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MULTICULTURALISM & THE ANTI-DISCRIMINATION PRINCIPLE

On the Persistent Political Under-Representation of Muslims in India

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Abstract

This Paper is divided into three sections. In the first section I provide a brief historical overview of Hindu-Muslim relations in India and of the condition of Indian Muslims today. I conclude by claiming that Indian Muslims are a marginalized minority who have been persistently underrepresented in political institutions, particularly in the Indian Parliament. This section is important for those who are less informed about these issues—and I assume that most readers fall in this category. In the second section, I examine the case for political representation for Muslims. This was a much debated issue in pre-independent India. It was debated with subtlety and in considerable detail in the Constituent Assembly debates on the Indian constitution. However, with the partition of the country and the formation of the separate state of Pakistan, all debate on the political representation of Muslims ceased. I examine the merits and demerits of the case for the political representation of Indian Muslims. I also attempt a brief explanation of why this issue has virtually disappeared from the public arena in India. I conclude in the section that although political representation of Muslims qua Muslims is desirable, it is still unfeasible in the prevailing situation in India. In other words, I would support the recommendation to the Indian State that political rights not to be granted to any religious community. If political theory was to remain a handmaiden of state policy, then the matter ends right here. However, since I believe that political theory must think for the long run and design just institutions and policies for the future, and since, there is, I claim, no principled objection to the political representation of Muslims, in the third and final section I briefly outline which of the several electoral mechanisms are best suited to ensure fair political representation for Muslims in the future. In my view, the principle of fair political representation for Indian Muslims is best fulfilled by a complex mechanism consisting of preferential voting in multi-member constituencies with intra-party quotas in proportion to the overall population of Muslims in the country.

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*Rajeev Bhargava**

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I. HINDU-MUSLIM RELATIONS: AN HISTORICAL OVERVIEW

There was much in common between Hindus and Muslims in pre-independent India.¹ A majority of Muslims belong to the same ethnic group as Hindus. Urdu, widely thought to be a language of Muslims, was actually spoken by only about 30% of the total Muslim population and by a large number of Hindus in the North. Certain social customs were common to both communities. Many Muslims retained Hindu names. Hindu rites were sufficient in many parts of the country to solemnize Muslim marriages. Indeed, many Muslims continued to follow Hindu law in matters of marriage, guardianship, and inheritance. Muslim *Pirs*² had Hindu disciples and Hindu *Yogis* had Muslim *Chelas*.³ The caste system remained integral to both communities. Apart from Bengal, Hindus and Muslims were not divided along class lines or along the rural-urban continuum. There is then strong evidence to support the contention of several historians

¹ For example, in Karla, until at least 1865, Muslim peasants worshipped old village deities. In Altar and Bharatpur, the Meos continued to have Hindu names and celebrated, not just joined in, festivals such as Janamashtami and the Parihar Minar forbade the consumption of beef. Muslim cultivators near Ratlam followed Hindu customs in marriage. The sect of Mehadawis near Ahmedabad, steeped in Muslim orthodoxy in appearance were known for concealing their real, un-Islamic beliefs. In Sind, among Sunni Memans, ancient cults of the worship of trees and rivers were freely practiced and both living and dead saints were revered. The list of sects and communities that despite the formal adoption of Islam, retained their pre-Islamic beliefs and practices, is endless. For a good account of this see M. MUJEEB, INDIAN MUSLIMS MUNSHI RAM MANOHARLAL (1985).

² Pirs are mystics, ascetics, or saints associated with Sufism, a movement in Islam that originated in present day Iraq and later spread to Persia, Muslim Spain, North Africa, and India. The Pir is a spiritual teacher or master who guides his murids (disciples) to the “right path.”

³ Chelas is a term used for disciples.

that “objectively speaking,” differences between Muslims and Hindus were not large enough to justify a separatist movement.⁴

Yet, a successful separatist movement did occur in India. Briefly, this movement for separation that partitioned India underwent four stages. The first stage was the heightened use of religion as an identity marker in public spaces and the consolidation of community identities based on religion. By the end of the nineteenth century, powerful revivalist movements had sprung among Hindus along with a sense of the need to be unified and recognized as one homogenous group. This growing self-awareness was often accompanied by the feeling that Hindus had been a subject group, subordinated first to Muslims and later to the British. Hindu revivalist movements therefore, frequently assumed a strident anti-Muslim character. This was to cause great consternation among Muslim elites who were thereby forced to devise new strategies to create a social and political space for hardened religious identity.

The second stage was characterized by the development of majority-minority self-identification and the demand for a social and political majority-minority framework. The introduction of the modern census and representative institutions into India, in particular the scheme of separate representation for Muslims, ushered in this second phase. This enabled the use of religion for political mobilization, publicly launched a majority-minority discourse, formed a communal party such as the Muslim League, and sowed the seeds that would transform a community into a nation.

⁴ Muslims anyway began to feel insecure by the pressure of change put on them by the “rise of monied men and resurgence of Hindu landholding communities and by some colonial government policies such as making it mandatory on Indian officials to be able to read both the Devnagri and the Persian script.” See MUSHIRUL HASAN, INDIA’S PARTITION, PROCESS, STRATEGY AND MOBILIZATION 36 (1993). Also see PAUL BRASS, LANGUAGE, RELIGION AND POLITICS IN NORTH INDIA 178 (1974); FRANCIS ROBINSON, SEPARATISM AMONG INDIAN MUSLIMS: THE POLITICS OF UNITED PROVINCES MUSLIMS, 1880-1923 (1974); and BIPAN CHANDRA, COMMUNALISM IN MODERN INDIA (1974).

In the third stage there was a public proclamation that religious communities are nations. Henceforth, a qualitatively different kind of majority-minority framework with a demand for self-government rights was put forward by elites in both previously existing and newly carved provinces where Muslims had majority. Once Muslims elites began to believe that Muslims too were a nation, they also began to dream of complete economic and political power for themselves and to demand, finally, that these self-government rights be exercised only within an independent, politically sovereign nation-state.⁵ However—and this has much relevance to what I shall claim below—these demands were laced with a long list of imaginary grievances. 1) Muslim elites were not really backward, but rather feared being left behind in a predominantly Hindu regime. Therefore they created the myth of the backward Muslim.⁶ 2) They were not really oppressed but *feared* political domination in a Hindu-majority India, so they spun tales of Hindu tyranny.⁷ 3) They were neither historically disadvantaged nor unable to voice their demands but still manufactured the fiction

⁵ The installation of a Congress government in Uttar Pradesh (UP) started this phase. While keen to have a large Muslim representation within the government, the Congress, believing itself to be the party of all Indians, refused to induct the largest group of Muslims in the legislature, members of the Muslim league, into the ministry, unless the league was disbanded as a party. This was unacceptable to the League. As a result, Muslim elites were deprived of a share in power. Soon they lost some of their privileges. Even more importantly was the realization that for any more political favors, they would now have to lean not on the British but on the Congress, a political organisation that also relied on Hindu support. This generated in them a propensity to be receptive to the mobilising strategy of the Muslim league and eventually to espouse separatism. See HASAN, *id.* at 1-43. For Hindu communalism in Bengal see JOYA CHATTERJEE, BENGAL DIVIDED, HINDU COMMUNALISM AND PARTITION 1932-1947 (1995).

⁶ See ROBINSON, *supra* note 4, at ch. 1. For Robinson, it was the *threat* of becoming backward rather than backwardness itself that encouraged UP Muslims to organize themselves separately.

⁷ See HASAN, *supra* note 4, at 4. Hasan talks of “the dreaded fear of elective, representative government and majority rule.” However, Hasan also admits that in Congress provinces Muslim minorities were oppressed. It is therefore not unfair to say that the Muslim elite had both real and imaginary grievances.

of marginalization. Perhaps the term “imaginary” should not be identified with “unreal.” As the historian Beniprasad, writing in the thick of the demand for partition, said, “in politics there is a profound significance in Adler’s thesis that complexes are due not to the past but to the fear of the future.”⁸ But by 1940s this fear has turned into paranoia that contributed greatly to the development of the majority-minority syndrome.

Nor was fear of the future the only ingredient in the syndrome. A deeply divided memory of the past also played a key role in its development. Against the dominant current of anti-colonial ideology, Ambedkar made this point with cold blooded clarity. He accepted that large sections of Hindus and Muslims shared a common way of life but insisted that this commonness should not be exaggerated.⁹ Using Renan’s arguments that to qualify as a nation, a people must share a common heritage and cherish a common memory and noting that Hindus and Muslims had divided memories, he concluded that Hindus and Muslims were two nations. Even when both referred to the same events, one remembered it with shame and sorrow and the other with great pride. Thus “there was no common cycle of participation for a common achievement. Their political and religious past was one of mutual destruction and mutual animosities.” It is, Ambedkar claimed, “embedded in their religion, and for each to give up its past is to give up its religion. To hope for this is to hope in vain.”¹⁰ The truth, according to Ambedkar, then was that political and religious antagonisms divided them more deeply than the common things that

⁸ BENI PRASAD, INDIA’S HINDU-MUSLIM QUESTION (1944).

⁹ Many of these common features were a result not of choice, of “conscious attempt” but due to “mechanical causes” such as incomplete conversions, the mere fact of living on common land and under a common climate and vestiges of a brief period during Akbar’s rule when religious amalgamation did genuinely take place. 8 B. R. AMBEDKAR, WRITINGS AND SPEECHES, PAKISTAN OR THE PARTITION OF INDIA, EDUCATION DEPARTMENT, GOVERNMENT OF MAHARASHTRA 33-37 (1990).

¹⁰ AMBEDKAR, *id.* 37

bound them. In the period in which Gandhi was tirelessly advocating Hindu-Muslim unity, Ambedkar claimed that it is:

[n]o exaggeration to say that it is a record of 20 years of civil war between Hindus and Muslims.... The acts of barbarism against women, committed without remorse...show the depth of antagonism between two communities.... The tempers on both sides are like tempers of two warring nations.... What is astonishing is that these cold and deliberate acts of rank cruelty were not regarded as atrocities to be condemned but were treated as legitimate acts of warfare for which no apology was necessary.¹¹

Even though he does not use the term, Ambedkar is alluding here to what I have called the majority-minority syndrome, a diseased network of neurotic relations, so completely poisoned and accompanied by a such a vertiginous assortment of negative emotions (envy, malice, jealousy, spite, and hatred) that, collective delirium and cold-blooded acts of revenge, sending groups on a downward path of deeper and still deeper estrangement are mindlessly, alternately, and cyclically generated. It is a feature of this syndrome that, groups make demands on one other that can rarely be fulfilled, conjure up imaginary grievances, insist precisely on that which hurts the other most, at one time obsessively desires the very same thing that the other wants, at another time the exact opposite, always with the sole purpose of negating the claims of the other. Ambedkar provides several examples. "Hindus and Muslims make preparations against each other," he tells us:

[W]ithout abatement reminding one of a race in armaments between two hostile nations. If the Hindus have the Banaras University,¹² the Musalmans

¹¹ AMBEDKAR, *id.* at 184-186.

