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### Minority Rights in the Indian Constituent Assembly Debates, 1946-1949

Rochana Bajpai\*

*This article analyses the arguments advanced for and against minority rights in the Indian Constituent Assembly. During the course of my analysis, I show first, that arguments advocating and opposing different kinds of minority provisions, advanced from diverse political and ideological positions, employed a shared legitimating vocabulary. The concepts of secularism, democracy, equality and justice, and national unity and development defined this legitimating vocabulary. Second, while it has generally been assumed that the constitution-makers subscribed to a single notion of secularism or democracy, my analysis shows that different conceptions of these political ideals were at play in arguments about minority rights in the Constituent Assembly. Third, against dominant understandings of Indian political discourse, this article emphasizes that different kinds of liberal norms were a crucial part of the legitimating vocabulary on minority safeguards. Finally, I argue that our understanding of an important and neglected development in India's constitutional history, the withdrawal of political safeguards for religious minorities during the making of the Indian Constitution, is furthered by an analysis of the legitimating vocabulary on minority rights in the Constituent Assembly debates.*

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\*Wolfson College, Oxford OX2 6UD and Queen Elizabeth House.

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## I Introduction

The rights of minority groups in liberal democracies have been at the centre of the intellectual and political debates of the last decade. In India, one of the oldest and most extensive regimes of minority preference exists within the framework of a polity formally committed to liberal-democratic norms. The Constituent Assembly debates mark a crucial turning point in the history of state policies of minority preference in India. Since the late nineteenth century, special provisions had been instituted by the colonial state<sup>1</sup> as well as by some princely states<sup>2</sup> for a vast array of groups designated as minorities or 'backward'. During the deliberations of the Constituent Assembly, the framework of state policies of minority preference came to be fundamentally redefined. Under the Indian Constitution of 1950, preferential provisions in legislatures and government employment were restricted mainly to the Scheduled Castes and 'backward' tribes.

This paper focuses on the arguments about minority rights in the Indian Constituent Assembly. It examines the concepts and norms invoked in the arguments advanced for and against minority rights in these debates. During the course of my analysis, I show, first, that arguments about different kinds of minority provisions, advanced from diverse political and ideological positions, employed a shared legitimating vocabulary. The concepts of secularism, democracy, equality and justice, and national unity and development defined this legitimating

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<sup>1</sup> Group representation provisions in central legislatures were first introduced by the colonial state in the Morley-Minto Reforms of 1909, which granted separate electorates to Muslims. The Government of India Act of 1919 extended separate electorates to Sikhs, Indian Christians and Europeans. In the Government of India Act of 1935, a total of thirteen communal and functional groups were granted special representation. Reservations in government appointments for Muslims were first recognized by the colonial state in 1925. The policy was formalized and extended to other communities in 1934. See B. Shiva Rao (ed.), *The Framing of India's Constitution, A Study* (Delhi, 1967).

<sup>2</sup> Some of the earliest instances of policies of group preference in government employment are to be found in the caste based reservation schemes instituted by the princely states, such as Mysore in 1895 and Kolhapur in 1902. See S. Bayly, *Caste, Society and Politics in India From the Eighteenth Century to the Modern Age* (Cambridge, 1999).

vocabulary. Second, while it has generally been assumed that the constitution-makers subscribed to a single notion of secularism or democracy, my analysis shows that different conceptions of these political ideals were at play in arguments about minority rights in the Constituent Assembly. Further, conceptions of secularism, democracy, and national unity were mutually interdependent, drawing upon each other for their connotations and normative force. Third, against dominant understandings of Indian political discourse, this paper shows that different kinds of liberal norms were a crucial part of the legitimating vocabulary on minority safeguards. Arguments about minority rights in the Constituent Assembly debates, while undoubtedly inflected by indigenous cultural and historical idioms, were underpinned by conventional liberal values such as those of religious freedom, equal individual rights and equality of opportunity. Finally, I argue that our understanding of an important and forgotten political outcome, the withdrawal of political safeguards for religious minorities during the making of the Indian Constitution, is furthered by an analysis of the legitimating vocabulary on minority rights in the Constituent Assembly debates.

The concepts and ideals espoused by politicians in support of their positions have rarely been the subject of sustained scholarly analysis. This neglect appears to stem from at least two sorts of reasons. First, the routine invocation of ideals like 'democracy', 'social justice' and 'secularism' in political debate appears to suggest that the meanings of these terms are self-evident or agreed-upon. Yet, closer investigation reveals that behind familiar appeals to concepts such as 'secularism' or 'democracy' in political discourse, there are often complex and divergent conceptions of these concepts. This paper seeks to reconstruct the different interpretations of concepts and norms, and to disentangle the distinct types of arguments that are run together in political debates.

Second, dominant approaches in historical and social science scholarship have tended to regard the values professed by politicians as irrelevant for explanations of political outcomes. The ideals invoked by political actors in defense of positions have usually been regarded as mere instruments of political expediency, as smokescreens for more 'real' interests that determine political outcomes such as political bargaining and material interests. By contrast, this article argues that the values espoused by political actors are important for our explanations of political outcomes. Here, I follow Quentin Skinner's position on the question of *how* the principles professed by political actors influence political outcomes. Skinner suggests that the actions of political actors are constrained by the need to appear to conform to principles invoked to legitimate them, and that professed principles thereby play a causal role in political life.<sup>3</sup> Further, individual actors cannot manipulate legitimating norms wholly according to their will, as the availability and applicability of these norms is limited by prevailing social usages. As

<sup>3</sup> From this perspective, no assumptions need to be made that the actors sincerely believe in the principles they profess. See Q. Skinner, 'Some Problems in the Analysis of Political Thought and Action', in J. Tully (ed.), *Meaning and Context: Quentin Skinner and his Critics* (Princeton, 1988), pp. 97-118; Q. Skinner, 'Language and Social Change', in T. Ball *et al* (eds.), *Political Innovation and Conceptual Change* (Cambridge, 1989). Unlike in Skinner's account, the focus here is not on how the norms professed by individual political actors constrain their actions, but rather, how the legitimating vocabulary shared by political actors in a particular political debate shaped the policy outcomes that emerged from this debate. I have discussed the implications of Skinner's argument more fully elsewhere (Bajpai, 'Recognising Minorities').

historical agents seek public legitimation of even their apparently untoward actions in terms of some accepted set of social and political principles, the prevailing normative vocabulary shapes and constrains the possible range of actions and thereby influences political outcomes.

In the context of the revocation of political safeguards for religious minorities during the making of the Indian Constitution, this paper contends that explanations in terms of power politics alone are insufficient and that an analysis of the legitimating vocabulary on minority rights is crucial for a more satisfactory account of this political outcome. Political safeguards in constitutional drafts and deliberations encompassed provisions for reserved seats in legislatures, quotas in government employment, representation of minorities in the Cabinet and the creation of administrative machinery to ensure supervision and protection of minority rights. All minority groups hitherto preferred were included within the ambit of these provisions in initial proposals and in the first draft of the Constitution published in 1948. In a remarkable reversal, however, by the time of the final draft of the Constitution, religious minorities were excluded from the purview of all political safeguards, which came to be restricted mainly to the Scheduled Castes and tribal groups. This momentous development has surprisingly received little scholarly attention.<sup>4</sup> In the scant literature on this question, the withdrawal of political safeguards for religious minorities during Constitution-making has been explained mainly in terms of the Partition of the country.<sup>5</sup> This traumatic event, it is argued, hardened opinion within the Indian National Congress against groups that represented communal interests. Moreover, the Congress no longer had to conciliate a powerful Muslim League and had few real checks in the way of pushing through its agenda. The political parties representing the two main religious minorities pressing for political safeguards, the Muslim League and the Sikh Panthic Party, were in disarray, and could not offer a united front resisting the revocation of safeguards.<sup>6</sup>

<sup>4</sup> This curious neglect appears to stem from an assumption that political safeguards for religious minorities were unthinkable after Partition. While the view that partition foreclosed the historical possibility of political safeguards for religious minorities is plausible with hindsight, at the time, the question was more open than this view suggests. It might be recalled that political safeguards for religious minorities were accepted by the Constituent Assembly *after* the decision to partition the country had been announced. The semblance of Muslim acquiescence in the subsequent abolition of quotas for religious minorities was secured through a close vote in the Advisory Committee meeting on this issue where key Muslim leaders, including Congress leader Maulana Azad, abstained. As Retzlaff points out, had the initial timetable for the drafting of the constitution, which called for its completion in fall of 1947 been adhered to, the Constitution would have included political safeguards for religious minorities. R. Retzlaff, 'The Problem of Communal Minorities in the Drafting of the Indian Constitution', in R.N. Spann (ed.), *Constitutionalism in Asia* (Bombay, 1963), p. 66.

<sup>5</sup> See, for instance, Retzlaff, 'The Problem of Communal Minorities'. For a more recent treatment of this question that offers a somewhat different explanation for this change, see I. A. Ansari, 'Minorities and the Politics of Constitution Making in India', in D.L. Sheth and G. Mahajan (eds.) *Minority Identities and the Nation State*, (Delhi, 1999).

<sup>6</sup> The Muslim League and the previously united Muslim group within the Constituent Assembly broke up during February-March 1948, with some splinter groups refusing to disband and most prominent Muslim members of the Constituent Assembly subsequently going to Pakistan. The Sikhs also split into several groups in the same period, with the Akali Dal calling for the Sikh Panthic Party to be dissolved and urging their members to join the Congress, a call that was resisted by the Master Tara Singh group. Retzlaff 'The Problem of Communal Minorities', p. 65. This disarray meant that in later constitutional deliberations, many minority representatives from parties that had formally advocated political safeguards now urged their revocation.

This article offers an alternative perspective on the removal of religious minorities from the purview of political safeguards during the making of the Indian Constitution. It argues that in the nationalist legitimating vocabulary, the political ideals of secularism, democracy, justice and national unity were construed in ways that precluded political safeguards for minority groups. Political safeguards were regarded as legitimate only for a temporary period and for a specific purpose, that of ameliorating the social and economic disabilities of the so-called 'backward' sections- the Scheduled Castes and Backward Tribes. This marked a crucial shift in the basis of group preferential provisions from British colonial policy. The colonial policy of 'political safeguards' for minorities had been based on the notion that India was a conglomeration of communities rather than a nation and had a two-fold rationale.<sup>7</sup> Political safeguards were viewed as a means of adjusting the balance between different communities in representative bodies, public services and other arenas. They were also favored as a means of improving the socio-economic conditions of disadvantaged groups. In nationalist opinion in our period, by contrast, the maintenance of a balance between different communities was regarded as an unacceptable basis for political safeguards. The fact that there was no principled defence in nationalist opinion for such provisions in the case of religious minorities enables us understand why political safeguards for religious minorities that had initially been accepted, came to be removed in the final stages of constitution making. This article thus argues that our understanding of the retraction of group preferential provisions for religious minorities during the drafting of the Indian Constitution is furthered by an analysis of the legitimating vocabulary on minority safeguards in the Constituent Assembly debates.

This paper is organized as follows. The next section examines the main concepts and ideals constitutive of the legitimating vocabulary on minority rights in the Constituent Assembly. The final section analyses arguments about political safeguards for minorities in two key areas: political representation and quotas in government employment.

## II *The Legitimating Vocabulary on Minority Rights in the Constituent Assembly*

### IIA *Defining Minorities*

The demand for a Constituent Assembly elected on the basis of universal adult franchise had been reiterated in Congress resolutions since 1934.<sup>8</sup> The Muslim League and the Scheduled Caste Federation had been less enthusiastic about such a body, holding that it would entrench Congress dominance over the transfer of power from colonial rule. From the 1940s onwards, the British had been increasingly receptive to the idea of a Constituent Assembly. Elections were held to the Constituent Assembly in July 1946 in accordance with the Cabinet Mission Plan of 16 May 1946. The Plan had stipulated that 'the cession of sovereignty to the Indian people on the basis of a constitution framed by the Assembly would be conditional on adequate provisions

<sup>7</sup> M. Galanter, *Competing Equalities: Law and the Backward Classes in India* (Delhi, 1984), p. 363.

