCs and STs, that can better act as guardians of the community's interests. Without these institutions, and with the lowest representation of Muslims in Parliament since 1952, the 'politics of representation' without 'presence' is unlikely to advance the interests of religious minorities.

Similarly, the traditional weakness of Muslim civil society has also impeded better policy development. This may well be the outcome of the socio-economic development of Muslim communities in India, but what our thesis has demonstrated is that under appropriate conditions Muslim civil society networks can emerge to make a difference. The role of ANHAD, for example, in the debates about the communal violence bills, is illustrative of how such advocacy groups can make an impact. The informal networks of Muslim policymakers and administrators, as interview data has demonstrated, were catalytic in fostering a collective community interest around the UPA's policies. The emergence and activities, moreover, of advocacy organisations such as the Centre for Equity Studies, the Centre for Budget and Governance Accountability, and the US-India Policy Institute that engage with policymakers and key public institutions, such as the Planning Commission, represents new initiatives that are both likely to promote greater scrutiny and interest in policies directed at minorities. Some of these initiatives are reactive; that is, a response to the possible consequences of public policy. Others have been encouraged by the co-option and engagement of Muslim civil society networks in policy formation, for example, by the NAC. This interest in policy-making is likely to be further strengthened by the emergence of new Muslim political parties after the SCR, though they have yet to actively participate in the policy process.⁸⁸⁹ Surprisingly, what has been absent from the Indian debate – in contrast to comparative experience of Western states following 9/11 – is the active sponsorship of Muslim civil society networks by the state to counter-balance the historical under-development of such associations within the community.⁸⁹⁰

⁸⁸⁹ For instance, see Peace Party of India (2008, Uttar Pradesh), Welfare Party of India (2011, West Bengal), Awami Vikas Party (2012, Maharashtra), Popular Front of India (2006, started as a Kerala outfit but developed into a multi-state organisation by merging with other political group), and Manithaneyya Makkal Katchi (2009, Tamil Nadu).

⁸⁹⁰ Post-9/11 the United Kingdom has sponsored social and political organisations among religious minorities, especially Muslims. These initiatives have been justified as a part of 'capacity building'

Summing up: ‘the verdict of history’

Reeling before the onslaught of the opposition parties, scandals, and the lowest poll rankings of any Prime Minister in office, three months before the 2014 Lok Sabha elections Manmohan Singh defended his record in government by invoking the judgment of history. ‘I honestly believe’, he declared:

that history will be kinder to me than the contemporary media, or for that matter, the opposition parties in Parliament. I cannot divulge all things that take place in the Cabinet system of government. I think, taking into account the circumstances, and the compulsions of a coalition polity, I have done as best as I could under the circumstances.⁸⁹¹

Although most analysts recognise that whilst the UPA (II) ended in whirlwind of political vilification associated with a weak and ineffectual Prime Minister, nonetheless, its policy performances in some areas was creditable. Between 2003 and 2009, the economy grew at an average of 9 per cent per annum, enabling the government to fund extensive anti-poverty social programmes. In foreign policy there were also notable successes in the nuclear energy deal with the US, détente with China and a new dialogue with Pakistan.⁸⁹² Uniquely, among developing countries, according to Manor, the UPA delivered ‘inclusive growth’ for a decade which witnessed rising incomes among rural Dalits, OBCs and Muslims. In so doing, the Congress-led UPA renewed its social democratic vision by skilfully balancing the management of a growing economy with the need for social welfare.⁸⁹³

However, these positive evaluations rarely, if at all, include any reference to UPA (I and II)’s policies on religious minorities. As a government with the first minority community Prime Minister, and one to have won two successive general election victories, this silence was remarkable. In retrospect, the UPA (I)’s first three years of policy formation on religious minorities, and Muslims in particular, probably represented the high watermark of India’s ‘liberal spring’, that ephemeral moment when

among communities that have traditionally lacked structures and organisations capable of interfacing with the state. See, Rachel Biggs, ‘Community Engagement for Counter-Terrorism: Lessons from the United Kingdom’, *International Affairs* 86:4 (July 2010), 971-81.

⁸⁹¹ Sanjaya Baru, *The Accidental Prime Minister: The Making and Unmaking of Manmohan Singh* (New Delhi: Penguin, 2014), 276-7.

⁸⁹² *Ibid.*, Chs. 9, 10, 11.