¹² The Banaras Hindu University (BHU) was founded in 1916 by Pandit Madan Mohan a member of the Indian National Congress. He was also an active member of Hindu Mahasabha which propogated a Hindu nationalist agenda.

must have the Aligarh University.¹³ If the Hindu start *Shuddhi*¹⁴ movement, the Muslims must launch the *Tablig* movement. If the Hindus start sangathan, the Muslims must have the *Tanjim*.¹⁵ If the Hindus have the R.S.S., the Muslims must reply by organising the *Khaksars*.^{16,17}

Again:

The Muslims (read extremist Muslims) agitated fiercely to introduce representative government in Kashmir but elsewhere they opposed it. Why? Because in all matters their determining attitude is how will it affect the Muslims vis à vis the Hindus. In Kashmir it would have meant transfer of power from Hindu king to Muslims masses; elsewhere where the ruler is Muslim and subjects Hindus, it means Hindu masses will be victorious.'

He adds: "[t]he determining and dominating consideration is not democracy but how democracy with majority rule will affect the Muslims in their struggle against the Hindus."¹⁸ Though wrong about Kashmiri Muslims, Ambedkar had grasped the general mindset of

¹³ The Aligarh Muslim University (AMU) was established by the efforts of Sir Syed Ahamad Khan who advocated modern western education among Muslims. It started as a college in 1875 and was deemed a university in 1920.

¹⁴ A movement started to bring back people who have converted to Islam and Christianity. It was started by the Arya Samaj, an religious sect founded by Swami Dayananda who tried to establish the infallible authority of Vedas for Hindus, in the early 20th century.

¹⁵ Tanjim: Islamic astrology, largely based on Hellenistic (Greek) models.

¹⁶ The Khaksar Tehrik based in Lahore was established by Allama Mashriqi in 1930. The Tehrik was created to free India from foreign rule, to uplift the masses, and to revive the Muslims who had previously ruled parts of India at different times during a period spanning nearly a thousand years.

¹⁷ AMBEDKAR, *supra* note 9, at 246.

¹⁸ AMBEDKAR, *id.* at 236.

extremists. As he himself recognized, extremist Hindu politics was similarly perverted. In different circumstances, a political majority-minority framework for Muslims within a united India should have been a satisfactory solution to all sides. But given the majority-minority syndrome, “in which a hostile majority is forever pitted against a hostile minority,” Ambedkar concluded, only a separate state seemed viable.

The partition of the Indian subcontinent left an even smaller (though in absolute terms still very huge) Muslim minority in India, largely composed of the illiterate poor scattered all over the country, a rather beleaguered rump in a state of confusion, guilt, and fear. They felt guilty that they may have had or would be seen to have a hand in partition, confused about their status, fearful and uncertain about their future in a newly born Hindu-dominated nation-state. Clearly, unlike those who successfully made it across the border, Muslims who chose to stay back or were left behind had become extremely vulnerable.

Yet political choices before Indian Muslims were not as limited after independence as it is sometimes made out to be. Nor were they dictated in the 1950s by a uniform ideological trend. Different groups vied with each other to take the mantle of Muslim leadership in India.¹⁹ These groups were broadly divided into two. The first was represented by organizations like the “apolitical” Tablighi Jamaat,²⁰ the revivalist Jamaat-I-Islami, the pro-Congress Jamiat-al-Ulema-e-Hind and sections among Muslims that tried to revive the dissolved Muslim League once again. These groups reflected a trend that had become strong in the three or four decades prior to the independence of India, namely, an exaggerated emphasis on cultural and identity issues such as the maintenance of the *Sharia*-based Muslim personal law at the

¹⁹ On this point, my account relies on the work of Mushirul Hasan. See his *INDIA'S MUSLIMS SINCE INDEPENDENCE: LEGACY OF A DIVIDED NATION* ch. 6 (1997).

²⁰ It is a movement started in 1926 by Maulana Mohammad Ilyas in the form of an organization called Tablighi Jamaat. Its stated aim is to bring spiritual awakening in the Muslims. Its intention was to “transform” into “pure Muslims” converts from Hinduism who still followed their Hindu cultural traditions.

expense of issues of material well being and development common to all Indians. The second group underplayed issues of identity. It opted for an expression of loyalty and demonstration of goodwill expressed through measures such as the observation of anti-Pakistan day, or the imposition of a voluntary ban on cow slaughter, and the formal acceptance of Hindi as official language. These people emphasized not separation but assimilation. Thus, Muslim legislators from the Congress generally avoided raising issues which were considered to be exclusively "Muslim." This was so for a number of reasons. First, the electoral process usually favors those who were reluctant to raise contentious issues for fear of being denied nomination at the next election. Second, many elected representatives had a constituency other than Muslims and were not obliged to redress only the grievances of the Muslim segment of the electorate. Had they done so, they would have alienated their non-Muslim constituency. Third, fearing that they would be branded communal, they did not want to appear to work exclusively among or for Muslims. These assimilationist Muslims within the Indian National Congress, also termed as "Muslim Nationalists" tried to project themselves as the real representatives of the Indian Muslims.²¹

This claim was not entirely unfounded. Since there was no schism between elite Muslims and ordinary Muslims, the virtual cooption of elite Muslims within the fold of the Congress meant that ordinary Muslims voted for the Congress as well. This happened consistently in the first three general elections: 1952, 1957, and 1962.²² When I write that Congress Muslims were assimilationists, I did not use this term entirely negatively, because a significant reason for their preference for the Congress was the faith of the ordinary Muslim in Nehru's leadership and in his ability to provide them adequate constitutional safeguards. However, this was so also because the average Muslim voter was concerned less about the fate of the *Sharia* and more worried about

²¹ See HASAN, *supra* note 19.

²² *Id.* at 216.

his own survival. He wanted an ordinary life with dignity for which he realized there was a need to build an enduring relationship with fellow citizens and with established political parties. Consequently, there was marginal improvement in the economic condition of some Muslims. For instance, the weaving community in UP and Bihar began to do well. Though there was a reduction in their number due to migration and riots, urban artisans in and around Delhi remained reasonably well off. The small Muslim bourgeoisie in western parts of the country expanded its business without any hindrance. The same trend was observed in the Southern part of the country where Muslims did relatively well in their traditional professional fields.²³ These factors continued to propel Muslims to vote for the Congress.

All this changed, however, after the death of Nehru. For a start, a schism between the elites and the rest gradually unfolded. The Congress failed to address issues of literacy, education, employment, and improvement in the conditions of women. Nor did it fully address the major issue of security which remained a concern for the ordinary Muslim: One communal riot after another left behind a disproportionately large number of Muslim victims (see Table 1 and 1-A). The incidence of violence against minorities which had showed a steady decline all through the Nehruvian period and had reached its lowest in 1963, showed a marked increase throughout the country. After Nehru, the law and order machinery was greatly “communalized.”²⁴ The slow and steady rise of Jana Sangh²⁵ and later

²³ *Id.* at 216-17.

²⁴ For a fuller explication of this point, see CHRISTOPHE JAFFRELOT, THE HINDU NATIONALIST MOVEMENT AND INDIAN POLITICS: 1925 TO THE 90S 330-337 (1996).

²⁵ A political party, the predecessor of the present Bharatiya Janata Party which existed from 1951 to 1980 and subscribed to right wing Hindu Nationalist ideology. This party merged in 1977 with the Bharatiya Lok Dal, the Indian National Congress (Organization), and the Socialist Party, to form the Janata Party (People's Party) and fought against the Indira Gandhi led Congress Party which had declared Emergency in India. The Janata Party formed the first non-Congress government in India and included former Jana Sangh leaders such as A. B. Vajpayee and L.K. Advani.

the BJP²⁶ was another important reason. In a new identity-charged and dominated political context, secularism was also reduced to a mere identity-constituting ideology that offered Muslims an alternative *identity* of a citizen without the political or socio-economic rights that frequently go with it. This rather thin secularism was no match to a well entrenched, much thicker identity offered by Islam. Drawn from the erstwhile landlord class, most of the Muslim elite was interested in self-perpetuation, was easily satisfied with Nehru's patronage, and did little to ameliorate the condition of their co-believers. Therefore, cracks between Muslim elites and ordinary Muslims were bound to grow. Ordinary Muslims began to lose faith in their leaders and in the Congress party and gradually moved towards organizations that focused on issues of cultural identity. For example there was a revival of the Jamaat-I-Islami in north India, the Muslim League in Kerala and the Ittehadul-Muslimeen in Hyderabad.²⁷ These organizations exploited the real and imaginary grievances of the Muslims in specific regional and local settings and legitimized themselves.

A. MUSLIMS: A MARGINALIZED GROUP IN INDIA

Meanwhile, the condition of the average Muslim worsened in much of India. One commentator, A.G. Noorani, described the condition of Indian Muslims as "sad."²⁸ When using this term, he had in mind the unequal treatment of Muslims in employment, the sorry plight of

²⁶ It is the acronym for Bharatiya Janata Party (BJP), one of the major political parties in India. Formed in 1980, after the disbandment of janasangh, it subscribes to the same ideology. It became the single-largest political party in Parliament in 1996 but could not muster enough support to form a government. After 1998 general elections, it managed to form a coalition government in alliance with other parties called National Democratic Alliance (NDA). But the coalition ruptured in May 1999, and fresh elections were again called with NDA coming to power with full majority. However, the NDA lost power in the next general elections.

²⁷ HASAN, *supra* note 19, at 253.

²⁸ Quoted in HASAN, *id.* at 280.

Urdu, and the threat to the physical security of ordinary Muslims.

It is important here to note the precise nature of marginalization and exclusion of Muslims in India. To say that Muslims are a marginalized community is not to claim that every single Muslim is marginalized, or that there is pervasive and unmitigated discrimination of all Muslims. As a matter of fact, the life of religious minorities in India is comparatively better than the life of minorities in many other countries. This is not surprising because constitutionally, India is a secular state and aspires to the dissolution of inter-religious domination.²⁹ Parity between communities is something that is valued by the Indian Constitution.³⁰ For example, as a distinct cultural and religious group, Muslims have a right to the survival and renewal of their own cultural resources. There are two distinct aspects of their right. The first has to do with the content of their culture, the second with the manner in which this content is generated and nourished. If Muslims have a right, then it is a right to be the guardians of the content of their culture, as well as the right to make decisions on how best this content is to be preserved.

In India, this cultural right can be divided, I believe, into four parts: first, the right to their language, or rather languages. The mother tongue of Muslims varies from region to region in India (Kashmiri, Malayali, Tamil Muslims) and this right, the right to the protection of their mother tongue, must be shared with people of other faiths. There is then the language of their religious instruction, Arabic and finally, the language of their literati, Urdu, a unique hybrid of Farsi and local

²⁹ For a detailed discussion on India's secular Constitution, see Rajeev Bhargava, *India's Secular Constitution*, in INDIA'S LIVING CONSTITUTION PERMANENT BLACK (E. Sreedharan, Zoya Hasan, & R. Sudarshan eds., 2002). See also Rajeev Bhargava, *Political Secularism*, in A HANDBOOK OF POLITICAL THEORY (B. Honnig, J. Dryzek, & A. Philips eds., 2006).