<sup>8</sup> This account draws upon B. Shiva Rao (ed.), *The Framing of India's Constitution*, vols. I-V (New Delhi, 1967); G. Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford, 1966); S. Chaube, *Constituent Assembly Of India: Springboard of Revolution* (New Delhi, 1973), Retzlaff, 'The Problem of Communal Minorities'.

being made for the protection of minorities.<sup>9</sup> The Assembly was elected by provincial legislatures that had been constituted in December 1945. Members of three communities, Muslim, Sikh and General (Hindus and all others) elected their representatives separately, by the single transferable vote system of proportional representation. The Congress and the Muslim League won an overwhelming proportion of General and Muslim places respectively, reflecting the composition of provincial legislatures, with the Congress majority in the Assembly rising to 82 percent after the partition of the country.<sup>10</sup>

The Constituent Assembly began its proceedings as scheduled on 9 December 1946, with the Muslim League boycotting its sessions.<sup>11</sup> In the Assembly's deliberations, the minorities question was regarded as encompassing the claims of three kinds of communities: religious minorities, Scheduled Castes, and 'backward' tribes, for all of whom safeguards in different forms had been instituted by the British and by Princely States in the colonial period. The representatives of most groups claiming special provisions in some form emphasized that the group was a minority of some kind. So close was the identification of the term 'minority' with the notion of special treatment for a group that even those opposed to a continuation of the colonial system of minority safeguards employed the same language to justify their stand. For instance, it was argued that the 'so-called minorities' were not the 'real minorities'. The latter were variously identified as 'the agriculturists', 'the rural people', 'the backward provinces', even 'the masses'. The claim was that these were the groups that ought to receive special treatment, rather than the communities hitherto favored by the British.<sup>12</sup>

The employment of the term 'minority', then, did not denote the numerical status of the group as much as the claim that the group suffered from some kind of disadvantage with respect to the rest that entitled it to special treatment from the state. In minority claims, the numerical status of the group was invoked most frequently to denote numerical strength, rather than numerical paucity of the group, which made it a force to reckon with, and entitled it to safeguards over other, smaller groups. Appeals to the numerical status of the group sought to

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<sup>9</sup> Shiva Rao, *Framing*, Vol. V, pp. 745-746.

<sup>10</sup> Franchise was restricted by tax, educational and property qualifications specified in the 1935 Government of India Act, which meant that about 28.5 percent of the adult population could vote. The number of representatives of each group depended on the proportion of their population. As the Cabinet Mission Plan had made no provisions for minorities other than Muslims and Sikhs, it was largely through the intervention of the Congress leadership that Parsis, Anglo-Indians, Indian Christians, members of the Scheduled Castes, 'backward' tribes, and women were brought into the Assembly. This fact would have some bearing on the positions of representatives of different minority groups during the debates, with those elected through Congress support generally taking a more conciliatory stand towards Congress proposals. The representation of the various minority communities in the Assembly after Partition was as follows: Nepalis 1, Sikhs 5, Parsis 3, Christians 7, Anglo-Indians 3, Backward Tribes 5, Muslims 31, Scheduled Castes 33 - a total of 88 out of the 235 provincial seats (Austin, *The Indian Constitution*, pp. 9-13).

<sup>11</sup> The Muslim League never lifted its boycott of the Constituent Assembly. League representatives who would remain in India after Partition began participating in the work of the Assembly from the fourth session, in July 1947. Some Sikh members had also initially expressed reluctance to join the Assembly, but had come around after negotiations with the Congress.

<sup>12</sup> NG Ranga for instance, held: '...the real minorities are the masses of this country. These people are so depressed and oppressed and suppressed till now that they are not able to take advantage of the ordinary civil rights. These are the real minorities who need protection and assurances of protection.' See *Constituent Assembly Debates: Official Report* (henceforth CAD), 12 vols., (Delhi, 1946-1950), I, p. 264.

establish that the group constituted a significant element of Indian society, and one therefore with a legitimate claim to preferential treatment. The notion that groups ought to receive representation in political bodies in proportion to their population enjoyed currency in minority claims in this period, with frequent complaints being voiced in instances where a group's representation in a committee was not commensurate with its demographic share, that the group was being unjustly treated and denied its 'due' share in comparison with other groups. Claims for preferential treatment were often competitive, with representatives of each group advancing reasons for why their group was more eligible for safeguards or deserving of greater representation than any other, on grounds, for instance, that it was numerically superior, more backward than others, more distinct from the majority in its cultural practices and so on.

The speeches of representatives belonging to most religious minority communities reflected concerns regarding the submerging of a distinct cultural identity in independent India. Considerations about cultural autonomy were sought to be rendered compatible with the nationalist elite's concerns regarding national unity by arguing that it was only through the retention of their own distinct cultures that members of these communities would be able to contribute effectively to the nation.<sup>13</sup> These arguments drew upon early nationalist conceptions that regarded communities, defined in religious, caste and linguistic terms, rather than the individual citizen, as the building blocks of the nation.<sup>14</sup>

Most representatives of the Scheduled Castes in the Constituent Assembly also claimed minority status but cultural distinctness from the majority community did not usually figure in this claim. Rather, such claims emphasized that Untouchables were culturally a part of the Hindu community, or at least that they were a different type of minority from the religious minorities. It was stressed that they were a 'political minority',<sup>15</sup> that the term 'minority' in their case did not connote numerical disadvantage but rather, entitlement to special treatment on account of social and economic 'backwardness'.<sup>16</sup> Not all representatives of the Scheduled Castes claimed minority status for the community and the concomitant 'political safeguards'. Some argued, in keeping with dominant nationalist opinion, that reserved quotas in legislatures and public

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<sup>13</sup> Rev. Jerome D'Souza argued for '...a certain degree of homogeneity....But...'absorption' in the sense of cultural or religious or any other absorption is something against which it is necessary for us to guard...the strength of this land will be based upon the strength of the individual members of the different communities. And they will not achieve their full strength unless they base themselves on convictions and ideals which are their very own. Cultural autonomy for which I am pleading and which has been promised as far as it is not inconsistent with national strength, even though it may appear in some sense as opposed to national unity, is still consistent with it.' *CAD*, III, p. 296. See also the statement of Sardar Ujjal Singh *CAD*, I, p. 107. Most Parsi representatives in the Assembly, by contrast, sought to distance themselves from the claims being made by the other religious minorities. See, for instance, RK Sidhwa, *CAD*, I, p. 114.

<sup>14</sup> See G. Pandey, *The Construction of Communalism in Colonial North India* (Delhi, 1990), chs. 6-7.

<sup>15</sup> PR Thakur stated: 'We are no doubt a part and parcel of the great Hindu community. But our social status...is so very low that we do feel that we require adequate safeguards to be provided to us. Firstly, we should be considered as a minority...not in the sense in which a community is a minority on racial or religious grounds but a minority that is a separate political entity.' *CAD*, I, p. 139. S Nagappa reiterated: 'I do not claim that we are a religious minority or a racial minority. I claim that we are a political minority. We are a minority because we were not recognised all these days and we were not given our due share in the administration of the country.' *Ibid.*, p. 284.

<sup>16</sup> See for instance, VI Muniswamy Pillai, *CAD*, V, p. 202.

employment were undesirable, and that the solution to the problems of these groups lay in the removal of economic and social disabilities.<sup>17</sup>

The most vocal tribal representative in this period, while claiming that his group was entitled to special provisions, chose not to term tribes 'minorities'.<sup>18</sup> This, however, was less a concession to nationalist distrust of the language of minority safeguards than an assertion of the innate superiority of tribal claims over all others. Tribal claims resembled those of the Scheduled Castes on several counts. Representatives of both groups would declare that they were the original inhabitants of the land, and that their claims were thereby antecedent to all others.<sup>19</sup> In both cases, arguments for special treatment referred to a history of exploitation by Hindu society and invoked arguments of compensatory justice in favor of preferential treatment.<sup>20</sup>

While the claims of the Scheduled Castes and the 'backward' tribes drew upon similar arguments about historical injustice and reparation in support of their case for special treatment, there were also differences. The claims of the Untouchables were dominated by a concern regarding the inclusion of these groups in the administrative and governing elite of the country and their access to positions of political power generally, an aspect that was implicit in their self-description as political minorities. The pronouncements of tribal representatives were, on the other hand, distinguished by their emphasis on the importance of land in tribal life.<sup>21</sup> Land was accorded centrality in tribal claims, and issues of cultural identity were bound up with those of land. Special provisions were claimed in the form of the continuation of the system of separate land reserves instituted by the British, in order that tribal land remain inalienable in independent India. The claims of the Scheduled Castes in the Constituent Assembly were more oriented

<sup>17</sup> Dakshayani Velayudan, for instance, argued: 'What we want is not all kinds of safeguards. It is the moral safeguard which gives protection to the underdogs of this country...I refuse to believe that seventy million Harijans are to be considered as a minority...what we want is the...immediate removal of our social disabilities.' *CAD*, I, p. 147. See also *CAD*, III, p. 470, *CAD*, V, p. 264 for arguments of Scheduled Caste representatives against reserved seats in the legislatures for the group. Ambedkar and Gandhi were emblematic of the adversarial positions in the debate over whether the Scheduled Castes should be considered as a minority community. In the decades preceding independence, Ambedkar had intermittently demanded separate electorates for the Scheduled Castes, on grounds that they were a separate community from the Hindus. Gandhi consistently opposed proposals that the Scheduled Castes be treated separately from the Hindu community from the point of view of representation, most famously in his fast unto death against the Communal Award of 1932 that had offered Scheduled Castes separate electorates.

<sup>18</sup> Jaipal Singh stated: 'I do not consider my people as a minority...the Depressed Classes also consider themselves as Adibasis, the original inhabitants of this country. If you go on adding people like the exterior castes and others who are socially in no man's land, we are not a minority. In any case, we have prescriptive rights that no one dare deny.' *CAD*, I, p. 139.

<sup>19</sup> S Nagappa, for instance, argued: '...we the Harijans and Adibasis are the real sons of the soil and we have every right to frame the constitution of this country.' *CAD*, I, p.284.

<sup>20</sup> Jaipal Singh argued: 'I leave to the good sense of the House ... that, at long last, they will right the injuries of 6000 years.' *CAD*, II, p. 317.

<sup>21</sup> Speaking in support of a proposed clause that permitted restrictions on the fundamental right of all citizens to reside, settle or acquire property in any part of the country '...as may be necessary in the public interest including the protection of minority groups and tribes', Jaipal Singh argued: '...land is the bulwark of aboriginal life...wherever we have been (in tribal areas) it has been urged upon us that for several years to come, the aboriginals' land must be inalienable...we have been talking about equality. Equality sounds well; but I do demand discrimination when it comes to the holdings of aboriginal land.' *CAD*, III, pp. 462-463.



towards the goals of inclusion and prohibition of discriminatory practices and lacked the element of territoriality.