⁸⁹³ James Manor, ‘An Overview of the Campaign and Results’, oral presentation, ‘Roundtable Discussion on the Indian General Elections and After’, School of Oriental and African Studies, University of London, 10 June 2014.

a range of out-of-the-box thinking policy initiatives combined to create the potential for a new paradigm of equality of opportunity in twenty-first century India, and also deliver the long-delayed promise of substantive equality for disadvantaged religious communities such as Muslims. The SCR and RMCR were the finest hours of this 'liberal spring'. But these new policy initiatives, as we have seen, were short-lived as the 'liberal spring' gave way to the intense heat of the Indian summer generated by the opposition to these proposals. Wilkinson has perceptively concluded that so far 'India has so far been fortunate to avoid alienating its 13 per cent Muslim minority from the polity, despite the fact that the Muslim community is worse off than the majority on almost every dimension.'⁸⁹⁴ Today, poverty and discrimination for self-conscious religious communities can be a fatal combination as militancy draws 'on men and women who have some education but feel that their life chances are limited and that the state, the market and the majority community are stacked against them'.⁸⁹⁵ Viewed in this light, when history judges the UPA (I and II), it will judge it not on scandals, political mismanagement or foreign policy, which are the normal failings of most Indian governments, but the historic opportunity to provide substantive equality of opportunity with religious minorities. The reversion to the familiar pattern of historical path dependence suggests that it will be sometime before such a public policy programme is again back on the political agenda.

⁸⁹⁴ Wilkinson, 'The UPA and Muslims', 77.

⁸⁹⁵ *Ibid.*, 77-8.

Appendix

Appendix 1.

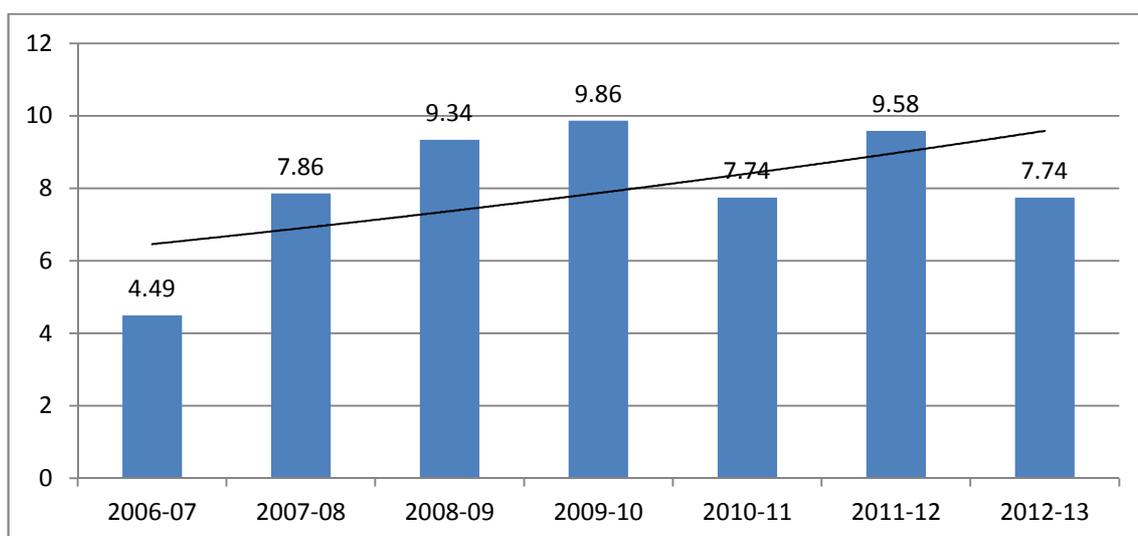
Recruitment of minorities in Central Government Departments and Public Sector Undertakings.

Sr. no.	Departments/ organisations	2006-07 Minorities recruited (%)	2007-08 Minorities recruited (%)	2008-09 Minorities recruited (%)	2009-10 Minorities recruited (%)	2010-11 Minorities recruited (%)	2011-12 Minorities recruited (%)
1	Government Ministries/Department	5485 (8.37%)	1620 (8.71%)	2593 (12.75%)	1339 (8.22%)	22349 (11.99%)	4665 (4.10%)
2	Public Sector Banks and Financial Institutions	702 (6.93%)	1615 (10.20%)	4263 (8.87%)	2930 (7.18%)	4702 (7.36%)	4245 (7.50%)
3	Para Military Forces	2700 (9.49%)	4914 (9.90%)	3068 (10.22%)	2682 (8.16%)	4539 (9.21%)	3404 (5.60%)
4	Posts	386 (7.60%)	517 (9.65%)	176 (6.36%)	617 (8.01%)	1293 (8.29%)	768 (8.11%)
5	Railways	1456 (2.67%)	2295 (6.31%)	2739 (7.56%)	1705 (6.65%)	1591 (8.72%)	3521 (12.53%)
6	Public Sector Undertakings	1453 (11.86%) (for 133 PSUs)	1234 (5.52%) (for 126 PSUs)	2107 (5.92%) (for 161 PSUs)	1322 (5.92%)	1218 (7.02%) (for 121 PSUs)	1776 (6.91%) (for 157 PSUs)
Total minorities recruited and percentage		12182 (6.93%)	12195 (8.23%)	14946 (9.90%)	10595 (7.28%)	35692 (10.18%)	18379 (6.24%)

Note: Figures in parentheses are the percentage to the total recruited employees in each organisation/departments in the respective years.