³⁰ For an overview of India's Constitutional vision, see Rajeev Bhargava, *Democratic Vision of a New Republic: India, 1950*, in TRANSFORMING INDIA (Francine Frankel, Zoya Hasan, Rajeev Bhargava, & Balveer Arora eds., 2000). Also see Sreedharan, Hasan, & Sudarshan eds., *id.*

dialects of Hindi, spoken in North India even by non-Muslims. Thus, Muslims also have a distinct right to the protection of Urdu and of the language of religious instruction. Second, they have a right to their cultural heritage, to ensuring that it is passed on from one generation to another. Though separate educational institutions are not necessary for this purpose, necessities of institutional design dictate that they have their own educational institutions. Third, the right to the protection of their places of worship. This should be taken care of in India by the fundamental right they have as individual citizens. But in view of destruction of the Babri Masjid,³¹ this may be deemed a separate right. Finally, a right to their own personal laws, i.e., laws pertaining to family, marriage, divorce, maintenance, inheritance, child custody, and adoption. Thus, by granting different forms of cultural rights, the Constitution tries to ensure cultural justice to Muslims. This is also evident from a cursory glance of the list of public holidays in India. Of the seventeen holidays approved by the Indian Government as national holidays, only three are non-religious: the Republic Day, the Independence Day, and Mahatma Gandhi's Birthday. Five relate to Hinduism, four to Islam, two to Christianity and one each to Sikhism, Jainism, and Buddhism.

Other achievements of India's multi-cultural experiment are also worth noting. There have been three Muslim Presidents of India. The current President of India, APJ Abdul Kalam is a Muslim from the southern state of Tamil Nadu. A Muslim rose to become the chief of the Indian Air Force (I.H. Latif, 1978-1981). Over the course of India's history, three Muslims have occupied the position of the Chief Justice of India: M. Hidayatullah 1968-1970, M. Hameedullah Beg 1977-1978, and A. H. Ahmadi 1995-1997. One of the major Indian industrial houses, Wipro is headed by Azim Premji—a Muslim.

³¹ A mosque that was built on land sacred to both Hindus and Muslims. This land is sacred to Hindus because Hindu activists widely believe it to be the birthplace of their God Rama. It is also sacred to Muslims because it is believed to have been constructed in the 16th Century by order of the first Mughal Emperor in India, Babar. Long under dispute, it was destroyed by Hindu activists on December 6, 1992.

Indians are crazy about their films and cricket. The hottest and the most popular film stars are predominantly Muslims. The Indian cricket team has been twice led by a Muslim and the current Indian squad has four Muslim team members in it. Sania Mirza, the latest sensation on World tennis circuit, is an Indian Muslim and is a role model for many young Indians. The market and the wider public do not always discriminate when it comes to their heroes and heroines. Yet, despite all this, the data on Indian Muslims makes a depressing reading.³²

- A majority of Muslims, nearly 71% of the total Muslim population, lives in rural areas and are mostly landless labourers, small and marginal farmers, artisans, craftsmen, and shopkeepers. The condition of Muslims in rural areas has deteriorated since the 1980s. In 1987-88, 40% of rural Muslim households cultivated little or no land. By 1999-2000 the figure has risen to 51%.
- More than half of urban Muslim population lives below the poverty line. Indeed, there has been a rise in the number of poor among Muslims. In 1993-94, 30% of Muslims were in the bottom 20% in urban areas. This has increased to 40% in 1999-2000. Likewise, the proportion of the poor in rural areas has increased over the same period from 20% to 29%.
- Many Muslims continue to be poor and self-employed. Their share in regular wage work is lower than members of other religious groups. (See Table 2.)

³² See HASAN, *supra* note 19, at 281-284 and Abusaleh Sharif & Azra Razzack, *Communal Relations and Social Integration*, in INDIA: SOCIAL DEVELOPMENT REPORT (2006). Also see C. Rammanohar Reddy, *The Gap Widened During the 1990s*, THE HINDU, September 13, 2002.

- The relative position of members of the two main religious groups in employment has changed over the years. In 1987-88, urban Muslims in the workforce experienced lower unemployment rates (4%) than the Hindus (5.5%). By 1999-2000, Muslims have a slightly higher rate of unemployment (5%) as compared to Hindus (4.7%).
- The Muslim share in public and private employment is dismal. (See Table 3, 4 & 5)
- In general, Muslim access to government sponsored welfare projects is limited.
- In general, Muslims are less educated than the national average. (See Table 6). For example, the illiteracy rate among urban Muslims is 11% points higher than urban Hindus in 1999-2000.
- Even in Kerala where their literacy level is comparatively higher, their share in public employment is much lower than others.
- Muslim population is a little over 12% of the total (over 120 million). However, their presence in the legislature is disproportionately low. Barring 1980 (9.2%) and 1984 (8.3%) it has hovered between 4.6 and 5.4%. (See Tables 7A-7K)

I have assumed throughout that Muslims form an ascriptive group, a community rather than a voluntary association, more or less a permanent minority in India. This is a correct assumption and requires no defense. The brief historical narrative and the data provided above show that there has been discrimination towards Muslims in India. Some of this discrimination is intentional. Negative stereotypes of Muslims abound in at least urban India, not least because of the

day-to-day effort of anti-Muslim cultural and political organizations. Although, the socio-economic condition of some groups such as the Dalits is worse, there is no doubt that the socio-economic condition of Muslims is extremely bad and constitutes a denial of many of their basic rights as citizens. They have a muted presence in the public sphere and their representation in legislatures is nowhere near what political justice dictates. Since there is an unambiguous connection between community identity and socio-economic and political inequality, it is entirely reasonable to conclude that Muslims constitute a marginalized group in India. They are not of course a historically marginalized group. They were not an oppressed group in colonial India. Indeed in pre-colonial India, the most pre-eminent rulers and emperors all happened to be Muslims. Yet, there is a substantial number of Muslims who are either converts from the outcastes or from other backward castes and the character of their oppression did not alter after their conversion. In this sense, these particular segments among Muslims have been historically marginalized. I return to this point later in the next section.

II. DO MUSLIMS NEED SPECIAL SELF-REPRESENTATION RIGHTS?

I have claimed that Muslims are a marginalized group and that they face sustained disadvantage because of structural properties of Indian society. Although they have the same legal and political rights available to the rest of the population, they are unable to exercise them fully. Whatever subsidiary benefits are gained by the exercise of these rights also remain unavailable to them. This should be a matter of grave concern. The state must take some remedial measures to ensure fairness to them. For example it can initiate special welfare schemes meant exclusively for Muslims. Yet, an explicit demand for these measures and for group-specific social and economic rights more generally does not appear to have a strong backing. A demand for Muslim affirmative action in the

civil service and education did surface during the Assembly by-elections in 1994 in five states of India. This demand also had some support from government lead by the Congress.³³ However, nothing much came of it. More recently, in Andhra Pradesh where more than 65% Muslims live below poverty line, the newly ensconced Congress introduced a program allotting a five percent reservation for Muslims in educational institutions. However, the High Court struck this decision down and the matter is currently pending in the Supreme Court.

Muslims are under-represented in political decision-making bodies, most notably in the Indian Parliament. However, the demand for political representation in the Parliament is even more muted. Such a demand was conspicuously missing when in 1994 the question of instituting a program favoring Muslim representation arose after nearly 50 years of silence on this issue.³⁴ To be sure, some fringe groups have expressed these demands.³⁵ For example in a convention of Indian Muslims held in 1989, a group of Muslims protested against their under-representation and demanded the introduction of the system of proportional representation in elections at all levels. Likewise, the National Convention for the Empowerment of Muslims in India urged the government to take necessary steps to ensure a proportionate share of seats for Muslims in legislative bodies. But support for these has not widened.

At any rate, the rest of India gives little attention even to these fringe demands. Surprisingly, even secularists, who are generally sympathetic to the plight of the Muslims, openly refuse to support any community-specific rights for representation in legislative bodies. The most vociferous champions of the continuation of group representation

³³ See Theodore P. Wright Jr., *A New Demand for Muslim Reservation in India*, 37(9) ASIAN SURVEY 853 (September 1997).

³⁴ *Id.*

³⁵ See, e.g., Iqbal A. Ansari, *Minority Representation*, available at <http://www.india-seminar.com/2001/506> (last visited October 16, 2006).

for scheduled castes³⁶ and scheduled tribes³⁷ do not wish to extend this right to Muslims. Even on this issue, the Indian Left clarified that it did not support this measure. The Indian State does not even conceive launching an affirmative action program to enhance the representation of Muslims in the legislatures.

Why is there so little support for community-specific affirmative action? Let me clarify that I shall not deal here with community-specific socio-economic affirmative action programs such as reservations for Muslims in education and government employment. My concern in this Paper is with the political under-representation of Muslims in the central legislature. Such political representation is valuable not only in itself—it gives a legitimate voice to Muslims in the political arena, something with intrinsic expressive value—but also has instrumental value because it helps them to influence decisions that might overcome or decrease their marginalization and exclusion from socio-economic benefits. Thus my question is: Why does such scant support exist for a fair political representation for Muslims? Some of the fears against special representative rights for Muslims can be traced to the bitter experience of separate electorates before the independence of India. Some explanation for this lack of support can therefore gleaned by examining the history of this issue.

A. THE DEBATE OVER SEPARATE ELECTORATES

It is widely accepted that the Government of India Act of 1909 was a calculated master stroke by imperial Britain to create divisions

³⁶ Communities or castes at the bottom of the hierarchical caste system of India. Treated as outcastes or untouchables by members of the “higher castes” and listed in a schedule prepared by Government of India. These castes are now granted special status by the Constitution of India. Fifteen percent of seats in legislatures and government employment are reserved for them.

³⁷ Tribal communities who are listed in a schedule prepared by the Government of India and are accorded special status by the Constitution. Seven and a half percent of seats in legislature and government jobs are reserved for them.

between Hindus and Muslims and to defuse the Congress's demand for greater share in political decision-making. The Act of 1909 was intended to pacify the growing discontent among the elites: It expanded the Legislative Councils at both the central and the provincial levels and enlarged their functions. It included nominated as well as elected members. However, it also introduced separate electorates for Muslims.³⁸ Separate electorates not only created a space for reinforcing religious identities but also homogenized and fixed them. A strong anti-colonial movement with a larger social base and a wider political appeal needed to be grounded in a more inclusive conception of the nation. A community organized along religion carried with it seeds of an incipient religious nationalism that would have dissipated the collective energy of a people in the making. The Indian National Congress was never comfortable with the idea of separate electorates and repeatedly recommended their abolition. Instead they demanded reservation of seats in the legislative bodies strictly in accordance with the proportion of the minorities in the overall population.