Tribal claims for preferential treatment in this period, however, manifested a dual character. In addition to the demand for the 'protection' of tribal lands, tribal representatives also put forward claims for reserved quotas in the legislatures and public services. Their arguments in support of these provisions were similar to those made by Scheduled Caste representatives. It was argued that quotas were necessary in order to improve the abysmal social and economic conditions of 'backward' tribes, to bring them unto the level of the rest of the population, and thereby facilitate greater integration of the tribes with the wider society.<sup>22</sup> Thus, in tribal claims as much as in the case of the Untouchables, the professed goal of measures of guaranteed representation in legislatures and services was the integration of these groups with the rest of the population and not self-government.<sup>23</sup>

While the appellation 'minority' was popular among the representatives of almost every group claiming special provisions in the Constituent Assembly, nationalist opinion, for reasons that will be explored below, regarded the term unfavourably and consistently sought to restrict its usage. KM Munshi proposed an amendment to define the term minority more narrowly in order to exclude the Scheduled Castes from its ambit as well as to define the Scheduled Castes as a part of the Hindu community.<sup>24</sup> In later stages of Constitution making, the term 'minorities' would be removed altogether from constitutional sections dealing with provisions of group preference.<sup>25</sup>

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<sup>22</sup> Supporting provisions for reservation in the legislatures and services for 'backward' tribes, Jaipal Singh explained: 'Our attitude has not been on grounds of being a numerical minority at all...Our standpoint is that there is a tremendous disparity in our social, economic and educational standards, and it is only by some statutory compulsion that we can come up to the general population level...We want to be treated like anybody else. In the past, thanks to the major political parties, thanks to the British Government and thanks to every enlightened Indian citizen, we have been isolated and kept, as it were, in a zoo...Our point now is that you have got to mix with us. We are willing to mix with you, and it is for that reason, because we shall compel you to come near us, because we must get near to you, that we have insisted on a reservation of seats as far as the Legislatures are concerned. We have not asked and in fact we have never had separate electorates...' *CAD*, V, p. 209.

<sup>23</sup> On the general implications of this point, see W. Kymlicka, *Multicultural Citizenship, A Liberal Theory of Minority Rights* (Oxford, 1995), pp. 143-144.

<sup>24</sup> Speaking in support of this amendment, KM Munshi said: '... my amendment seeks to clarify the position that so far as the Scheduled Castes are concerned, they are not minorities in the strict meaning of the term; that Harijans are part and parcel of the Hindu community, and that safeguards are given to them to protect their rights only till they are completely absorbed in the Hindu community.' (*CAD*, V, p. 227). The amendment was adopted.

<sup>25</sup> During discussion of the revised draft of the Constitution on November 16, 1949, an amendment was adopted that stipulated the substitution of the word 'minorities' by the words 'certain classes' in all instances of its usage. There was no attempt at definition or comprehensive listing of the groups to be regarded as minorities during the making of the Constitution. The term 'minorities' occurs in only two articles of the Indian Constitution (Articles 29, 30), which mention explicitly minorities based on language, religion and culture. 'Backward' castes are not minorities within the meaning of Article 30, although they are included in the non-discrimination provisions of Article 29. KK Wadhwa, *Minority Safeguards in India: Constitutional Safeguards and their Implementation*, (Delhi, 1975), pp.4-8; see also Galanter, *Competing Equalities*.

*IIB Nationalist Opinion and Minority Safeguards*

In nationalist opinion in the Constituent Assembly, individuals as well as groups were recognized as entities to which a liberal regime of rights, and its underlying norms of equality and freedom would apply. Speaking on the Objectives Resolution, Purushottamdas Tandon stated: 'The Resolution...has equality as its underlying theme...we shall do justice to all communities and give full freedom in their social and religious affairs.'<sup>26</sup> This would be reflected in the future Indian Constitution, where cultural and educational rights of religious minorities are enshrined as justiciable fundamental rights, in the form of the rights of individual members of minority communities, as well as minority group rights.<sup>27</sup> Congress pronouncements in the Constituent Assembly continually and concordantly reiterated a commitment to the cultural, educational and linguistic rights of religious and other cultural minorities, rights that were viewed as enabling minority groups protect and promote their distinct cultural identities.<sup>28</sup>

Political safeguards, however, were a different matter. While political safeguards for minorities were included in the Report on Minority Rights adopted by the Constituent Assembly in August 1947 and in Part XIV of the Draft Constitution published in February 1948, nationalist opinion was hostile to such provisions from the outset. Political safeguards for minorities were reluctantly admitted as temporary, transitional measures, necessary until 'backward' sections of the population were brought up to the level of the rest, or until groups accustomed to 'privileges' under the colonial system had adjusted to the new order. In the dominant nationalist opinion, however, the ideal was always visualized as a situation in the future where political safeguards for minorities would no longer be necessary. Such safeguards were regarded as corrosive of the fundamental principles on which the new nation state was to be constituted. Safeguards required the recognition of a person's religion or caste in matters of public policy, and this would undermine secularism. Equality and justice would be compromised as a regime of group preference implied departures from a system of equal individual rights.

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<sup>26</sup> CAD, I, pp. 66-67. This sentiment was echoed in many of the speeches on the Objectives Resolution. Vijayalakshmi Pandit stated: 'The Resolution indicates clearly that in an independent India the fullest social, economic and cultural justice to individuals and groups will be conceded.' CAD, II, p. 261. See also S. Radhakrishnan, CAD, II, p. 254.

<sup>27</sup> See Articles 25, 26, 29.1, 30.1 of the Indian Constitution. Not only does each individual have the freedom to profess, practice and propagate his religion (Article 25), every religious group or denomination has the right to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with law (Article 26). Further, any section of citizens of India that has a distinct language, script or culture has the right to conserve the same (Article 29.1). All minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice (Article 30.1). Every Congress resolution on the fundamental rights of citizens since the 1931 Karachi resolution had included guarantees for the protection of the culture, language and scripts of minorities in its list of fundamental rights.

<sup>28</sup> It is however, important to note that while minority groups were given the *freedom* to establish religious institutions and manage religious affairs, to establish and administer educational institutions and to preserve minority languages and cultures, they were not granted a constitutional *entitlement* to state support. I have elaborated this point elsewhere (Bajpai, 'Recognising Minorities'). On the attenuation in the provisions for cultural and educational rights of minorities during the drafting of the Constitution, see Ansari, 'Minorities and the Politics of Constitution Making'.

Also, safeguards were thought to be incompatible with democracy as these implied departures from the principle of the representation of individuals through territorial constituencies. But the overriding apprehension in this period was that the granting of political safeguards to religious minorities would undermine national unity. While arguments from national unity, secularism, democracy and equality and justice are analytically distinguishable, these notions were deployed together and interdependently in the arguments against minority safeguards in political pronouncements in the Constituent Assembly, and were parasitic on each other for their connotations and normative force.

Speeches in the Constituent Assembly employed several variants of arguments from national unity, secularism, democracy and equality and justice in opposition to minority safeguards. The strongest opposition to minority safeguards during the Constituent Assembly debates stemmed from concerns regarding their implications for national unity and was usually accompanied by a particular understanding of the history of minority safeguards. Such safeguards were regarded as instruments of a colonial 'divide and rule' policy, deliberately fashioned by the duplicitous colonial rulers to create strife between different sections of the nation, to deny that India was a nation and to delay the transfer of power once it became inevitable. These strategies were seen to have enabled the legitimization and the perpetuation of colonial rule and to have culminated in the dismemberment of the country.<sup>29</sup>

At least three related concerns were to be found in reservations about minority safeguards from the standpoint of national unity.<sup>30</sup> First, there was the concern that minority safeguards were a threat to the political unity and integrity of the country. Recent history was perceived as providing overwhelming evidence in support of this view, with religion-based separate electorates in particular regarded as the direct cause of the traumatic Partition of the country.<sup>31</sup> Minority safeguards involved the politicization of religious identities- the 'mixing of religion and politics' as it was termed- that had hardened differences between Hindus and Muslims, and resulted in the bloody break-up of the country. The paramount task facing the Assembly was that of containing civil strife and consolidating political unity and state stability.

<sup>29</sup> RV Dhulekar was voicing the typical nationalist position on safeguards when he said: 'No doubt our country or community stands guilty for creating social barriers and divisions. But the Britishers aggravated these evils in order to establish and consolidate their imperialistic hold on us. With their duplicity, they created a gulf between the Brahmins and non-Brahmins, between touchables and untouchables, between the Hindus and the Muslims...to continue the safeguards and perpetuate the division is not a wise course... the English played their game under the cover of safeguards. With the help of it they allured you (the minorities) to a long lull. Give it up now....Now there is no one to misguide you.' *CAD*, II, p. 285. A similar understanding of the history of the 'minority problem' was reflected in the speeches of many minority representatives. The Parsi representative, RK Sidhwa held: '...the mischief of separate representation was forced for the purpose of upholding British rule in this country.' *CAD*, I, p. 114. See also the statement of Scheduled Caste representative, S Nagappa, *CAD*, II, p. 205.

<sup>30</sup> These distinctions are adapted from W. Kymlicka and W. Norman (eds.), *Citizenship in Diverse Societies*, (Oxford, 2000), p.31. On the different kinds of national unity concerns in India, see A. Embree, *Utopias in Conflict: Religion and Nationalism in Modern India* (Berkeley and Los Angeles, 1990).

<sup>31</sup> For instance, Purushottamdas Tandon held '... In politics (the Congress party) refuses to recognise any differences on account of religion. We ask Sir Stafford Cripps and other British leaders: 'If a hundred years or for that matter twenty years ago, the right of separate elections were given to different sects of your country, what sort of government would you have had today? Would you not have had continuous civil wars?' *CAD*, I, p. 66.

The continuation of a system of political safeguards in independent India for religious minorities and other ethno-cultural groups would, it was argued, perpetuate social divisions in the 'body politic' and thereby endanger the integrity and stability of the fledging nation. The concern regarding the impact of minority safeguards on the political integrity of the country dominated in this period, and other anxieties regarding minority safeguards were all mediated through this central concern.

A second concern pertained to the implications of minority safeguards for the emergence of a common national identity. Nationalist opinion, for all its appeals to an eternal India, recognized that the new state had to create a common national identity that could unite its citizens, transcending group identities based on 'caste, creed, and religion' that divided them. Minority safeguards implied the recognition of group identities in the political realm, that it was felt, would promote particular group identities at the expense of wider national identities among citizens, and thereby inhibit the development of a common national identity for all citizens necessary for securing the political integrity of the nation.<sup>32</sup> Minority safeguards were regarded as inhibiting the development of a common national identity among citizens in several ways. At the level of the individual, it was felt that safeguards would encourage individuals to think of themselves and to associate primarily in 'narrow' group terms in public political matters, rather than in terms of 'larger' national issues. At the level of the group, it was felt that minority safeguards would legitimize and strengthen group identities that were 'distinct from, and potentially in competition with, common citizenship identities.'<sup>33</sup> Nationalist opinion looked upon group identities with suspicion: while religious identities were seen as direct rivals to national identities, having recently formed the basis of claims for an alternative nation-state, caste, regional and other ascriptive groups were also viewed as competing loci for citizens' affections, detracting from a common citizenship identity in proportion of their strength.

Third, not only did minority safeguards undermine the creation of a common national identity by vitalizing group identities, the content of these group identities was regarded as antithetical to the content of the national identity that the Constitution-makers sought to fashion. Minority safeguards were instituted for groups defined in terms of the ascriptive criteria of religion, caste, and tribe, whereas the national identity aspired to by the nationalist elite was defined in secular liberal democratic terms that eschewed references to ethno-cultural criteria.<sup>34</sup> While the 'nation' had not been regarded as antagonistic to such 'communities' in early nationalist visions of the nation, in our period, ascriptive criteria were held in disfavor. The Indian nation was conceived not in ethnic or cultural terms, but as a political community, united by its commitment to common political ideals of secularism, democracy, rights, equality and

<sup>32</sup> A common national identity was also regarded as a prerequisite for the successful functioning of a democratic state. Pandit Govind Vallabh Pant argued: '...For the success of democracy one must train himself in the art of self-discipline. In democracies one should care less for himself and more for others. There cannot be any divided loyalty. All loyalties must exclusively be centred round the State. If in a democracy, you create rival loyalties, or you create a system in which any individual or group, instead of suppressing his extravagance, cares nought for larger or other interests, then democracy is doomed.' *CAD*, II, p. 224.