Source: *Post-Sachar Evaluation Committee* (New Delhi: GoI, 2014), 122.

Share (%) of persons from minority community recruited in 37 Ministries/department of Government of India



Source: *Post-Sachar Evaluation Committee* (New Delhi: GoI, 2014), 123.

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9. Interviews with key informants

Name	Date	Place	Occupation
Abusaleh Shariff	13 February 2013 / 4 July 2013/ 5 December 2013	New Delhi / telephone	Member of Sachar Committee, President of US-India Policy Institute
Amir Ullah Khan	17 April 2014	New Delhi	Senior Policy Advisor to Bill and Melinda Gates Foundation, President of Glocal University
Amitabh Kundu	10 February 2013	New Delhi	Chair of Expert Group on Diversity Index, Professor of Economics, Jawaharlal Nehru University (JNU), Chair of Sachar Committee review committee
Anurag Thakur	21 February 2013	New Delhi	MP from Himachal Pradesh, BJP
Asaduddin Owaisi	6 March 2013	New Delhi	MP from Hyderabad, president of All India Majlis-e-Ittehadul Muslimeen
Badruddin Khan	20 February 2013	New Delhi	Private Secretary to Minister of Minority Affairs

Chandan Mitra	14 March 2013	New Delhi	Managing director of <i>The Pioneer</i> , former Rajya Sabha member from Madhya Pradesh, BJP
D. Raja	22 March 2013	New Delhi	National Secretary of CPI, member of Rajya Sabha from Tamil Nadu
Dipankar Gupta	12 March 2013	New Delhi	Former professor of Sociology, JNU
Farah Naqvi	27 February 2013 / 16 April 2014	New Delhi	Member of National Advisory Council
Gautam Navlakha	16 March 2013	New Delhi	Civil activist, People's Union for Democratic Rights
Gurpreet Mahajan	28 January 2013	New Delhi	Professor of Political Studies, JNU
Harihar Bhattacharyya	9 March 2013	New Delhi	Professor of Political Science, University of Burdwan
Hilal Ahmed	16 April 2014	New Delhi	Researcher at Centre for the Study of Developing Societies
Jawed Alam Khan	11 April 2014	New Delhi	Researcher at Centre for Budget and Governance Accountability
K. Rahman Khan	19 February 2013	New Delhi	Minister of Minority Affairs
Mahendra Pal Singh	25 March 2013	New Delhi	Constitutional Law scholar, former professor of Law, University of Delhi
Mohammad Akhtar Siddiqui	16 January 2013	New Delhi	Dean of Faculty of Education, Jamia Millia Islamia
Muhammad Ali Khan	14 March 2013	New Delhi	Officer on Special Duty (OSD) to the Minister of Rural Development

Rajinder Sachar	14 February 2013 / 14 April 2014	New Delhi	Chairman of Sachar Committee
Sajjad Hasan	19 April 2013	London	Former IAS officer, Centre for Equity Studies
Subrata Mitra	14 March 2013	New Delhi	Professor of Political Science, University of Heidelberg
Sukhadeo Thorat	19 March 2013	New Delhi	Chairman of Indian Council of Social Science Research, professor of regional development, JNU
Surinder S. Jodhka	9 January 2013 / 10 August 2013 / 5 March 2014	New Delhi / skype / London	Professor of Sociology, JNU
T. K. Oommen	22 February 2013	New Delhi	Member of Sachar Committee
Tahir Mahmood	20 February 2013 /12 April 2014	Noida / New Delhi	Member of Ranganath Misra Commission
Tanweer Fazal	15 April 2014	New Delhi	Associate Professor of Sociology, JNU
Vrinda Grover	15 April 2014	New Delhi	Supreme Court lawyer
Wajahat Habibullah	12 February 2013 / 11 April 2014	New Delhi	Chairman of National Commission for Minorities
Zameer Pasha	14 February 2013	New Delhi	Former IAS officer
Zia Haq	8 March 2013	New Delhi	Journalist, Hindustan Times
Zoya Hasan	11 March 2013	New Delhi	Chairperson of Working Group on 'Empowering Minorities' on 11 th Five Year Plan, Professor of Political Studies, JNU

In addition to the above interviewees, seven interviewees did not want to be identified, and hence are anonymous. The positions described are those held at the time of the interview.