It is one thing to say that the Congress never accepted separate electorates and quite another to say that they had good reasons for it. To explore this issue, it is important to look into the debate over separate electorates in the Constituent Assembly which is quite illuminating. Pocker Sahib Bahadur, an advocate of separate electorate, began his argument with the premise that human beings are bound to identify themselves with particular communities on an ascriptive

³⁸ Separate electorates are best understood at least in the Indian context by contrasting them with joint electorates. In a system of joint electorates, the boundaries of a constituency do not coincide with the boundaries of a caste or religious community. A constituency may be reserved for members of a particular caste or community but the constituency itself is not defined along caste or community lines. Thus, a constituency reserved for Scheduled Castes will elect a Scheduled Caste Member of Parliament but the electorate which chooses him/her consists of members of every caste. In separate electorates, the constituencies are already defined by caste or religious community. Thus, not only do parties field Muslim candidates but votes are cast only by Muslims. Likewise, Hindu candidates are elected only by Hindus and so on.

basis and since such communities cannot be numerically equal, there are bound to be minorities in every land.³⁹ Since minorities cannot be “erased out of existence,” we need to come to terms with them, which in turn entails reconciling with the fact that total harmony between communities, the complete eradication of differences among them, is impossible. On the other hand, a minimization of differences between them is achievable, but only if minorities are satisfied with the overall political framework in which they live. A condition of such satisfaction, Bahadur argued, was that their views and grievances be given an effective voice in the deliberations of the legislature. Since all members of the minority community cannot bring their own voices in the deliberative assembly, attempts must be made to find and induct their authentic representatives, “to lay down a procedure by which the best man who can represent that community and voice forth the feelings of that community is elected to the legislature.”⁴⁰

Many of the premises of this argument were acceptable to opponents of separate electorates. For example, in his statement on August 27, 1947, Govind Ballabh Pant accepted that in a free and democratic state, citizens would like to satisfy not only their material wants but also “a spiritual sense of self-respect.” This self-respect, he assumed, was linked to their community-based identity. It was linked, significantly for him, also with their recognition as equals by members of other communities. More significantly, this equal recognition must be available within the political arena. Pant appeared to have understood the active dimension of citizenship. For him, citizens are hardly treated as equals in the public domain if, despite a formal right to vote, they are excluded from public deliberations by informal mechanisms. They then begin to have the lingering feeling that they are inadequately heard, that their view are not properly taken into deliberations, and that they have no real say in public matters including in those which vitally concern them. Such people then begin to have a “shrill and

³⁹ Constituent Assembly Debates, Vol. III, August 27, 1947, at 211.

⁴⁰ *Id.* at 212.

discordant voice” Pant agreed that rather than be shrill and discordant, Muslim voice in the legislatures must be “powerful.”⁴¹

Bahadur conceded that these premises were shared by some of the best Congressmen. Differences arose over the best procedure by which this could be affected and adequate representation for Muslims achieved. For the Congress, initially, the best procedure for this was a system of community-based reservations of a certain number of seats based on joint electorate. For Bahadur, this procedure was defective because it may elect a person favored solely by the majority, one who fails to represent the real views and interests of Muslims. Bahadur insisted that it is extremely difficult for non-Muslims to realize the actual needs and requirements of the Muslim community. True interests of Muslims can be understood only by Muslims. However, even the fact of belonging to a community was not sufficient for proper representation. (This demand was compatible with reservations on the basis of joint electorates.) The elected person must be the right sort of man from the community and this, he argued, could be ensured only by separate electorates.⁴² To elect the best man, only Muslims must choose their Muslim representative. For this requirement to be met, separate electorates were essential.

Though Pant accepted most of Bahadur’s premises, he fiercely disagreed with his conclusion. To oppose separate electorates, he put forward a persuasive argument from democratic accountability. For Pant, a system of separate electorates entails that both majority and minority representatives are chosen separately by their respective communities. When that happens, representatives of the majority are not accountable to the minority community and, despite the formal presence of minority representatives, could well take decisions that

⁴¹ *Id.*

⁴² The casteist overtones of Bahadur’s demand could hardly go unnoticed. He was anxious from hegemonic considerations, members of the majority may strategically vote for a lower caste Muslim candidate, “some illiterate sweeper or scavenger” who may not be capable of understanding the real needs of the community and whose selection, therefore, could be detrimental to its long term interests.

went against the interests of the minority. If that happens, the chosen representatives of the minority are reduced to being mere advocates in the legislature without possessing a corresponding share in power in the decision making process. The price of guaranteed representation in the legislature may be reduced representation in the cabinet and that, Pant argued, was a heavy price indeed. Pant concluded his address to the Constituent Assembly with the thought that it was unjust for minorities to be segregated from the rest of the community, to be kept aloof in an air-tight compartment, even drawing a comparison to the need to rely on others for the air they breathed. To have a powerful, rather than a shrill and discordant voice, the Muslims must, he pleaded, reject separate electorates. In short, Pant agreed that if people are excluded from or discriminated against within the deliberative assembly solely on the ground that they belong to a particular religion then the principle of equal citizenship one of the core values of secularism, is violated. But he argued that it is separate not joint electorates that force this exclusion and by implication breach the principles of secularism.

It is clear from this discussion that it was not community-based difference as such which was unacceptable to the best of the Congressmen. Nor, based on their initial acceptance of reservations for Muslims based on joint electorates, did they entirely reject what is frequently called: "mirror representation," namely the view that a legislature is representative only if it mirrors the ethnic, religious, or gender characteristics of the public. What the Congressmen rejected was the idea that this mirror representation should be generalized. For most of them separate electorates embodied generalized mirror representation. Muslims could represent members of their own community but they need not, by law, have monopoly over such representation.⁴³ Separate electorates were rejected not because they

⁴³ Farzana Sheikh who claims that the Congress categorically assumed that the unit of representation simply had to be the individual is mistaken, for the Congress did not completely rule out community-based political representation. See Farzana Sheikh, *Muslims and Political Representation in Colonial India: the Making of Pakistan*, in INDIA'S PARTITION: PROCESS, STRATEGY, AND MOBILIZATION 81-101 (Mushirul Hasan ed., 1993).

fostered communal difference as such or because they endangered a simple idea of national unity but because, as Patel put it, “they had in the past sharpened communal difference *to a dangerous extent* and had proved one of the main stumbling blocks to the development of a *healthy* national life.” (My emphasis added R.B.).

Allow me to dwell on this idea of national unity. Liah Greenfeld has recently drawn our attention to a change in the semantics of the term “nation.”⁴⁴ In the late thirteenth century, the term “nation” meant a community of opinion where the constituents of the said community were representatives of cultural and political authority. In short, a nation was a group of social elites. In the 16th century, however, the reference of the term nation changed; it began to be applied to the entire population of a country and became synonymous with the word “people.” This change in meaning signalled the symbolic elevation of the rabble into an elite, its movement from the wings onto center stage, from irrelevance to relevance. Henceforth, every member of the population could partake of this superior, elite quality. The transformation of a rabble into a people and of the people into an elite, presupposes a profound change in the way societies are imagined, i.e., from hierarchical communities to networks consisting of free and equal individuals.

This effected yet another change; in their self-understanding, the nation exists prior to and independent of the political organization of society, which has the power to give itself a constitution. The idea of the basic rules of society as stemming from the common action of a people, of a nation, is identical with the democratic idea for which sovereignty is located within a people fundamentally equal to one another. As Greenfeld puts it, “nationalism was the form in which democracy appeared in the world, contained in the idea of the nation as a butterfly in a cocoon.”⁴⁵ Now, I wish to argue that the unity that

⁴⁴ LIAH GREENFIELD, *Introduction*, in NATIONALISM: FIVE ROADS TO MODERNITY (1992).

⁴⁵ *Id.* at 10.

many members of the assembly would not tire of emphasizing, the obsession against sharp communal divisions that they persistently displayed had much to do with the need to create and sustain, what one assembly member called “the unadulterated identity of people, a democracy.”⁴⁶ This is of a piece with a point recently made by the political philosopher Charles Taylor that unlike other political systems, democratic states need cohesion, a common identity, a common personality, and a common agency.⁴⁷ Democracy, therefore, is not just a procedural issue but also a matter of identity. It allows for differences but it cannot stomach divisions which are “sharpened to a dangerous extent.” It was precisely for this reason that a “suffrage based on religious affiliation was ridiculous” and why therefore, religion in India had to be separated from a democratic state. This is also why eventually no political rights were granted to religious communities. Indeed group-differentiated political rights were not granted in the constitution. This of course is entirely a contextual issue. Rejection of political rights for Muslims was a necessity in India because religion-based divisions had become too dangerous here.

The rejection of community-based political rights was entirely consistent with the acceptance of community-based socio-cultural rights. The rights granted under Article 30⁴⁸ were as necessary for a

⁴⁶ Constituent Assembly Debates, *supra* note 39, at 219.

⁴⁷ See Charles Taylor, *Modes of Secularism*, in SECULARISM AND ITS CRITICS 31-53 (Rajeev Bhargava ed., 1999).

⁴⁸ This Article of the Indian Constitution reads as follows:

Right of minorities to establish and administer educational institutions.

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

democratic state as the rejection of separate electorates under Article 325.⁴⁹ The reason for the inclusion of socio-cultural rights is also found in the debates. Members of the assembly believed that the majority-minority framework may eventually go but “the minorities must be dissolved into the majority by *justice*.” As Hridaya Nath Kunzru puts it, “if this elementary justice is not given to minorities, we may open up the dangerous path of fanatical nationalism.” The principle of justice, and the very same principles of liberty and equality that ruled out group-differentiated political rights, necessitated group-differentiated socio-cultural rights.⁵⁰ Equality of free citizenship required group-differentiated socio-cultural rights as much as it ruled out group-differentiated political rights.⁵¹ For Ambedkar, such

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- (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.

⁴⁹ Article 325 of the Indian Constitution says:

There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

⁵⁰ By group-specific socio-cultural rights, I mean the right granted to communities to maintain, say, their own educational institutions so that they can make available their religious and cultural heritage to the young. Such rights are different from social rights. By social rights is meant rights to the prevailing standard of life and the social heritage of society. Such rights are realized through social services and the education system. See T.H. MARSHALL, CLASS, CITIZENSHIP AND SOCIAL DEVELOPMENT 71-72 (1973). Also see J.M. BARBELET, CITIZENSHIP 6 (1988). It follows that by group-specific social rights is meant the grant of the right to general education and employment to members of the Muslim community. Group-specific social rights were not granted to Muslims.

⁵¹ By political rights, I mean not only freedom of speech and association but also the right to participate in deliberations in the public sphere and to stand for public office, including the legislature.

minority rights had an absolute status. When preparing the interim report on fundamental rights he was asked by Mahavir Tyagi if the grant of cultural and educational rights to minorities in India should not wait till the fate of minorities residing in Pakistan was more clearly known. Ambedkar replied firmly that the rights of minorities are not relative or conditional upon the decision of other states but were absolute: "No matter what others do, he urged, we ought to do what is right in our own judgement and, therefore, every minority, irrespective of any other consideration, is entitled to the right to use their language, script and culture and the right not to be precluded from establishing any educational institution that they wish to establish.⁵²" Thus, culture and identity related issues were given recognition but political recognition to a consolidated religious community that could make demands related to any issue, both cultural and non-cultural was not conceded.