<sup>33</sup> Kymlicka and Norman (eds.), *Citizenship*, p. 35.

<sup>34</sup> See D.L. Sheth, 'The Nation-State and Minority Rights' in Sheth and Mahajan, *Minority Identities*.

justice.<sup>35</sup> Further, as will be explored below, these ideals were regarded to preclude the recognition of ethno-cultural criteria, particularly religion, in the political domain. Cultural identities were seen as 'backward', relics of a pre-modern past, and the recognition of cultural group identities in the political sphere implied by minority safeguards was regarded as a pre-modern legacy that was inconsistent with the task of building a modern nation state, where the cultural affiliations of individuals were irrelevant for purposes of citizenship.<sup>36</sup>

In sum, minority safeguards undermined national unity by endangering the political integrity of the nation, by inhibiting the development of a common national identity, and by undermining the creation of a modern, secular democratic citizenship. Characteristically of nationalist doctrines, minority groups were perceived to be a 'part' of the 'organic whole' that was the nation, and were advised not to be selfish and short sighted and put their 'narrow', 'petty' group concerns above the 'larger', 'common' national interest.<sup>37</sup> In nationalist opinion, the nation was usually conceived in terms of biological metaphors, referred to, for instance, as an 'organic whole', a 'body politic,' in other words, as 'natural' as opposed to the artificially created minorities that were referred to as 'disfigurements', 'cancerous', 'poisonous' for the body politic.<sup>38</sup> Minority safeguards were referred to variously as 'privileges', 'concessions' and 'crutches', and portrayed as a symptom of 'ill-health' in the polity.

As the above discussion suggests, citizenship in a modern nation state was conceived in nationalist opinion in liberal terms, as characterized primarily by equal individual rights. The concession of safeguards by the state was deemed unjust from this standpoint because it was thought to compromise its commitment to not discriminate between its citizens on the basis of their 'caste, creed or community'. The assumption here was that the recognition of cultural distinctions in the political realm contravened the state's commitment to treat all individuals as

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<sup>35</sup> Prior to the 1920s, the nation had been envisaged as a composite of communities defined in religious, regional and caste terms. The terms 'nation' and 'community' were often used interchangeably in English, as well as Indian languages in the late nineteenth century. Pandey, *The Construction of Communalism*, chapters 6-7.

<sup>36</sup> Renuka Ray argued: 'After all...it is not a question of minorities and majorities on a religious basis that we should consider in a democratic secular State...we have stood aside helplessly while artificially this problem of religious differences-an echo of medieval times, has been fostered and nurtured and enhanced by the method of political devices such as separate electorates in order to serve the interests of our alien rulers. Today we see as a result our country divided and provinces like my own dismembered. ...We have submitted to all this so that at least in the rest of India that remains with us now we may go ahead in forming a democratic secular State without bringing in religion to cloud the issue.' *CAD*, V, p. 268.

<sup>37</sup> Vijayalakshmi Pandit warned: 'Even though certain minorities have special interests to safeguard, they should not forget that they are parts of the whole and if the larger interest suffers, there can be no question of real safeguarding of the interest of any minority.' *CAD*, II, p. 261. Jawaharlal Nehru advised group representatives not to 'bicker so much over this seat or that post, over some small gain for this group or that...there is no group in India, no party, no religious community which can prosper if India does not prosper. But if it is well with India, if India lives as a vital free country, then it is well with all of us to whatever community or religion we might belong.' *CAD*, II, p. 302. Speaking against proposals for guaranteed representation for minorities in the Cabinet, Govind Vallabh Pant advised the minorities: 'Your safety lies in making yourself an integral part of the organic whole which forms the real genuine State.' *CAD*, V p. 223.

<sup>38</sup> See also Pandey, *The Construction of Communalism*.

equals.<sup>39</sup> Many Congress speeches lamented the importance accorded to community and the neglect of individual citizen in political claims.<sup>40</sup> The opposition to minority safeguards on liberal grounds in this period was cast in the language of justice, equality, and fair play- the appellation 'liberal' was rarely used.<sup>41</sup> When the term liberal occurred in these debates, the connotations were of tolerance, of a reliance on constitutional means rather than violent agitation, and of 'modern' and 'progressive' as opposed to 'traditional' attitudes.

As our discussion of the nationalist conception of the nation in this period suggests, minority safeguards were also opposed on grounds that they compromised the nationalist ideal of secularism. How was the concept of a secular state construed in these debates? In terms of the state's stance towards religion, most speeches in the Constituent Assembly emphasized that secularism did not imply that the state was hostile to religious belief.<sup>42</sup> Further, it was argued that a secular state was not a state that was incognizant of the importance of religious faith in society, neither was a secular state zealous of inculcating skepticism towards religious belief among its citizens. Speeches in this vein argued simultaneously that a secular state did not imply secularism of this kind as well as that a secular state could not assume such a stance in country like India where religious beliefs were deep-seated. For instance, proposing an amendment that gave the President the option of taking his oath of office in the name of God, a proposal that

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<sup>39</sup> Mahavir Tyagi argued: 'These minorities cannot be recognized because in a country whose administration is supposed to be run on the basis of justice alone, there is no question of minority or majority. All individual (*sic*) are at par.... We cannot recognize religion as far as the State is concerned.' Quoting Jinnah, he said '...even in that State he says religions will not be taken notice of by the State. Every individual will be an individual and Hindus will lose their Hinduship as far as their political rights and privileges are concerned. ... We are one nation which stands for justice. We will legislate in a manner that will be a guarantee against all injustice, and we shall not recognise any sections.' *CAD*, V, p. 219. Differentiated citizenship rights, of course, do not necessarily violate norms of equal citizenship. While a liberal state must treat all its citizens as equals, the right of each individual to be treated as an equal is compatible with, and may under some circumstances require, unequal treatment. For arguments along these lines, see R. Dworkin, *Taking Rights Seriously*, (London, 1977), W. Kymlicka, *Liberalism, Community and Culture* (Oxford, 1989), W. Kymlicka, *Multicultural Citizenship, A Liberal Theory of Minority Rights*, (Oxford, 1995). For an elaboration of this point in relation to secularism in India, see R. Bhargava 'What is Secularism For?' in R. Bhargava (ed.), *Secularism and Its Critics* (Delhi, 1998).

<sup>40</sup> Pandit GB Pant held: 'There is the unwholesome and to some extent a degrading habit of thinking always in terms of communities and never in terms of citizens. But it is after all citizens who form communities and the individual as such is essentially the core of all mechanisms and means and devices that are adopted for securing progress and advancement. So let us remember that it is the citizen that must count. It is the citizen that forms the base as well as the summit of the social pyramid.' *CAD*, II, p. 312.

<sup>41</sup> See for instance, Biswanath Das: '...it is very very unfortunate that the minority communities do not demand mere justice, equity and fairplay but claim safeguards and weightages under third party domination.' *CAD*, II, p. 323. Interestingly, liberal values were most prominently invoked in the speeches of women representatives in the Constituent Assembly, in opposition to safeguards for women and minority groups. See for instance, Hansa Mehta's statement: 'The women's organisation to which I have the honour to belong has never asked for reserved seats, for quotas or for separate electorates. What we have asked for is social justice, economic justice and political justice. We have asked for equality.' *CAD*, I, p.134.

<sup>42</sup> On attitudes towards secularism in the Constituent Assembly, see also J. Chiriyankandath, 'Creating a Secular State in a Religious Country': The Debate in the Indian Constituent Assembly', *Commonwealth and Comparative Politics*, Vol. 38, No. 2 (July 2000).

was supported by representatives of the religious minorities and incorporated into the Constitution, KM Munshi stated:

A secular state is not a Godless state. It is not a state which is pledged to eradicate or ignore religion. It is not a state which refuses to take notice of religious belief in this country...We must take cognisance of the fact that India is a religious minded country. Even while we are talking of a secular state, our mode of thought and life is largely coloured by a religious attitude to life...the state in India cannot be secular in the sense of being anti religious.<sup>43</sup>

While secularism for the Constitution makers did not involve state antagonism towards religion, it did imply some forms of separation between state and religion.<sup>44</sup> First, a secular state was construed in terms of disestablishment or the notion that the state would not have an official religion.<sup>45</sup> Second, secularism was regarded to imply an exclusion of religion from the political domain: religion, it was argued, should be a 'personal matter' for citizens, restricted to their individual and associational private practices.<sup>46</sup> A third conception of secularism as separation between state and religion was that of state impartiality between different religions: secularism meant 'that the state or the government cannot aid one religion or give preference to one religion as against another...not that it has lost faith in all religions.'<sup>47</sup> Much of the debate on provisions relating to cultural and educational rights of minorities involved conceptions of secularism as separation between state and religion. It was secularism as separation that was at issue in the claim that state funding of educational institutions providing religious instruction was illegitimate from the point of view of secularism, as it would involve the state in the purveying of religious tenets. It was resolved that the state could provide aid to minority educational institutions that imparted religious instruction, although there was no obligation upon the state to do so. However, institutions maintained wholly out of state funds were prohibited from giving religious instruction, as this was regarded as incompatible with the separation between state and religion required of a secular state.<sup>48</sup>

<sup>43</sup> CAD, VII, p. 1057. See also Rev. Jerome D' Souza's statement, *ibid.*, p. 1059.

<sup>44</sup> On the different forms of separation between state and religion, see R. Bhargava, 'Is Secularism a Value in Itself?' in I. Ahmad, P. Ghosh and H. Reifeld (eds.), *Pluralism and Equality* (Delhi, 2000).

<sup>45</sup> For instance, BR Ambedkar, one of the chief architects of the Constitution, stated in his memorandum to the Sub-Committee on Fundamental Rights dated March 24, 1947: 'The State shall not recognise any religion as state religion.' Shiva Rao, *Framing*, Vol. II, p. 87, cited in G. Mahajan, *Identities and Rights, Aspects of Liberal Democracy in India* (Delhi, 1998), p.47.

<sup>46</sup> Renuka Ray argued: '... at least in the rest of India that remains with us now we may go ahead in forming a democratic secular State without bringing in religion to cloud the issue. Religion is a personal matter. Religious differences might have been exploited as a political expedient by the British, but there is no room for that in the India of today.' CAD, V, p. 268.

<sup>47</sup> See, for instance, M Ananthasayanam Ayyangar, CAD, VII, pp.881-882.

<sup>48</sup> BR Ambedkar, moving the Draft Constitution in the House, opined: 'The State, of course, is free to give aid, is free not to give aid...religious instruction has been left free to be taught and given by each community according to its aims and objects subject to certain conditions. All that is barred is this, that the State in the institutions maintained by it wholly out of public funds, shall not be free to give religious instruction.' CAD, VII, pp. 883- 884.

There were at least two values underpinning conceptions of secularism as separation between state and religion in the Constituent Assembly.<sup>49</sup> First, these were regarded as a requisite of equal citizenship in a situation where citizens professed a variety of faiths. KM Munshi asserted:

A secular state is used in contrast with a theocratic government or a religious state. It implies that citizenship is irrespective of religious belief, that every citizen, to whatever religion he may belong, is equal before the law, that he has equal civil rights, and equal opportunity to derive benefit from the state and to lead his own life and nothing more.<sup>50</sup>

Speaking in support of an amendment explicitly stipulating state neutrality in matters relating to religion, KT Shah opined: `...with the actual profession of faith or belief, the State should have no concern. Nor should it, by any action of it, give any indication that it is partial to one or the other. All classes of citizens should have the same treatment in matters mundane from the state.'<sup>51</sup> A secular state here was apprehended as a liberal state, committed to equal citizenship and non-discrimination. It was argued that the state had an obligation to treat its citizens as equals, to not discriminate between them on grounds of (religious) group membership. The assumption in such utterances was that given a situation of religious pluralism and the importance of religion in people's lives, this obligation would be compromised if the state identified with or gave preference to any particular religion. Key liberal concerns, thus, were intimately bound up with the meaning and justification of secularism in the Constituent Assembly debates.