Allow me to sum up the salient points of this debate. First, there are ascriptive communities in any society and some of these have the status of more or less permanent minorities. Second, the interests of these minorities must be safeguarded. Third, these interests must be articulated in a political forum and therefore they must have an effective voice in the deliberations of the legislature. Fourth, in a representative democracy this can be done by representatives of the community. Thus, some form of descriptive representation, one designed to constitute an assembly that mirrors the relevant ascriptive features of the community in question, is required for meaningful political inclusion, to overcome the possible tyranny of the majority and the consequent alienation and marginalisation of minority communities. Inclusion in the political process is important for the legitimacy of decisions arrived through the process. Even if a decision goes against the interests of the minority, the chances are that they would be gracefully accepted if the process

⁵² Constituent Assembly Debates, vol. III, May 1, 1947. Mahavir Tyagi (1899-1980) was an Indian freedom fighter and a parliamentarian from the state of Uttar Pradesh in India. He was a member of the Constituent Assembly of India.

through which they were made had included them in a meaningful way and given them an effective voice.

The Congress rejected generalized descriptive representation, not restricted descriptive representation. There were two main arguments against the specific mechanism for descriptive representation. First, they objected to the idea that Muslims alone can represent members of their community. Second, they were worried about democratic accountability. Third, that descriptive representation does not guarantee substantive representation. In other words, it is entirely possible that a Muslim represents Muslims not just inadequately but badly. Fourth, they were worried that they would sharpen communal difference to a dangerous extent and prevent the development of a healthy national life. Eventually, in the aftermath of the violence during the partition of India, this fourth reason was decisive and became the basis for the rejection not only of separate electorates but of any kind of political self-representation of Muslims.

B. OBJECTIONS TO GROUP-BASED POLITICAL REPRESENTATION IN INDIA TODAY

Do these arguments still hold in India today? Separate electorates were rejected because of the fear of balkanization. Is this fear still strong in India? More importantly, is it reasonable to have this fear? Before coming to this issue, I address seven possible arguments against group-representation for Muslims that still might be doing the rounds in India. I say this with some uncertainty because there is virtual silence over this issue in the public sphere. The benefits of group representation that would accrue to Muslims and the costs they continue to bear for remaining politically under-represented are hardly ever discussed. The arguments presented here are reconstructed then from fragments of statements that are expressed largely privately and only occasionally in public.

The *first* is the standard liberal-individualist argument against group representation more generally. This argument comes in two

versions. The first version is motivated by a genuine concern that any community specific representation undermines the freedom and autonomy of individual citizens. The second is motivated by purely instrumental reasons and is deployed ironically by right-wing, communal Hindu forces which claim that any such right is a privilege granted to one group and therefore undermines inter-group equality and anyway violates the basis of modern citizenship grounded as it is in individual subjectivity.

A *second* objection is that community-specific political representation is valid in the case of historically oppressed groups, i.e., groups which have faced systematic discrimination inter-generationally, over a long period of time. It is not valid in the case of marginalized groups. Proponents of this argument accept that some remedial measures should be undertaken to rectify this injustice but then go on to argue that group representation is not the appropriate mechanism to do so. This objection runs into another *third* one offered by secularists. For most Indian secularists, any group representation is permissible as long as religion is not the principal criterion of individuating groups. Any segmentation or classification of society along religious lines, it is claimed, contravenes the secular fabric of society. Political recognition to religion-based communities grossly violates the principles of political secularism. Since “Muslim” falls into a religious category, any political right given to Muslims *qua* Muslims contravenes secularism and is therefore unacceptable. Yet another *fourth* objection is that the demand for community-specific political representation is pressed only by a fringe group with nostalgia for the pre-partition political system of India. It is not preferred by a majority of Muslims who seek an alliance, if not merger with the subaltern classes. A good system of political representation must respect the preferences of its members. Therefore, community specific political representation is redundant for Muslims in post-independent India.

A *fifth* objection claims that group representation for minority communities makes the majority unaccountable to the minorities. This argument was made in the Constituent Assembly most forcefully by

Gobind Ballabh Pant⁵³ and continues to inhabit the political landscape of India even today. Some opponents of group representation believe that all arguments which were valid and sound against separate electorates hold equally well for any kind of group representation. Thus, they argue that once Muslims begin to represent themselves, non-Muslims will feel that they are no longer accountable to the Muslims. They may even take decisions that adversely affect Muslims. Thus, a measure that looks good on paper may lead to another form of majoritarianism and to the ghettoization of the minorities. Far from including Muslims in the political process, Muslims self-representation might lead to their exclusion.

Another *sixth* argument is grounded in the value of national unity. Political recognition to religious communities is reminiscent of the demand for separate electorates which, so the argument goes, was a major contributory factor to the partition of India. Similar demands today will only bolster fissiparous forces and lead not only to the polarization of Indian society but also possibly to its balkanization.

Finally, a *seventh* related argument focuses less on national unity and more on the adverse impact of religion based political representation. On this view, such a measure is self-defeating for Muslims. It is self-defeating because it is bound to generate a “communal backlash” and revive a majority-minority syndrome. Such a syndrome in the present context in which Muslims lack the capacity to fight back is bound to lead to a vicious majoritarianism that would be perceived to be legitimate by a majority of Hindus. Any demand for group representation of Muslims, no matter how correct in principle, is imprudent and should be abandoned.

1. RESPONSES TO OBJECTIONS

Given the paucity of space, I will not deal with every argument in detail. For example, I do not discuss the second version of the liberal-

⁵³ See Part II A, *supra*.

individualist argument. The right-wing Hindu objection instrumentally deploys the liberal argument and is therefore insincere. I discuss in this Article arguments, on the assumption that they are made sincerely. Any argument that is widely recognized as insincere requires an explanation not a systematic, rational rebuttal. The objection that community-specific political representation is inappropriate for Muslims because they do not constitute a historically oppressed group has already been answered above⁵⁴ and need not be addressed any further. This leaves me to respond to six objections, a) the liberal individualist objection b) the secularist objection c) the objection that we need to respect the current wishes of the Muslim community d) the democratic accountability objection e) the argument for national unity f) the pragmatic objection.

2. THE LIBERAL-INDIVIDUALIST OBJECTION

I turn to the first objection that group representation undermines individual freedom and autonomy. It must be conceded straightforwardly that any theory of group representation that permits the state to ascribe political beliefs and preferences to individuals solely on the ground of their group membership and creates a system in which individuals are not allowed to express their own distinctive beliefs and preferences is deeply troublesome.⁵⁵ If a system is such that the beliefs and preferences of individuals are inferred or read off directly from their membership in groups, then such a system shows utter disregard for individual freedom and autonomy and, from a liberal point of view, is unacceptable. Thus, it is important that groups are not granted a moral status that easily overrides the moral status of individuals. Yet, sometimes there are hidden atomistic assumptions underlying the moral claims of individuals that are as troublesome as claims made on behalf of groups. All individuals are necessarily

⁵⁴ See pages 89 & 90, *supra*.

⁵⁵ MELISSA S. WILLIAMS, *VOICE, TRUST AND MEMORY* 81 (1998).

situated within social contexts, which have a deep impact on the formation of their beliefs and preferences. They also shape their sense of self-respect and self-esteem. Such social contexts include not only diffused and thin network of social relationships that we associate with modern urban life but also modern ascriptive communities. Such groups can either relate to one another as equals or be in a relation of domination and subordination. If the relationship is one of domination, then a member of the subordinate group is likely to have a diminished sense of self-respect and low self-esteem. Her beliefs and preferences will also be affected by this experience of domination. A person who is persistently stereotyped because of his membership in a group is bound to be affected adversely.⁵⁶ In short, inter-group equality is an important condition for individual freedom and autonomy. Members of a subordinate group are less likely to be free and autonomous. It follows that neither groups nor relations between them can be ignored in any discussion of individual freedom and equality that lie at the core of liberal theories. It also follows that fair representation is not just a matter of the principle of one person one vote or the equal opportunity principle in the political sphere but involves additional mechanisms to ensure fair representation of groups in the deliberative process.⁵⁷

The institutional implication of these points is this: Fair representation can be achieved by electoral mechanisms that attend to the demands both of group representation and individual autonomy. Neither a mechanism that ensures only group representation, nor one that ignores it is likely to generate structures of fair representation.

⁵⁶ Hence in India, there is an equal concern for intra-group and inter-group equality, and against inter-religious domination as much as intra-religious domination. On these points, see RAJEEV BHARGAVA, THE DEMOCRATIC VISION OF A NEW REPUBLIC: INDIA, 1950, in TRANSFORMING INDIA 38 (Francene Frankel et al. eds., 2002) and Rajeev Bhargava, *The Distinctiveness of Indian Secularism*, in THE FUTURE OF SECULARISM (T.M. Srinivasan ed., 2007).

⁵⁷ On this see, WILLIAMS, *supra* note 55, at 75-82.

3. THE SECULARIST OBJECTION

The secularist objection goes something like this: Since secularism means the separation of religion and politics and further since separation means exclusion, any inclusion of religion in the democratic process is violative of secularism. What does it mean to include or exclude religion from politics? In western political theory, it is frequently taken to mean that neither actual decision-making nor its justification in the public domain should be grounded in religious rationales. In non-western societies, however, this issue is usually framed differently. The principal question to be addressed here is: Is a reference to community-based religious identity permissible or not in the electoral processes? Should religious groups be included or excluded from the democratic and electoral processes? In short, inclusion of religion within the democratic or electoral process also means giving or refusing political recognition to religious communities. The exclusion of religion means refusing to grant political rights to religious communities. A commitment to secularism then entails that neither self-government rights nor special representation rights are to be granted to religious communities.

This is consistent with the standard liberal answer to the same question. In the standard liberal view, religious identity is irrelevant to the issue of fair representation. The fair representation of religious communities does not depend, on this view, on their legislative presence but rather bestowed by the more general principle of one person one vote and by the satisfaction of the equal opportunity principle. As long as all citizens have an equal opportunity to influence the voting process, the outcome of the process is fair, no matter what it is. For example, if they have equal opportunity to coalesce with others, to express their interest in conjunction with other citizens through interest groups, pressure groups, or political parties, then they have an equal chance to influence voting in the legislative process too.⁵⁸ In other words,

⁵⁸ *Id.* at 10.

fair representation is defined through an individualist understanding of procedural fairness. Legislative decisions are fair if every citizen has had an equal opportunity to mobilize politically around interests she considers most important to her. Fair representation does not dictate a “threshold level” of group presence in legislative bodies.⁵⁹ If groups demand guaranteed proportional representation of their members in legislative bodies then they are asking for special entitlements, i.e., privileges that are not granted to other citizens. But what if groups are absent from legislative bodies? What if their interests remain uncrystallized? What if they do not enter the political arena? If that happens, political effort must be enhanced and mobilization increased. The standard secular view that refuses special representation rights to religious communities is entirely consistent with this liberal proceduralism.

Now I wish to argue that secularism and liberal proceduralism need not be strongly connected. More importantly, conceptions of secularism exist which are delinked from liberal individualism. To the question, should religion be included or excluded from the democratic process and should special representation rights be given or not to religious communities, secularism can give an answer other than a bland no. So what is alternative secularist answer to this question? And on what conception of secularism is it based? Elsewhere, I have argued that there is no a priori, antecedently determined general principle that excludes religion from state/politics and that is dictated by secularism. The separation of religion from politics may mean not exclusion but principled distance.⁶⁰ Crudely put, principled distance means that religion may be included or excluded depending on whether

⁵⁹ On this point see Anne Phillips, *Dealing with Difference: A Politics of Ideas or a Politics of Presence?*, CONSTELLATIONS 74-91 (1994) and WILL KYMLICKA, MULTICULTURAL CITIZENSHIP 147 (1995).

⁶⁰ On the idea of principled distance, see Rajeev Bhargava, *What is Secularism for?*, in SECULARISM AND ITS CRITICS 515 (Rajeev Bhargava ed., 1999) and Rajeev Bhargava, *India's Secular Constitution*, in INDIA'S LIVING CONSTITUTION 115-117 (Zoya Hassan et al. eds., 2002).

this inclusion or exclusion promotes or undermines the values and principles that are integral to secularism. These values and principles comprise peace and toleration between communities and liberty and equality construed both individualistically and non- individualistically. For example, if by granting political rights to religious communities, the value of civic friendship is enhanced and alienation among citizens is diminished, then such rights must be granted. On the other hand, if by granting these rights, we increase alienation and adversely affect civic friendship, then such rights must be refused. Likewise, if by granting these rights, the voice and participation of citizens is improved in the deliberative process, then such rights must be granted. If on the other hand, giving such rights diminishes the prospects of their participation or the participation of others in the decision-making process, then such rights must not be granted.

On this view of secularism, a failure to grant political rights to groups, when such rights would enhance the participation of citizens, reproduces the political under-representation of these religious communities. A secularism based on principled distance may be able to check this under-representation. Mainstream secularism that insists on the exclusion of religion that refuses to grant rights to religious groups does the opposite. In other words, the right to self representation to Muslims violates only one version of secularism. The other version, which is enshrined in the Indian constitution, may, in certain contexts, require that religious communities be given self representation rights.

4. THE OBJECTION THAT MUSLIMS PREFER NOT TO HAVE SELF-REPRESENTATION RIGHTS

In his recent book, *Who Wants Democracy*, Javed Alam claims that almost on every dimension of democracy, the proportion of Muslims responding positively is greater than the overall national average.⁶¹ Democracy itself is affirmed overwhelmingly by Indian Muslims. In a

⁶¹ JAVEED ALAM, WHO WANTS DEMOCRACY? 61-74 (2004).

recent survey of the Centre for the Study of Developing Societies, 72% of Muslims agreed that democracy is a better system of government than any other. More Muslims than one would expect believe in the efficacy of their votes. It is about 1½ % above the national average.

These are amazing statistics. For it is widely accepted and confirmed by the data presented in the tables that poverty among Muslims is high; their share in public jobs is low; there is more unemployment among them; they have high propensity in urban areas to be in the disorganized sector and therefore to be criminalized; they face persistent discrimination and have been frequent victims of communal riots and massacres. One would expect such a group to be deeply alienated from the political order, including from the democratic process. How come they still manage to have public confidence in the process? Alam has a general argument about why democracy in India enjoys legitimacy. He argues that unlike western societies, where capitalism played an important role in dismantling the feudal order and democratic institutions were installed much later in response to the demands from the vulnerable sections to negate the adverse impact of capitalism, democracy, in India, has helped break the shackles of a semi-feudal social order by empowering people with the right to vote and by giving them equal citizenship. In particular, it helped destroy a status-ridden, hierarchically downgrading caste system which possessed self-validating authority and which worked with the help of mechanisms that enforced in conformity. Democracy has loosened these inherited social structures. As I have mentioned, it did so by giving ordinary people the identity of an equal citizen, and with it, a new status, dignity, and self-respect. Moreover, it has opened up spaces for them to struggle for relief, material well-being, and dignity. Thus democracy has also provided an arena in which vulnerable sections of society can fight for full citizenship rights.

Alam argues that this insight about the positive impact and appraisal of democracy on and by vulnerable sections has not escaped or bypassed Muslims. As they begin to identify with the rest of the vulnerable population, Muslims too feel that they have a stake in the

process of democracy, that their fight for jobs, relief, dignity, and material well-being is not so very distinct from the more general struggle of other vulnerable sections. How has this happened? Was it always the case? Alam claims that this is increasingly becoming so. It has happened first because of a chasm that now exists between Muslim elites and all other Muslims. This has made it impossible for a meager Muslim elite to affect the larger Muslim populace to follow their lead in politics. Ordinary Muslims no longer vote as their elites wish them to. In the Nehruvian period, the Congress took the Muslim vote for granted because the Muslims elites were loyal to Nehru. This is no longer the case, in part because the general disillusionment with the more manipulative and opportunistic policies of the Congress towards Muslims but also because the chasm mentioned above means that Muslims no longer vote en bloc in favor of any one party. Even if the Muslim elites vote with the Congress, ordinary Muslims do not. A second reason is that although the persistent discrimination faced by Muslims virtually everywhere in India has given them a sense of unification, in post-independent India this does not translate into their identification as a national or sub-national group. While they feel that they are vulnerable community, this sense of vulnerability is something, they feel, they share with other vulnerable communities such as the Scheduled Castes, the other Backward Castes, and women. This, along with the fact that they lack both an exclusivist ideology and organizational unity, means that there is a much better chance that they would act as secularized vulnerable minority rather than as a religious community that is defined negatively by its relationship to the majority community.

This is a promising thesis. However, it underplays the deeper alienation felt by Muslims and the greater sense of separateness that they have, not just because of the legacy of the partition of India but by virtue of the persistent threat they feel from vicious, Hindu majoritarian forces. Alam expresses one strand among Muslims or rather the aspiration of some secular-minded Muslims concerning

this strand among the larger Muslim populace. However, I doubt if this gives us an accurate picture of what is really happening on the ground. I am not denying that they cannot align with other vulnerable communities or that they feel no solidarity with them, but it is hard not to accept that most of them believe that they are specially underprivileged or targeted. This vulnerability is different from the vulnerabilities felt by other weaker groups in Indian society. Moreover, for Alam, the Muslims share the same sense of vulnerability as the Scheduled Castes (SC) and Scheduled Tribes (ST). This may be so, but two other conclusions follow from this claim than the one derived by Alam. First, that neither Muslims nor SC/STs should be given community-specific political rights. Second, that Muslims must also be granted the same rights as SC/STs.

5. THE DEMOCRATIC OBJECTION

Against the argument that group representation for minority communities makes the majority unaccountable to the minorities, I reply: It is true that some forms of political representation of groups create this problem. If political representation of groups is grounded entirely on the idea of mirror representation, or if it has the effect of generating mirror representation, then this objection is sound. However, if one has a political mechanism which grants restricted mirror representation or if it reflects a strategy that mixes mirror representation with non-descriptive representation, then this problem of non-accountability is unlikely to be generated. Such a mixed strategy would include some representation of a group by members of the same groups but would allow for the possibility that the same group can also be represented by persons who do not share the same religious or ethnic characteristics. It also allows for shared experience, possibly across cultures and ethnicities, to be the basis of adequate representation. Mechanisms such as this do not face the problem of non-accountability.

6. THE ARGUMENT FROM NATIONAL UNITY

Provided certain conditions are adequately met, the argument for national unity is not convincing. Conversely, if these conditions do not hold, the argument is persuasive. It is not persuasive if national unity is founded on the idea of homogenization and assimilation. A nation does not become one if all differences are suppressed or if they are erased by the imposition of the culture of the majority. Unity is more likely to be maintained if some significant differences are freely expressed, socially recognized, and publicly affirmed so that people who come from different cultural or religious backgrounds feel that despite differences they are respected in the polity.

However, the expression of difference is not always peaceful and harmonious. Frequently it leads to conflict, sometimes to violent conflicts. When such conflicts are persistent, pervasive, and run deep, then no society is likely to tolerate them and some suppression of these differences might be contextually appropriate—as was the case in the aftermath of the partition of India. In such times, the claim that the political recognition of difference is dangerous and detrimental to the unity of the nation cannot easily be brushed aside.

7. THE PRAGMATIC OBJECTION OF THE LIKELIHOOD OF A MAJORITARIAN BACKLASH

A final argument comes from those who claim that such a demand is self-defeating for Muslims because it is likely to lead to a crushing majoritarianism. Now, there is nothing inevitable about this. The political self-representation of groups does not lead necessarily to a backlash from the majority. True though this may be, this is a sensitive matter which can be understood only with better appreciation of India's socio-historical context. Thus, the pertinent question here is: Given the current socio-historical context of India, will such a demand by Muslims lead to a communal backlash? In

answering this question a number of points need to be kept in mind. First, although in the decade following the violence during India's partition the official policy of forgive and forget appeared successful, in more recent times this policy does not appear to have worked. The partition of the country is still living in the memory of at least some people in North India and bitterness and rancor hasn't simply disappeared. It is true of course that ordinary Muslims in India had virtually nothing to do with the partition of the country. The creation of Pakistan was a product of elitist imagination. Yet ordinary Hindus, prone to stereotyping, make no such distinction between ordinary Muslims and Muslim elites. For them, the partition was a product of a generalized Muslim self-assertion. Second, even if this memory fades, as it frequently does, there are two factors that tend to keep it alive. One is the unresolved problem of Kashmir. Second the continuing tension between India and Pakistan. Even these two issues are not sufficient to recreate the bitter memory of partition and its violence. For this to happen there must be active political agents in society whose primary agenda is to keep the pot boiling. Crucial therefore to the generation of majority backlash is the active presence in the political arena of political agents and political parties whose sole objective, indeed the very *raison de'etre* of their existence, is to grab power on the basis of the alleged historic division between Hindus and Muslims. Majoritarian communal backlash is a very real possibility in India because of the presence of the right wing, ultra-nationalist, Hindu political parties. Unless such political forces are weakened, the prospect of a communal backlash can never be ruled out. If so, it is imprudent to introduce political self-representation for Muslims in India.

I have argued that though the political self-representation of Muslims does not necessarily violate liberal, democratic, or secular principles, it is not prudent to have it in the present context in India. The political self-representation of Muslims is desirable because it ensures maximum political inclusion and a fairer system of representation, yet it is not feasible in India today.