The requirements of equal citizenship were, however, not the only considerations motivating conceptions of secularism as separation between state and religion. Separation was also regarded as a critical imperative, as the `mixing religion and politics' was dangerous from the standpoint of the survival of the new nation-state. Religion was viewed as a source of deep discord in the nation and the recent violent partition of the country was thought to be a direct consequence of the colonial policy of `mixing religion and politics'. If conflicts about religious doctrines were played out in the political arena, the state would be torn apart. Therefore, the state, in order to save itself and in order to achieve the consolidation of the nation, had to keep clear of matters concerning religion.<sup>52</sup>

While religion was to be excluded from the affairs of the state, a secular state also implied religious freedom for individuals and groups. Interestingly, religious freedom was most prominently invoked in conceptions of a secular state in the speeches of proponents of Muslim Personal law in the Constituent Assembly. Many Muslim representatives argued that religious personal laws that governed areas such as marriage, divorce and maintenance were an essential aspect of religion, and as such, ought to be granted immunity from state interference. Secularism, as invoked by the proponents of Muslim Personal Law, drew upon conceptions of secularism as de-politicization of religion. Here, secularism as separation of state and religion was construed to imply that religion in a secular order should be free from state interference. A

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<sup>49</sup> On the underlying values of secularism, see Bhargava, `What is Secularism For?'

<sup>50</sup> CAD, VII, p.1057.

<sup>51</sup> CAD, VII, p. 816. It may be recalled here that the Congress Karachi Resolution of 1931 had explicitly proposed religious neutrality on the part of the state.

<sup>52</sup> See also Bhargava, `What is Secularism For?'; N. Chandhoke, *Beyond Secularism, The Rights of Religious Minorities* (Delhi, 1999).



secular order was one in which citizens would have full religious freedom, including the freedom to live by the tenets of their religious personal law. A secular state would be excluded from the domain of religion and would lack the authority to intervene in matters regulated by religious personal law. It was argued:

People seem to think that under a secular State, there must be a common law observed by its citizens in all matters, including matters of their daily life, their language, their culture, their personal laws. That is not a correct way to look at this secular State. In a secular State, citizens belonging to different communities must have the freedom -to practise their own religion, observe their own life and their personal laws should be applied to them.<sup>53</sup>

Claims for granting religious law absolute immunity from state interference were rejected by the Constitution making elite, which was not surprising given that the reform of Hindu religious law was looming large on the agenda in this period.<sup>54</sup> Nevertheless, the identification of secularism with religious freedom remained in the political discourse on minority rights and was to become the dominant connotation of secularism in the Shah Bano debate.

Thus far we have considered conceptions of secularism in terms of the state's stance towards religion. The connotations of secularism in the Constituent Assembly debates, however, did not pertain to religion and state alone. The ideal of secular, liberal nationalism captured in the popular slogan 'irrespective of caste, creed, race or community', was of a polity where ascriptive affiliations of any kind would become irrelevant in the political domain. This nationalist vision moreover, required not just the exclusion of ascriptive affiliations from the political domain, but also the creation of a new secular ethos and secular citizenship identities, where people would cease to see themselves as members of this or that community and regard themselves as Indians 'first and last'. The implication of secularism in the project of nation-building was clearest here: ascriptive affiliations were viewed simultaneously as anti-secular and as expressions of anti-national sentiments: the pejorative term 'communal', it may be recalled, was opposed to both 'secular' and 'national' in nationalist discourse of this period.<sup>55</sup> Secularism in the nationalist scheme was, after all, the envisaged solution to the problem of the creation of an integrated nation-state and a common national identity out of competing allegiances of religion, caste and language.<sup>56</sup>

Secular nationalists in the Constituent Assembly were, however, not opposed to ascriptive group identities solely on account of their divisiveness. In its elaboration by the modernizing nationalist elite of the Constituent Assembly exemplified by Nehru, secularism had another inflection. This view was opposed to ascriptive affiliations as they were viewed as vestiges of a pre-modern era that processes of modernization and development would make

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<sup>53</sup> CAD, VII, pp. 541-544. It was argued that 'the right of a group or community of people to follow and adhere to its own personal law is part of the way of life of those people who are following such laws; it is part of their religion and it is part of their culture. ... This secular State which we are trying to create should not do anything to interfere with the way of life and religion of the people.' *Ibid.*, p.540, 541.

<sup>54</sup> See, for instance, BR Ambedkar, *ibid.*, pp. 781-782.

<sup>55</sup> See Pandey, *The Construction of Communalism*.

<sup>56</sup> On this point, see for instance, N. G. Jayal, *Democracy and the State, Welfare: Secularism and Development in Contemporary India*, (Delhi, 1999); Embree, *Utopias in Conflict*.

redundant.<sup>57</sup> It was held that nation, rather than religion or caste provided the appropriate basis for identity in the modern era. The nation in this period was backed both by the force of self-evident legitimacy as well as that of historical necessity. S. Radhakrishnan declared: 'The present tendency is for larger and larger aggregations...nationalism, not religion is the basis of modern life.'<sup>58</sup> To define the nation without reference to ascriptive criteria was considered to be 'the mark of India's coming of age'.<sup>59</sup> Religion and other ascriptive identities were regarded as vestiges from a bygone era that had acquired importance only as a result of their exploitation by British and Indian 'vested interests'. These would wither away once India had gained independence from British rule, economic inequalities had been tackled and there occurred a diffusion of education and a scientific temper among the Indian people.<sup>60</sup> Until then, cultural identities and claims for safeguards based on these were regarded as out of step with the times and as distractions from the real and more pressing tasks of tackling issues of development and attending to the basic needs of the common man.<sup>61</sup> Recent history has shown only too well that Nehru's confidence in the withering away of religious and other communal identities was misplaced. What is less often recognized, however, is that the mistaken causal claim, namely that processes of modernization and secularization would make for secular attitudes and identities, was based on a conceptual confusion: the identification of a scientific temper with a secular outlook.<sup>62</sup>

In the debates about minority safeguards, the language of liberal-secular nationalism was inflected by norms drawn from indigenous cultural and historical idioms. The most salient instance was to be found in the recurrent appeals to the tolerance and the generosity of the House and the majority community towards minorities. This theme, explicitly or implicitly, evoked filial norms: the majority community was cast in the role of the responsible, easygoing, benevolent, and self-sacrificing older brother, indulgent, protective and accommodating of even the excessive and unreasonable demands of his younger and weaker brothers, as the responsible older brother, duty bound to look out for and to protect the interests and sentiments of his weaker siblings, the minorities.<sup>63</sup> There was frequent elision between the majority

<sup>57</sup> For an analysis of secularism in the writings and speeches of Nehru and other nationalist leaders, see Chandhoke, *Beyond Secularism*.

<sup>58</sup> CAD, II, p. 254.

<sup>59</sup> Embree, *Utopias in Conflict*, p.55

<sup>60</sup> See Embree, *ibid.*; Pandey, *The Construction of Communalism*.

<sup>61</sup> Nehru likened religious nationalism to 'thinking in terms of bows and arrows as weapons of war in the age of the atom bomb.' Quoted in Pandey, *The Construction of Communalism*, p. 242. On the subject of political safeguards for minorities, included in the first draft of the Constitution, he reportedly said in a legislative debate that the draft constitution had 'certain definite communal elements'. 'What the final decision will be about that I cannot say. I hope personally that the less reservation there is the better.' Quoted in Retzlaff, 'The Problem of Communal Minorities', p. 66.

<sup>62</sup> This point has been made by Akeel Bilgrami, who argues that Nehru's linking of the scientific temper with a secular attitude was based on a conceptual confusion and that his optimism about the ability of a scientific outlook to overcome communal commitments was therefore misguided. See A. Bilgrami, 'Two Concepts of Secularism: Reason, Modernity and Archimedean Ideal', *Economic and Political Weekly*, XXIX: 28 (July 9, 1994), pp. 1749-1761, p.1756.

<sup>63</sup> Naziruddin Ahmad, speaking in support of minority representation, argued: '...the Hindu community who can be collectively described as the elder brother has in a generous mood conceded for the period of ten years-I should consider that period quite sufficient-that they (Muslims) should get a reserved

community and the major party, both overwhelmingly preponderant numerically in the country and the Assembly respectively, both being generous beyond the call of justice in allaying the misapprehensions and insecurities of the minorities. The theme of the tolerance and generosity of the House and the majority community towards minorities also sometimes invoked notions of the 'age old civilizational traditions' of (Hindu) India of the accommodation of diverse religious groups. Secularism elaborated in terms of the tolerance and the generosity of the majority community towards the minorities carried connotations of forbearance and self-restraint; it implied 'that the numerical majority, the Hindus, would not use their power to give Hinduism a favoured place over other religions.'<sup>64</sup> As such, political arguments in the Constituent Assembly debates frequently appealed both to a secular liberal- democratic idiom and to filial and feudal values.

### III *The Nationalist Resolution of the Minorities Question*

The question of political safeguards for minorities was referred to the Advisory Committee on Fundamental Rights, Minorities, Tribal and Excluded Areas in the Constituent Assembly whose creation had been mandated by the Cabinet Mission Plan of 16 May 1946. Its first report on minority rights of August 1947 proposed the following. While rejecting some of the central components of the British system of minority safeguards, such as separate electorates and weightage, it offered an alternative set of political safeguards. A system of joint electorates with representation for communities in proportion to their population was proposed for a period of ten years. The Instrument of Instructions to the President and Governor suggested the 'desirability of including members of important minority communities in Cabinets as far as practicable.'<sup>65</sup> A general declaration was adopted that 'in the All India and Provincial Services, the claims of all the minorities shall be kept in view in making appointments to these services consistently with the consideration of efficiency of administration.'<sup>66</sup> A provision was made for a Special Minority Officer at the central and provincial levels to report to the legislatures regarding the working of various safeguards for minorities. This report was adopted by the Constituent Assembly in August 1947 and incorporated in the Draft Constitution published in February 1948. In a comprehensive reversal, amendments were adopted to each of these articles during discussions of the Draft Constitution in October 1949, effectively removing religious minorities from the purview of these safeguards and restricting the scope of these articles mainly to the Scheduled Castes and Tribes. This section analyses arguments in the Constituent Assembly

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representation. It seems to me that it implies that the great Hindu community are willing for this period of ten years to listen to what difficulties and complaints, apart from the justice or otherwise of these complaints, of the Muslim community... No danger or harm can follow from this in the period of ten years if the elder brother listens to the grievances of the younger brother. These grievances and difficulties may be real or exaggerated, they may be due more to fear and suspicion rather than to any real reasons....' CAD, V, p. 270.

<sup>64</sup> Embree, *Utopias in Conflict*, p.87.

<sup>65</sup> CAD, V, p. 246.

<sup>66</sup> *Ibid.*, p. 249. Some special provisions of a temporary nature were also made for the Anglo-Indian community in the spheres of representation, education and the services. This report was regarded as representing 'the high watermark in Congress' concessions to minorities... made several months after the partition, when the need for conciliating the minorities, particularly the Muslims, had greatly diminished.' See Retzlaff, 'The Problem of Communal Minorities', p.64.

about mechanisms for minority political representation and quotas in government employment with a view to understanding this outcome.