III. A PROPOSAL FOR THE FUTURE

If political theory remained a prisoner of the current context, was exclusively policy-oriented or worse: was a mere tool in the service of the state, then this conclusion would be the end of the matter. However, political theory works for the long run. It must embody a vision of the future. It should probably not recommend anything that goes against the grain of a plausible moral psychology of the society in question but nor, if there are morally objectionable features in a society, should it leave things entirely as they are, particularly when social situations are replete with injustice.

I therefore indulge in a thought experiment and imagine that the Kashmir problem is solved, tensions between India and Pakistan are virtually non-existent, the bitter memory of partition has almost disappeared, (this has possibly happened anyway) and the ultra-nationalist Hindu party is considerably weakened or has transformed beyond recognition into just another right-wing party within a broadly liberal democratic framework. In short, I envisage a situation in which conditions are ripe for the introduction of special representation rights for Muslims. The only crucial and pertinent question then is what precise form this must take.

In India, for reasons already outlined above, separate electorates do not enjoy popular legitimacy. The most familiar strategy for enhancing political representation of any group is to reserve seats in the Parliament. Such reserved seats based on joint electorates are provided for the former “untouchables” (SC) and for the indigenous people (ST). Should there be similar reservation for Muslims? It is important to keep in mind that reservations have several problems (and even then provisions for such reservation for SC’s and ST’s exist in India despite these problems).⁶² First, they essentialize. They

⁶² See also the discussion of this issue in Jane Mansbridge, *Should Blacks Represent Blacks and Women Represent Women? A Contingent “Yes,”* 61(3) J. POL. 652-653 (August, 1999) and WILLIAMS, *supra* note 55, at 12.

presuppose the worst understanding of mirror representation; namely that only people who are identical in significant respects can represent one another and that only people with the same ascriptive features can understand and share each other's interests. If so, only Muslims must represent their community. Second, they ignore the possible fluidity in a person's identity, entirely disregarding the possibility that individuals may attach little significance to their ethnic features or may in important ways change their culture or their religion. Third, reservations employ the power of the law to impose a particular group identity on individuals. This too undermines individual freedom and autonomy. Finally, in societies where past differences have turned into bitter conflicts, a policy of reservation which freezes differences has a propensity to encourage the growth of further cleavages and to permanently entrench inter-community conflict. This would be extremely damaging in India where Hindu-Muslim relations in the past have been marred by bitterness and rancor. What holds true for reservations is also true for gerrymandering, i.e., community conscious districting. Gerrymandering also generates statis and essentializes identities, both damaging for inter-communal relations. At any rate, Muslims in India are mostly dispersed so that any attempt at gerrymandering is unlikely to generate Muslim majority constituencies.

What then is the most appropriate mechanism for Muslim self-representation in the Legislatures? Recall that any mechanism must remain faithful to the following four values: (a) it must fulfill the legitimate political demands of groups to have fair representation, to have a powerful voice in the deliberative process; (b) as much as possible, it should not violate individual autonomy; (c) part of what we mean by respecting individual autonomy is that Muslims retain their choice to be represented by non-Muslims; (d) although there is a presumption that Muslims share the same life conditions and life prospects and therefore the same interests, this cannot be an immutable assumption. There must therefore be some space for the idea that shared experience and participation in the same practices give

a practical knowledge to people of each others interests, regardless of their ascriptive characteristics. If all these conditions are to be met, the following recommendation may be most appropriate in the Indian context.⁶³

- (1) Multimember constituencies;⁶⁴
- (2) Proportional representation in the form of preference voting;⁶⁵
- (3) Intra-party quotas in proportion to population;
- (4) The identification by the election commission of the constituencies where intra-party quotas are to be allotted.

My reason for recommending the above is to balance the value of fair representation of Muslims with individual autonomy and to prevent

⁶³ On a discussion of institutions of fair representation, I have relied on WILLIAMS, *id.* at ch. 7; ANNE PHILLIPS, THE POLITICS OF PRESENCE 140-160 (1995) and Mansbridge, *id.* at 628-657.

⁶⁴ What is a multi-member constituency? To understand it, we might contrast it with a single member constituency. In single member constituencies, each constituency is represented in the legislative body by one elected representative. It follows that each party fields only one candidate in any one constituency. In multi-member constituencies, several members may be elected from a single constituency and therefore every political party may field a number of candidates within the same constituency.

⁶⁵ A system of proportional representation (PR) tries to deliver a close correspondence between the percentage of votes obtained in elections by groups of candidates and the percentage of seats secured by them, say in the Parliament. Through PR, a political body seeks to secure representation for citizens roughly proportionate to their share of the voting population. Moreover, PR allows individuals to form self-defined constituencies rather than be accidentally bound to specific territories. Thus, in the PR system one selects not only one's representative but also other citizens with whom one wishes to form a representable constituency. Preference voting is one particular version of proportional representation. It is also known as single transferable vote. In preferential voting though only one vote is allotted to each citizen, he or she is allowed to have a preference order of candidates. See WILLIAMS, *supra* note 55, at 215.

the possibility of freezing Muslim identity and ghettoizing Muslims. My view is that the proportion of Muslims in the legislature should reflect their proportion in the population but only if Muslims choose to do so. It would be obviously unfair to *guarantee* disproportionate representation of Muslims in the legislature. No procedure should be put in place that guarantees Muslims to have more than say 12% of seats in the legislature. Equally, it would be fair, if despite the opportunity of using procedures of fair group representation, Muslims qua Muslims remain under-represented because they choose this outcome. What is grossly unfair is their under-representation by virtue of the circumstances created in the absence of procedures of fair group representation.

With the assistance of intra-party quotas proportional to the population, we ensure that parties field at least some candidates from among Muslims. Intra-party quotas guarantee that Muslims have at least the opportunity to select someone from their own community, one that they might use or forgo. But what if parties fill this quota by fielding Muslims in those constituencies where there is every likelihood of their losing? This possibility is prevented by (1) and (4). (4) is necessary to ensure that parties do not field Muslim candidates where they are bound to lose. An impartial body such as the election commission must determine those constituencies where parties are required to field Muslim candidates. The provision of (1), i.e. multi-member constituencies, encourages every party to field at least one Muslim candidate even in constituencies where there is every likelihood of winning. Multi-member constituencies eliminate any temptation that parties might have not to field Muslim candidates in non-Muslim majority constituencies out of the fear that they would not be elected. In multi-member constituencies, the majoritarian bias, if any, of a political party would be easily caught out.⁶⁶ Multi-member constituencies create an incentive for parties to run Muslim candidates. By (2), preference voting, the system ensures that Muslim can choose

⁶⁶ *Id.* at 208.

between a Muslim or a non-Muslim candidate. So, this proposal rejects the idea that Muslims *must* select a fixed number of legislators from their own community, strictly in accordance with their proportion in the population. It allows for the possibility that Muslims choose non-Muslims as their preferred candidate. In short, with the help of (1) and (3) we try to ensure fair group representation. We do this by giving adequate *opportunity* to Muslims to choose Muslim candidates. This is different from reservations that guarantee proportional Muslim representation. Furthermore, (2) and (3) together give individual Muslims the choice to select a non-Muslim candidate or to choose from among several Muslim candidates. (4) prevents the possibility of system being abused by parties who are hell bent on ignoring the interests of minorities. All four together helps us combine values of fair group representation and individual autonomy.

It has been argued that intra-party quotas do not ensure proper accountability of the candidates to their own constituencies. Once elected, Muslim candidates may owe their primary allegiance to the parties that provided them this opportunity, and thus may fulfill the interests of their own community only if these interests coincide with the larger agenda of the party.⁶⁷ There is some validity to this objection and in defense of the recommended strategy, I suggest three points. First, this assessment assumes a parliamentary system. Second, it is a part of a package which includes preferential voting and multi-member constituency. Third, the principal reason underlying it is to give an opportunity to Muslims to select someone of their own community, one that they might use or even forgo. In short, the value guiding intra-party quotas is individual autonomy and prevention of the hardening of community identities. It is an attempt to reconcile individual autonomy with community identity and at the same time to prevent the communalization of identities. Intra-party quotas are consistent with the critique of a generalized mirror representation, i.e., the view that the legislative assembly must accurately mirror the voting

⁶⁷ *Id.* at 212.

population and the assumption that a community is a homogenous entity with all its members necessarily possessing identical socioeconomic, political, and cultural interests. If Muslims have a reasonable chance of choosing a non-Muslim candidate, then even Muslim candidates become more accountable. They cannot take members of their own community for granted.

A further objection might be raised against (4) on the ground that it unduly restricts the autonomy of parties to select candidates for the constituencies of their choice. No doubt this is true but (4) only ensures a more effective exercise of (3) which is antecedently accepted as necessary to ensure fair representation. If (3) is to be properly realized (4) is also required. Without (4), (3) is toothless and since (3) exists to facilitate fairer representation, representation remains unfair without (4). It might still be objected that even (3) together with (4) inhibits political parties from pursuing the most effective strategy of winning. But this curtailment of the freedom of the party is found in the Indian Constitution. For example, the Constitution forbids political parties to seek vote on ground of religion alone. If a candidate wins by pursuing this strategy, he can be lawfully unseated. This happened in India in the case of the election of R.K. Prabhu, an independent candidate supported by the extreme Hindu-right wing party, Shiv Sena, which was declared void by the Bombay High Court on the ground that he and his agent Bal Thackeray had appealed for votes on the basis of the returned candidate's religion and also that Thackeray's election speeches promoted feelings of enmity and hatred among citizens of India.⁶⁷ Thus, some moral limits already exist on the kind of means adopted by party candidates in their pursuit of winning an election. (4) is not a novel suggestion but part of a set of remedies to ensure the fair political representation of Muslims.

⁶⁸ See The India Election Commission, Shiv Sena Organizational Elections, December 30, 1997, available at <http://www.eci.gov.in/ElectoralLaws/Judgements/LandmarkJudgementsVolIII.pdf> (last visited December 20, 2006).

Appendix

TABLE 1
**NUMBER OF COMMUNAL INCIDENTS AND PERSONS KILLED AND INJURED,
1954-1979**

Year	No. of Incidents	Killed	Injured
1954	84	34	512
1955	75	24	457
1956	82	35	575
1957	58	13	316
1958	40	7	369
1959	42	41	1344
1960	26	14	262
1961	92	108	593
1962	60	43	348
1963	61	26	489
1964	1070	1919	2053
1965	173	34	758
1966	144	45	467
1967	198	251	880
1968	346	133	1549
1969	519	674	2977
1970	521	298	1723
1971	321	103	1330
1972	240	70	1207
1973	242	72	1550
1974	248	87	1266
1975	205	33	962
1976	169	39	794
1977	188	36	1122
1978	230	110	1853
1979	304	261	2379

Source: GOVERNMENT OF INDIA, SIXTH REPORT OF THE NATIONAL POLICE COMMISSION appendix 2, at 60 (March 1981).

TABLE 1-A

Year	Killed	
	Hindus	Muslims
1968	24	99
1969	66	558
1970	68	176
1971	38	65
1972	21	45
1973	26	45
1974	26	61
1975	11	22
1976	20	19
1977	12	24
1978	51	56
1979	80	150

Source:, *Rai Vibhuti Narain, Law and Order: Reading and Cases, COMBATING COMMUNAL CONFLICTS* (1998).

TABLE 2

DISTRIBUTION OF PERSONS BY HOUSEHOLD TYPE (URBAN) AND HOUSEHOLD RELIGION (x 1,000)

Type of Household				
Household Religion	Self-employed	Regular/wage/salaried	Casual labor	Others
Hindu	359	467	121	53
Muslim	534	289	134	42
All religious groups	389	436	121	52

Note: Totals for each religion will not add up to 1,000 because of cases not reported.

Source: *Sarvekshana September 1990*, 101 FRONTLINE 12-25 (October, 1991).

TABLE 3
MUSLIM SHARE OF PUBLIC EMPLOYMENT

Name of Service	Years/No. of Establishments	Total	Muslims	Percent
A. All India and Central Services				
Indian Administrative Service	Total in 1981	3,883	116	2.99
Indian Public Service, Income Tax I	Total in 1981	1,753	50	2.85
Railway Traffic and Account Services	Intake during 1971-80	881	27	3.06
B. Random Survey of Public Employment				
Central Government Offices	105 offices in 13 states	75,951	3,346	4.41
State Government Offices	876 offices in 13 states	826,669	49,718	6.01
Nationalized Banks	1317 branches	113772	2479	2.18
Public Sector Undertakings (Central and State)	168 undertakings in 13 states	476,972	51,755	10.85
Total		1,499,881	107,491	7.16

Source: MUSLIM INDIA 261-263 (June 1983).

TABLE 4
MUSLIM SHARE OF PRIVATE SECTOR EMPLOYMENT

Corporation	Executive Cadre (%)	Supervisory Cadre (%)	Worker Cadre (%)
TISCO	4.1	5.60	10.30
Texmaco	nil	0.30	4.40
Mafatlal	nil	1.72	3.53
Calico	0.68	n.a.	10.20
Mahindra and Mahindra	1.48	2.25	5.02
Orkay	3.30	3.00	11.90
J.K. Industries	2.63	2.28	5.41
Indian Explosives	nil	2.73	7.09

Source: MUSLIM INDIA 17 (January 1984).

TABLE 5
REPRESENTATION OF MUSLIMS IN STATE PUBLIC SERVICE COMMISSION EXAMINATIONS
(% of total in brackets)

Examination/ State	Persons Applied		Appeared		Called for Interview		Selected	
	Total	Muslims	Total	Muslims	Total	Muslims	Total	Muslims
Andhra Pradesh								
Group II Services	21,532	967	6,857	310	196	26	112	11
		(4.49)		(4.52)		(13.26)		(9.82)
Group II (B) Services	19,899	950	14,583	639	—	—	664	21
		(4.77)		(4.38)				(3.16)
Group I Services	5,651	412	1,917	103	85	8	22	1
		(7.29)		(5.37)		(9.44)		(4.54)
Dy. Executive Engineers	1,704	102	593	34	172	4	99	2
		(5.98)		(5.73)		(2.32)		(2.02)

continued

Table 5

Examination/ State	Persons Applied		Appeared		Called for Interview		Selected	
	Total	Muslims	Total	Muslims	Total	Muslims	Total	Muslims
Civil Assistant Surgeons	5,450	166	4,377	131	3,733	103	1,066	25
		(3.04)		(2.86)		(2.76)		(2.34)
Total	54,236	2,597	28,527	1,217	4,186	141	1,963	60
		(4.79)		(4.27)		(3.37)		(3.06)
Kerala								
Office Assistants Gr. II	1,089	123	700	70	552	58	200	20
		(11.29)		(10.00)		(10.50)		(10.00)
Block Development Officers	N/A	N/A	6,984	588	143	14	N/A	N/A
				(8.42)		(9.79)		
Total			7,684	658	695	72		
				((8.56))		(10.36)		
Madhya Pradesh								
Group I and II Services	31,885	903	31,221	90	1,356	24	353	6
		(2.83)		(2.89)		(1.77)		(1.70)
Maharashtra								
Assistant & Sales tax Inspectors Class III	8,399	120 (1.43)	5,610	114 (2.03)	712	4 (0.56)	160	—
Forest Ranges	2,048	62	1,565	N/A	189	3	74	—
		(3.03)				(1.59)		
Assistant Conservators of	2,375	N/A	2,015	3	164	2	39	1
Forest Class II				(0.15)		(1.22)		(2.56)
Total					1,065	9	273	1
						(0.84)		(0.37)
Tamil Nadu								
Group III Services	2,352	76	—	—	2,097	69	313	9

continued

Table 5

Examination/ State	Persons Applied		Appeared		Called for Interview		Selected	
	Total	Muslims	Total	Muslims	Total	Muslims	Total	Muslims
		(3.27)				(3.29)		(2.87)
Group II Services	497	12	—	—	470	11	79	3
		(2.44)				(2.34)		(3.80)
Assistant Surgeons	3,503	162	—	—	3,371	152	1,400	71
		(4.62)				(4.51)		(5.07)
Total	6,325	250	—	—	5,938	232	1,792	83
		(3.95)				(3.91)		(4.63)
Uttar Pradesh								
Forest Rangers	8,086	513	6,149	371	270	11	67	2
		(6.34)		(6.03)		(4.07)		(2.98)
Bihar								
Forest Rangers	980	22	578	10	110	1	40	1
		(2.24)		(1.12)		(1.00)		(2.50)
Total (UP and Bihar)	9,066	535	6,727	381	370	12	107	3
		(5.90)		(5.66)		(3.24)		(2.81)
Uttar Pradesh								
Combined State Services	19,557	1,310	12,261	1,037	660	18	244	6
		(6.70)		(8.46)		(1.21)		(2.46)
Bihar								
Combined State Services	17,645	709	11,111	504	619	39	233	17
		(4.02)		(4.54)		(6.36)		(7.30)
Total	37,202	2,019	23,372	1,541	1,279	47	477	23
		(5.40)		(6.60)		(3.67)		(4.82)
Grand Total	N/A				14,889	537	4,965	176
						(3.61)		(3.54)

Source: MUSHIRUL HASAN, LEGACY OF A DIVIDED NATION: INDIA'S MUSLIMS SINCE INDEPENDENCE (1997).

Table 6
URBAN EDUCATION LEVELS BY HOUSEHOLD RELIGION (%)

Household Religion/ Sex	Not literate	Literate but below primary	Primary	Middle	Secondary	Graduate and above	Not reported
Male							
Hindu	25.3	18.8	16.6	13.9	17.2	7.9	0.3
Muslim	42.4	20.9	16.3	10.0	8.0	2.3	0.1
All	27.7	19.0	16.7	13.3	13.3	7.0	0.3
Female							
Hindu	42.2	17.2	15.0	10.3	10.7	4.2	0.3
Muslim	59.5	18.5	11.4	5.4	4.3	0.8	0.1
All	44.1	17.4	14.5	9.7	10.2	3.8	0.3
Total							
Hindu	33.4	18.1	15.8	12.2	14.1	6.2	0.3
Muslim	50.5	19.8	13.9	7.8	6.2	1.6	0.1
All	35.5	18.3	15.7	11.6	13.2	5.5	0.3

Source: MUSHIRUL HASAN, LEGACY OF A DIVIDED NATION: INDIA'S MUSLIMS SINCE INDEPENDENCE (1997).

Table 7-A

Religion Lok Sabha 1952		
	No. of Legislatures	Percentage
Hinduism	433	86.9
Islam	25	5.0
Christianity	17	3.4
Jainism	3	0.6
Other	1	0.2
Sikhism	12	2.4
NA	7	1.4
Total	498	100

Source: CSDS Data Unit

Table 7-B

Religion Lok Sabha 1957		
	No. of Legislatures	Percentage
Hinduism	433	86.9
Islam	23	4.6
Christianity	12	2.4
Zoroastrianism	3	0.6
Buddhism	1	0.2
Jainism	4	0.8
Sikhism	12	2.4
NA	10	2.0
Total	498	100

Source: CSDS Data Unit

Table 7-C

Religion Lok Sabha 1962		
	No. of Legislatures	Percentage
Hinduism	451	88.6
Islam	26	5.1
Christianity	14	2.8
Zoroastrianism	1	0.2
Jainism	3	0.6
Other	1	0.2
Sikhism	12	2.4
NA	1	0.2
Total	509	100

Source: CSDS Data Unit

Table 7-D

Religion Lok Sabha 1967		
	No. of Legislatures	Percentage
Hinduism	462	88.5
Islam	28	5.4
Christianity	15	2.9
Zoroastrianism	2	0.4
Buddhism	1	0.2
Jainism	4	0.8
Sikhism	10	1.9
Total	522	100

Source: CSDS Data Unit

Table 7-E

Religion Lok Sabha 1971		
	No. of Legislatures	Percentage
Hinduism	465	89.3
Islam	28	5.4
Christianity	13	2.5
Zoroastrianism	1	0.2
Buddhism	1	0.2
Jainism	1	0.2
Sikhism	10	1.9
N.A.	2	0.4
Total	521	100.0

Source: CSDS Data Unit

Table 7-F

Religion Lok Sabha 1977		
	No. of Legislatures	Percentage
Hinduism	473	87.3
Islam	32	5.9
Christianity	16	3.0
Zoroastrianism	1	0.2
Jainism	5	0.9
Other	1	0.2
Sikhism	7	1.3
N.A.	7	1.3
Total	542	100.0

Source: CSDS Data Unit

Table 7-G

Religion Lok Sabha 1980	No. of Legislatures	Percentage
Hinduism	438	82.5
Islam	49	9.2
Christianity	19	3.6
Jainism	2	0.4
Other	1	0.2
Sikhism	10	1.9
N.A.	12	2.3
Total	531	100.0

Source: CSDS Data Unit

Table 7-H

Religion Lok Sabha 1984	No. of Legislatures	Percentage
Hinduism	482	88.6
Islam	45	8.3
Christianity	12	2.2
Jainism	3	0.6
Sikhism	1	0.2
N.A.	1	0.2
Total	544	100.0

Source: CSDS Data Unit

Table 7-I

Religion Lok Sabha 1989	No. of Legislatures	Percentage
Hinduism	477	89.8
Islam	33	6.2
Christianity	12	2.3
Zoroastrianism	1	0.2
Buddhism	1	0.2
Jainism	1	0.2
Sikhism	6	1.1
Total	531	100.0

Source: CSDS Data Unit

Table 7-J

Religion Lok Sabha 1991	No. of Legislatures	Percentage
Hinduism	481	88.9
Islam	29	5.4
Christianity	19	3.5
Sikhism	12	2.2
Total	541	100.0

Source: CSDS Data Unit

Table 7-K

Religion Lok Sabha 1996		
	No. of Legislatures	Percentage
Hinduism	492	89.3
Islam	27	4.9
Christianity	19	3.4
Jainism	1	0.2
Sikhism	12	2.2
Total	551	100.0

Source: CSDS Data Unit