### III A Political Representation

The most significant and contentious aspect of the regime of minority safeguards before the Constituent Assembly was that of special representation measures for minority groups. Separate electorates, reserved quotas in the legislatures in proportion to the population of the communities and various forms of proportional representation were the chief mechanisms proposed for enabling the representation of minority groups during the career of the Constituent Assembly. Muslim representatives, the chief beneficiaries of the colonial regime of minority representation, were at the forefront of demands for special representation provisions, although similar claims were also put forward by Sikh and Scheduled Caste representatives.

One of the strongest cases for political safeguards for religious minorities in the Constituent Assembly was to be found in arguments for separate electorates for Muslims. These were put forward by Muslim League members during discussions on the first Report on Minority Rights in August 1947, in response to the Advisory Committee's proposals for reservations of seats under joint electorates for Muslims, Indian Christians, Scheduled Castes and Tribes in the Parliament and the State Legislatures in proportion to the population of these communities, for a period of ten years. The case for separate electorates was built around a contention over the concept of representation and typically invoked the following arguments.<sup>67</sup> First, Muslim League representatives asserted that minorities were a permanent feature of every human society and not, as nationalist opinion claimed, merely a contrivance of colonial machinations. There were fundamental differences between communities that were inherent in the very nature of things: irreducibly distinct groups existed, at least along lines of religion.<sup>68</sup> Second, it was argued that the fact that these differences existed meant that the distinct religious groups had to be represented in the legislatures. As the legislature was the body that made laws that affected all communities, it was `necessary that in that legislature the needs of all

<sup>67</sup> Farzana Shaikh has argued that there is an ideological opposition between Islam and western liberalism on the question of representation. She holds that Islamic and liberal approaches to representation differ on the unit of representation, the basis of representative status and the organization of representative bodies. See F. Shaikh, 'Muslims and Political Representation in Colonial India: The Making of Pakistan' *Modern Asian Studies*, 20, 3, 1986, pp. 539-57, and *Community and Consensus in Islam: Muslim Representation in Colonial India, 1860-1947* (Cambridge, 1989). Unlike Shaikh, I do not wish to suggest that the conception of representation underlying the demands of the Muslim League for separate electorates derived necessarily from Islam.

<sup>68</sup> To deny the existence of minority communities, B. Pocker Sahib Bahadur argued was going `against the facts of human nature and having before us ideologies that are impossible for realization. Human nature being what it is, there are bound to be minorities and minority communities in every land; and particularly in such a vast subcontinent as India they are bound to exist, and it is humanly impossible to erase them entirely out of existence.' *CAD*, V, p. 212. Contrast this with the following speech by Congress leader Purushottamdas Tandon, which was typical of Congress speeches on this subject: 'The history of our relations with the British show that Hindu-Muslim differences are purely a British creation. The differences which the British harp upon have been created by them. They were not in existence before their advent. Hindus and Muslims had a common civilization and lived amicably.' *CAD*, I, p. 66.

communities should be ventilated'.<sup>69</sup> While this claim bore superficial similarity to the familiar democratic idea that those affected by decisions should participate in their making, it is important to note that unlike in our present day intuitions about democracy, representation was not necessarily linked to notions of popular participation here. Separate electorates had originated within a colonial context of limited democracy, where political participation was highly circumscribed and legislative bodies were relegated to a largely advisory role. The demand for separate electorates had been driven by a concern to ensure that significant interests had a voice in the framing of legislation rather than one of deepening popular participation in decision-making. Also, accompanying claims for representation here was the notion that the entities that had to be represented were religious groups. The implicit assumption here was that the political choices and interests of individuals derived from their religious group membership, in other words, that the needs and preferences relevant from the standpoint of representation cohered along religious group lines.

Third, accompanying the claim that there were distinct groups that had to be represented in legislatures was the assumption that group representation implied the presence of members of the group in legislative assemblies. The fact that culturally distinct groups existed had to be reflected in the social composition of legislatures. While the mechanism of separate electorates, strictly speaking, does not require that representatives elected belong to beneficiary groups, only that the electorate be constituted of group members, in its practice in India, this had almost always been the case, and it was certainly assumed to be an aspect of separate electorates in the speeches of its advocates in the Constituent Assembly. The underlying notion here was that of descriptive representation, where representation was seen as requiring a correspondence between the characteristics of the representative and those she represented.<sup>70</sup> Further, descriptive group representation was being advocated here not as a means of granting a group symbolic representation in the legislature, but of enhancing substantive representation. It was argued that different religious communities had distinct needs and preferences and it was not possible for members of other communities, no matter how well-informed and well-intentioned they were, to understand, and thereby, to effectively represent the interests of a community in policy making, particularly in the prevailing climate of distrust between communities.<sup>71</sup> Advocating separate electorates, B. Pocker Sahib Bahadur held:

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<sup>69</sup> CAD, V, p. 213.

<sup>70</sup> On the notion of descriptive representation, see H. Pitkin, *The Concept of Representation*, (Berkeley, 1967), A. Phillips, *The Politics of Presence*, (Oxford, 1995). Drawing upon Hanna Pitkin's distinction between substantive and descriptive notions of representation, Farzana Shaikh has argued that the Muslim's League's demands for institutional mechanisms such as separate electorates for Muslims stemmed from a notion of representation as a descriptive activity, distinct from conventional liberal-democratic notions of representation. See Shaikh, *Community and Consensus*. While an earlier scholarship on representation had contrasted descriptive representation with modern liberal-democratic representation where representation is defined in terms of the procedures by which office-holders are elected, rather than their personal attributes' (Kymlicka, *Multicultural Citizenship*, p. 138), recent scholarship has focussed on continuities between descriptive representation and modern practices of representation.

<sup>71</sup> On how descriptive representation enhances substantive representation, see J. Mansbridge, 'What Does A Representative Do? Descriptive Representation in Communicative Settings of Distrust, Uncrystallized Interests, and Historically Denigrated Status', in Kymlicka and Norman (eds.), *Citizenship*.

...as matters stand at the present moment in this country, it will be very difficult for members of particular communities, say the non-Muslims to realize the actual needs and requirements of the Muslim community. I say that even if a non-Muslim does his best to do what he can for the Muslim community, to represent their views, he will find it impossible to do so because he is not in a position to realize, understand, and appreciate the actual needs of members of that particular community, so long as he does not belong to that community.... How would Hindus feel if Muslims were to represent their grievances in the legislature and provide effective remedies as regards, say, temple entry, marriage customs etc.?<sup>72</sup>

Fourth, and most relevantly for the case for separate electorates, it was argued that group representation would not be authentic, hence effective, unless the person representing the community was chosen by members of that community alone. B. Pocker Sahib Bahadur said that under a system of joint electorates,

...it is that person whom the majority community backs that will be elected. Perhaps that man might be a man liked by the majority under the guise of belonging to the minority community...the mere fact that a particular member belongs to a particular community is not a guarantee that his views represent the views of that particular community. That particular community, if at all it has to be represented, has got to elect the right man from among the members of that community.<sup>73</sup>

In other words, for minority representation to be achieved, it was not sufficient that the representative be a member of the minority community: descriptive representation was not sufficient for group representation. To be a 'true representative', one who genuinely represented the views of the community, she had to command the confidence of the community. Separate electorates were defended as being the best mechanism for securing this end. The main concern here was that reserved seats for minority groups would remain an empty safeguard, facilitating the election of candidates favored by the majority community or the ruling party to reserved seats if group representatives were elected by a general electorate.

The proposals for separate electorates were predictably rejected in the House: these had already been rejected by the Report on Minority Rights. Nationalist opinion was opposed to the conception of representation implicit in the case for separate electorates in each of its four aspects discussed above: in terms of the entities to be represented (religious groups or territories), the function of representatives (advocacy of a group's concerns or participation in collective decision making), and also in terms of who could do the representing (members of the group or any citizen), and how representation was to be achieved (separate electorates or joint electorates).

Three main types of concerns were put forward against separate electorates. First, separate electorates were regarded as incompatible with the nationalist ideal of a secular state.

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<sup>72</sup> CAD, V, pp. 211-213.

<sup>73</sup> *Ibid.* Chaudhari Khaliqzaman argued: 'If you conceded separate electorates, the Muslim community feels that they will help in returning their true representatives, representatives who will lay before you-not to any other power, not to any other government, not even to Pakistan-our grievances and our claims.' *ibid.*, pp. 221-222. The notion of 'true' or 'authentic' representation was often incomprehensible from a standpoint of secular nationalism. For instance, Ananthasayanam Ayyangar held: '... My friend Mr. Pocker says "I want a good, honest representative". What is the definition of goodness? Goodness does not come by being a Muslim or a Hindu...' *Ibid.*, p. 216.

In contrast to the advocates of separate electorates, Congressmen argued that in a secular state, the interests relevant from the standpoint of political representation were not those of religious groups. Representatives in secular state, it was argued, did not deliberate and legislate about religious issues concerning particular communities, but about secular national issues that affected all citizens and the nation as a whole. So religion was irrelevant for purposes of political representation, and religion-based separate electorates were both inappropriate and unnecessary. Underlying such claims was a conception of secularism as separation of state and religion. Religion based separate electorates were thought to breach a secular state's requirement of the exclusion of religion from the political domain, as they required the recognition of religious affiliations for electoral purposes. In doing so, separate electorates were thought to violate the norm underlying conceptions of secularism as separation, that of equal citizenship, as they implied that the political rights of citizens would differ depending upon their religious group membership. Religion based differences in the political rights of citizens were regarded as out of place in a modern secular nation- state. Mahavir Tyagi argued:

To give the right of suffrage to a section of the people on religious basis is something which the world does not understand. After all, we do not come here to legislate about religions. We come here to legislate and make laws to see that peace is maintained in the country on a country -wide basis. It is not a question of one or the other section being considered. It is the whole country which has to be taken into consideration when we legislate (sic). So the idea of getting representation from religious sections is simply ridiculous. We have had it till now but we cannot continue it because the future constitution is not meant to be a constitution of religions. A State cannot be a confederation of so many religions or sects or groups.<sup>74</sup>

Separate electorates were also opposed on grounds that they were undemocratic. Two main political arguments were offered here. First, it was argued that separate electorates were undemocratic because they implied that individuals from some religious groups would have special privileges with regard to representation.<sup>75</sup> The underlying democratic norm being appealed to was that of political equality of all individuals. The assumption here was that differentiated political rights along lines of religious group membership violated political equality.<sup>76</sup> This was similar to the claim that separate electorates were incompatible with a

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<sup>74</sup> *Ibid.*, p. 218. Addressing the proponents of separate electorates, Govind Vallabh Pant said: 'Do you want a real national secular State or a theocratic State? ...Apart from other things it is an obsolete anachronism today. In a free country, nobody has ever heard of separate electorates.' *Ibid.*, pp. 223, 224.

<sup>75</sup> See, for instance, Mahavir Tyagi: 'I am...a believer in unadulterated democracy, which means a true representation of the people; true without any weightage, without any favour; without any disregard of the rightful privileges of any section of the people or any individual...if we put obstacles in the way of any or stop the passage of others or give privilege to others, that will mean that the democracy or the representation of the people will not be as true and pure as it ought to be in an unadulterated democracy.' *Ibid.*, pp. 218-219.

<sup>76</sup> Again, it is important to note that differentiated political rights do not necessarily violate the principle of political equality. On the multiple institutional implications of the principle of political equality, see C. Beitz, *Political Equality, An Essay in Democratic Theory*, (Princeton, 1989).

secular state because they violated equal citizenship. Here, group differentiated political rights implied by separate electorates were seen as undermining democratic citizenship.<sup>77</sup>

A second objection to separate electorates on democratic grounds was that these were vestiges of an undemocratic colonial system, in which legislatures had been advisory bodies without decision-making powers. In a democratic system such as the one that Constitution makers were fashioning, it was argued, representation was not about advocacy of particular interests but about collective deliberation and participation in decision-making. Here, a contrast was being drawn between the nature of representation in a democratic and an undemocratic political system in terms of what the function of representatives was in each case. This, in turn, had implications for who could represent, what were the interests that had to be represented, and finally, for the mechanisms appropriate for representation. The case for separate electorates was thought to rest on a misapprehension of what was involved in the transformation of the political system from an undemocratic colonial regime to democratic, independent India. Arguing that separate electorates would be suicidal for minorities, Pandit Govind Vallabh Pant said:

...Do the minorities always want to remain as minorities or do they ever expect to form an integral part of a great nation and as such to guide and control its destiny? If they do, can they ever achieve that aspiration and that ideal if they are isolated from the rest of the community? ...will you be satisfied with the pitiable position of being no more than advocates -if advocates alone you wish to be-when your advocacy will be treated, if not with scorn and ridicule, but in any case with utter disregard and unconcern, which is bound to be the case when those who are the judges are not in any way answerable to your electorate?<sup>78</sup>

The conception of democracy implicit here was the following. The democratic norm appealed to was that of popular rule, where laws were made by those subject to them. The ideal of democracy as popular rule was regarded as embodied in the institutions of representative democracy. Under a democratic system, it was argued, representatives of the people were not subjects petitioning the law making authority on behalf of particular religious constituencies as the case for separate electorates assumed, but were the authority that made laws for the people as a whole. Further, representative democracy was identified here with procedures of parliamentary government, where the executive was parliamentary, the legislatures were chief law-making bodies, and laws came into being through majority decision-making. In such a system it was claimed, separate electorates would isolate minority representatives from the rest, preventing them from forming majority coalitions in the legislatures that alone would allow them to enact their preferences into policy. As such, separate electorates would give minority groups a voice in the legislature while depriving them of any effective influence over decision-making. The implicit claim here was that in a democratic system, there were no permanent majorities or minorities in legislatures, only temporary, issue-based ones; thus minorities based on ascriptive criteria could convert themselves into legislative majorities. The claim for separate electorates, by contrast, assumed the existence of permanent majorities and minorities, in legislatures as

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<sup>77</sup> On this point, see Kymlicka and Norman (eds.) *Citizenship*, 'Introduction'.

<sup>78</sup> CAD, V, pp.222-224.



much as in society at large. The association of democracy with the notion of temporary majorities and minorities was conducive to the nationalist temper: in addition to violating secularism, political claims that assumed the existence of majority and minority communities defined in religious terms could also be criticized as undemocratic.

Finally, the most prominent political arguments against separate electorates in this period were based on concerns regarding national unity. Different concerns of national unity were present here. Separate electorates had become synonymous with political separatism in this period, and their continuation was regarded as incompatible with the political integrity of the country and with the maintenance of civil peace. Further, it was felt that separate electorates would keep different groups apart and thus sabotage the nationalist project of the creation of a common political community and national identity.<sup>79</sup> Conceptions of secularism and democracy discussed above formed part of the vision of the common good on the basis of which citizenship was to be defined in the new nation. Separate electorates, in this view, potentially challenged the idea of the existence of a national political community and a common good.

Separate electorates were not the only mechanisms suggested for minority representation during the career of the Constituent Assembly. Various forms of proportional representation were proposed for the election of members to the Lower House and the formation of the Cabinet at different stages of the framing of the Constitution. During the initial stages of Constitution making, when religious minorities were still included in constitutional provisions for quotas in legislatures, proportional representation was favoured so that members of minority groups could have a greater voice in the election of their representatives and minority representation could thereby be more 'authentic'. Legislative quotas under joint electorates were regarded as an 'illusory' safeguard as they did not allow the members of the community to have a preponderant voice in the election of representatives and therefore did not ensure that the person elected was a 'true' or 'real' representative of the community.<sup>80</sup> In the later stages of constitution-making, when quotas for religious minorities no longer obtained, proportional representation was proposed as a mechanism that would enable the representation of minority political opinion, and, as one of its consequences, enable some representatives from minority communities to be elected. In the first case, as in the case of arguments for separate electorates,

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<sup>79</sup> See, for instance, Ananthasayanam Ayyangar's speech: 'We expect if there is to be joint electorates, we will come together sometime. Under the joint electorate system a Hindu can represent the Muslims and a Muslim the Hindus...I am a Hindu and if you allow me to represent you, I will come to you at least every four years. Similarly a Muslim can come to Hindus. Ultimately we will come together. This is possible only if we have joint electorates. If I do not come on his vote, if I am not his representative, what on earth is there to bind me to him?' *CAD*, V, p. 216.

<sup>80</sup> For instance, Kazi Syed Karimuddin argued: 'Even a false convert, or a hireling of the majority party could come in by the votes of the majority party. Therefore my submission is that this provision is detrimental to the interests of the minorities...There is no chance under this system for any real representatives of the minorities to be elected ...If at all the majority community want to protect the rights of the minorities, let them introduce the system of proportional representation...without any sacrifice of democratic principles the minorities can be protected...' *CAD*, VII, p. 243. Sardar Bhopinder Singh Man warned: '... at the time of forming these constituencies, particular care should be taken to make them plural constituencies. The right which you have conferred on the minorities can be preserved only if you make the constituencies in such a way that they should be able to represent themselves.' *Ibid.*, p. 1249.

the assumption was that representatives would belong to the group they represented. In the second case, minority group representation in the legislatures while desired, was to be a by-product of the representation of minority opinion. It was hoped that proportional representation would enable the representation of a greater diversity of political opinion in the country than a first-past-the-post electoral system, and thereby result in the election to legislatures of a greater number of representatives belonging to minority communities. While claims for proportional representation in both cases invoked the notion of pictorial adequacy, its implications in the two cases were somewhat distinct, resting on the composition of assemblies in terms of social groups in the first instance, and in terms of political opinion in the second.<sup>81</sup>

The arguments invoked in the case for proportional representation were substantially similar in the different proposals advanced for proportional representation during the career of the Constituent Assembly. Proportional representation was justified on democratic grounds in the following types of arguments. First, it was argued that a first-past-the-post electoral system resulted, in effect, in the disenfranchisement of voters who did not vote for the winning candidate. Proportional representation was more democratic as it enabled a more adequate realization of the democratic right of every individual in a democracy to be represented by a person of her choice. ZH Lari, the most vocal supporter of proportional representation during the career of the Constituent Assembly, argued:

The twin principles of democracy are that everybody has a right of representation and the majority has the right of govern (sic). The electoral system must be such as to ensure representation to everybody. This is the significance of adult franchise but the method adopted really amounts to the disenfranchisement of 49 per cent of the voters...I am talking of political minority. Even political minorities are entitled to be represented in representative institutions...It is better for us to adopt this principle (Proportional representation by single transferable or cumulative voting) which is more progressive in instinct and which is really democratic...<sup>82</sup>

Here the underlying democratic norm being appealed to was that of political equality. Political equality required that all citizens have equal political rights; this was construed here to imply that all individuals had an equal right to be represented in representative institutions. In other words, the normative work being done in the claim regarding disenfranchisement was by the notion of equal political rights of all individuals. Equal political rights were being defined here in terms of 'an equal chance of voting for a winning candidate.'<sup>83</sup> The central claim implicit in this argument was that inequalities in political outcomes, such as those between the representation of majority and minority opinion in legislatures elected under the first-past-the-post system, violated procedural equality, here construed as the equal right of each citizen to be represented. Now we know that egalitarian procedures may produce unequal results: inequalities in outcomes do

<sup>81</sup> This distinction draws upon Phillips, *The Politics of Presence*. Phillips has criticized Hanna Pitkin's discussion of the limits of descriptive representation for ignoring the distinction between these two kinds of proportionality, between the mapping of opinion and the mapping of people. She points out that Pitkin's analysis does not distinguish between 'a representative sample that might more adequately capture the range of ideas, the range of interests, or the range of socially significant groups.' *Ibid.*, p.49.

<sup>82</sup> *CAD*, VII, p. 209. See also Kazi Syed Karimuddin, *ibid.*, p. 1233.

<sup>83</sup> Phillips, *The Politics of Presence*, p. 107.

not necessarily prove that procedural equality has been violated.<sup>84</sup> What is significant for our argument here is that minority representation was not being defended here on grounds that significant social groups had a right to be represented in the legislature, as had been the case in arguments for separate electorates, but rather, on grounds of individual rights. Democracy was being construed here in liberal terms, as implying equal political rights for all individuals.

Proportional representation was also defended as a mechanism of making assemblies more representative of the diversity of political opinion in society. Here, arguments regarding the right of each individual to be represented blended with those regarding the representative-ness of assemblies. Thus, it was argued that if the electoral system enabled a better realization of the individual's right to be represented, minority political opinion would have a better chance of being represented in the legislatures. This was regarded as desirable as it would enhance the representative-ness, and thereby, the democratic character of assemblies. Democracy was here regarded as implying that the legislature ought to mirror the different shades of political opinion in society in proportion to their strength. It was argued:

... Those who have read the writings of Mill must have been impressed by his advocacy of fundamental principle of democracy, that every political opinion must be represented in an assembly in proportion to its strength in the country, and naturally so...But if you adopt a method by which only 51 percent of the people alone are represented in the legislature, it ceases to be the mirror of the nation. Now the question is, does the method of representation adopted by this House give effect to or rather does it implement the principles of democracy?<sup>85</sup>

The democratic norm implicit here was also that of political equality, but this was now being defined not in terms of each individual having an equal chance of having his preference adopted, but rather, in terms of 'some roughly proportionate representation of political preference and opinion.'<sup>86</sup> Even though this was defended in political arguments as the natural extension of the 'right of each individual to be represented', political equality in the two cases had different implications. Political equality in the disenfranchisement argument implied that majority and minority preferences should have an equal chance of being adopted, and in the representative-ness argument, that majority and minority preferences should be represented in proportion to their strength.<sup>87</sup> It is significant that both these arguments for proportional representation appealed to the nationalist conception of democracy, with its notion of shifting political minorities, in contrast to the case for separate electorates that had been based on the notion of permanent religious minorities.

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<sup>84</sup> For a critique of arguments about disenfranchisement or wasted votes that hold that individuals who vote for candidates who do not win, are disenfranchised, see B. Barry, 'Is Democracy Special?' in P. Laslett and J. Fishkin (eds.), *Philosophy, Politics and Society* (Oxford, 1979). The principle of political equality is compatible with a range of institutional mechanisms that distribute opportunities for political influence, as well as actual political influence differently. Moreover, as Phillips points out, these two concerns may not coincide, so, for instance, in order to give citizens equal actual power over political outcomes, we may need to assign unequal weights to their preferences. See Phillips, *The Politics of Presence*.

<sup>85</sup> ZH Lari, *CAD*, VIII, p. 282.

<sup>86</sup> Phillips, *The Politics of Presence*, p. 107.

<sup>87</sup> *Ibid.*

There was another type of democratic consideration invoked in support of proportional representation. It was argued that the representation of minority opinion in assemblies was desirable from the point of view of democracy, as it would mitigate the tendency in a parliamentary system for the concentration of power in one party, by increasing the likelihood of a stronger opposition and coalition governments. The term 'tyranny of the majority' was frequently employed in such arguments, to refer to the majoritarian tendencies that characterized a first-past-the-post electoral system and a parliamentary government that were attacked as undemocratic.<sup>88</sup> Proportional representation, by enabling the representation of minority opinion it was argued, would save the parliamentary system from the undemocratic tendencies immanent within it and prevent it from degenerating into fascism.

The case for proportional representation was also defended in terms of the legitimating vocabulary of the period on grounds other than democratic ones. It was argued that proportional representation would allow minorities to be represented without giving explicit recognition to religious and other ascriptive identities in the political realm. Thus, unlike mechanisms such as separate electorates or group quotas in the legislature that involved the 'mixing of religion and politics', proportional representation would enable the representation of minorities without requiring any compromise of secular principles.<sup>89</sup> It was also argued in favour of proportional representation that it would strengthen national unity and state consolidation. A Parliament that was more representative of the 'shades of political opinion' in society it was argued, would enjoy greater popular legitimacy, and would make for more governmental consultation with minority opinion, and thereby increased support for the state from minorities.<sup>90</sup>

The proposals for proportional representation put forward for elections to the Lower House of Parliament and the constitution of the Cabinet were rejected by the Assembly.<sup>91</sup> In some cases, proportional representation proposals were viewed as a way of smuggling in

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<sup>88</sup> Mahboob Ali Baig Sahib Bahadur was the most prominent advocate of this argument in favour of proportional representation in the Constituent Assembly: 'Can you think of any parliamentary democracy where there is no opposition? Unless there is opposition, Sir, the danger of its turning itself into a Fascist body is there. An opposition can come into existence only if persons holding different views from the majority are enabled to be returned to the legislature...' *CAD*, VII, pp. 1244-1245.

<sup>89</sup> Kazi Syed Karimuddin argued: '(Proportional Representation) is not based on religious grounds and it applies to all minorities, political, religious or communal...without any sacrifice of democratic principles, it can afford protection to communal minorities also. Without any spirit of communalism, representatives of political and communal minorities can be elected.' *CAD*, VII, pp. 1234-1235.

<sup>90</sup> ZH Lari defended proportional representation on grounds that it would further the national interest: 'I concede that a minority must aspire to be an integral part of the nation...The minority must claim only such safeguards as are consistent with this aspiration and are calculated to give it an honoured place in the governance of the country, not as a separate indifferent entity, but as a welcome part of the organic whole...the adoption of this method is in the national interest and that for three reasons. 1. Parliament must be the mirror of the national mind: otherwise it will not have the respect which is due to it. 2...where national interest is preserved or is not jeopardised or imperiled it is necessary to consult minority opinion. If you do that it necessarily leads to consolidation of the State...3...If you have proportional representation you will have an opposition in the House. You will have a party not on a communal basis but based on large national issues.' *CAD*, VIII, pp. 282-289.

<sup>91</sup> Proportional representation by the single transferable vote had been accepted by the Assembly as the mode of election for the President as well as the constitution of the Council of States, the Rajya Sabha (Article 55, clause 3 and Article 80, clause 4 of the Indian Constitution).

separate electorates indirectly and were opposed on grounds that they shared the flaws of communalism and separatism that beset separate electorates. More often, proportional representation proposals were rejected on grounds that they were impracticable in an illiterate country; that they would encourage government instability and make parliamentary democracy based on collective responsibility unworkable. Here, the parliamentary form of democracy favored by the nationalist elite, and the imperatives of maintaining political stability weighed against proportional representation.<sup>92</sup> However, the fact that proportional representation increasingly replaced separate electorates as the favoured institutional mechanism for minority representation was significant. It reflected how the dominant legitimating vocabulary of the period shaped the forms in which minority claims were cast, with such claims being increasingly put forward in forms more acceptable to nationalist opinion than separate electorates. Its influence was also visible in the arguments advanced for minority representation, which increasingly deployed concepts and ideals drawn from the nationalist legitimating vocabulary. Thus proportional representation was defended as a mechanism that would enable a more adequate realization of democratic principles than the existing provisions for a first-past-the-post electoral system and a parliamentary executive.

The opposition of nationalist opinion to special representation measures for religious minorities was not restricted to separate electorates and proportional representation for elections to legislatures. The arguments against these mechanisms were also employed against every other proposal for minority representation, including provisions for reservation of seats in the legislatures that had initially been accepted by the House. These, too, were regarded as detracting from the principles of secularism, justice, democracy and concerns about national unity. Legislative quotas for religious minorities had initially been admitted as temporary exceptions to these norms, as measures of compromise whose existence was an aberration.<sup>93</sup> Religious minorities, it was argued, had been accustomed to certain 'privileges' in the colonial system and would find the sudden withdrawal of such privileges difficult. Reserved seats in legislatures and other special measures were needed for a short period to ease the passage of transition from the colonial system to that of independent India, to enable them to adjust to the new political order. At no stage did reserved seats in legislatures for religious minorities find a

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<sup>92</sup>BR Ambedkar argued: '...proportional representation would not permit a stable government to remain in office, because Parliament would be so divided into so many small groups that every time anything happened which displeased certain groups in Parliament they would on that occasion, withdraw their support from the government, with the result that the government losing the support of certain groups and units would fall to pieces. Now, I have not the least doubt in my mind that whatever else the future government provides for, whether it relieves the people from the wants from which they are suffering now or not, our future government must do one thing, namely it must maintain a stable government and maintain law and order.' *CAD*, VII, p. 1262.

<sup>93</sup> S Radhakrishnan asserted: '(let us) make it clear that it is not our desire in this House to have these minorities perpetuated. We must put an end to the disruptive elements in the State...we must declare our objective - that it is our desire to set up here a homogenous, democratic, secular State, and those devices which were hitherto employed to keep the different sections of society apart have to be scrapped...We have to effect a compromise between the ideal we have in view and the actual conditions which have come down to us. These concessions will operate only for a period of ten years...the measures of compromise are transitional...' *CAD*, V, pp. 283-284. See also Vallabhbai Patel's speech in the House, introducing the first minority report, *ibid.*, pp.199-200.

principled defense from any ideological position within nationalist opinion in the House. While the colonial rationale for such safeguards was rejected, no attempt was made by the Constitution-makers to develop an alternative normative basis for special representation provisions for religious minorities in the edifice they were fashioning.

Special representation measures in the case of Scheduled Castes and 'backward' tribes, on the other hand, had a different basis in the nationalist legitimating vocabulary. Such provisions were defended in nationalist opinion and in the claims put forward by the representatives of these groups, primarily on grounds that access to political power would enable the economic and social advancement of historically disadvantaged groups. This, in turn, it was argued, would facilitate their integration into the rest of the population on the one hand, and the development of the nation, on the other. Special representation provisions in the case of these groups were envisaged as 'a political form of affirmative action', 'a temporary measure on the way to a society where the need for special representation no longer exists'.<sup>94</sup> That is, what was at issue in proposals for political representation of Scheduled Castes and Tribes was not so much representation, as the rectification of inequalities suffered by members of groups historically excluded from arenas of state power. Quotas in the case of these groups were advocated not as a means of enabling distinct social groups have a voice in the legislature, but as a temporary mechanism necessary to give effect to the requirements of equality for groups that were 'backward'.<sup>95</sup> While such claims were cast in the language of representation, the normative work being done here was by notions of systemic group disadvantage. Importantly, in the case both of the religious minorities and the Depressed Classes, special representation provisions were intended as creating conditions for their own extinction.<sup>96</sup> In the nationalist scheme, the role envisaged for special representation provisions was to enable the eradication of distinctions between groups rather than to preserve or encourage distinctions.<sup>97</sup> While political representation provisions for the Scheduled Castes and Backward Tribes were amenable to such an interpretation, those for the religious minorities were more problematic, given their implicit grounding in the notion of the cultural distinctness of groups. Bereft of legitimacy in the nationalist scheme, their presence in the future Constitution was precarious from the outset.

### IIIB Reservations in Government Employment

The debates on reserved posts in government employment in the Constituent Assembly reveal a pattern similar to those on special representation provisions. In the dominant opinion in the House, quotas in the public services were regarded as undesirable in general although necessary for 'backward' sections in the short run. By and large, other methods of ameliorating backwardness, such as channeling more financial and educational resources towards these

<sup>94</sup> Kymlicka, *Multicultural Citizenship*, pp. 141-142.

<sup>95</sup> See, for instance, VI Muniswamy Pillai, *CAD*, V, pp. 202-204, S Nagappa, *ibid.*, p. 206.

<sup>96</sup> See Lelah Dushkin, 'The Backward Classes: Special Treatment Policy', *Economic Weekly* 13: 1665-68, Galanter, *Competing Equalities*.

<sup>97</sup> Thus, for instance, Vallabhbhai Patel asserted: '...the Scheduled Caste has to be effaced altogether from our society, and if it is to be effaced, those who have ceased to be untouchables and sit amongst us must forget that they are untouchables... We are now to begin again. So let us forget these sections and cross-sections and let us stand as one, and together.' *Ibid.*, p. 272.

groups were considered preferable to reserved seats in government employment. The grounds on which political representation for minority groups was opposed were also invoked against reservation in the public services for Untouchables and Backward Tribes. Reservations were regarded as undermining the commitment to secularism as these required the recognition of caste and tribe as categories of public policy, and would thereby perpetuate the significance of ascriptive ties in public life. Secularism would also be undermined as such provisions involved departures from the state's commitment to equal treatment of all individuals irrespective of the community to which they belonged. Further, like other group preferential provisions, these were regarded as encouraging loyalties to communities other than the nation and were therefore regarded as undermining the political unity of the nation and the creation of a common national identity.<sup>98</sup> These distinct concerns were combined in the oft-voiced criticism that quotas would prevent the establishment of a 'casteless society', a claim that attacked caste both as a system of invidious hierarchies as well as a unit of affiliation.<sup>99</sup>

There were also arguments directed specifically against the policy of group quotas in government employment. The most common arguments here criticized such policies as compromising merit. Merit based objections to quotas assumed two main forms, those of fairness and general welfare type of arguments.<sup>100</sup> Quotas were regarded as unfair because they allegedly detracted from the individual right to equality of opportunity in matters of state employment. The most prominent merit based arguments against quotas in this period, however, invoked considerations of general welfare rather than fairness. It was argued that departures from merit selection in the form of group quotas would harm public interest in an efficient administration and good government.<sup>101</sup>

Reservation in government posts was also regarded as undesirable for the 'backward' classes. Here the most common arguments were that not only would quotas stigmatize and induce feelings of inferiority among the recipients and stifle initiatives for self-development, but also that they would benefit only a few, already privileged sections within these groups.<sup>102</sup> It was also feared that such provisions would open the way for more and more groups claiming special treatment for an indefinite period. Thus it was urged that the Constitution ought to clearly specify and limit groups in the category 'backward' as well as the duration for which such provisions would apply.<sup>103</sup>

Nevertheless, unlike in the case of religious minorities, there were arguments within nationalist opinion in favor of quotas for the 'backward' classes. Such provisions were justified

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<sup>98</sup> See, for instance, Raj Bahadur, *CAD*, IX, pp. 622-624.

<sup>99</sup> See Galanter, *Competing Equalities*.

<sup>100</sup> The distinction between fairness and general welfare arguments about quotas in government employment for the backward classes is drawn from Galanter. See *ibid.*, ch. 16.

<sup>101</sup> See, for instance, Ananthasayanam Ayyangar: '...the first requisite is that all appointments shall be made in the interests of public administration on merit and merit alone. But, having regard to the conditions of our country, there must be some provision in favor of those persons who are not even economically and socially advanced and may not be able to come up to the mark....With regard to appointments which require enormous skill and capacity, certainly, these rules cannot be relaxed, because public interests demand otherwise.' *CAD*, IX, p. 626.

<sup>102</sup> See, for instance, Krishna Chandra Sharma, *CAD*, VIII, p. 516; Brajeshwar Prasad, *CAD*, X, pp. 238-239.

<sup>103</sup> See, for instance, Damodar Swarup Seth, *CAD*, VII, p. 679; Pandit Hirday Nath Kunzru, *CAD*, IX, p.629.

in both fairness and general welfare type of arguments. There were two main types of fairness arguments in favor of quotas for the Scheduled Castes and Backward Tribes. In one kind of argument, it was claimed that unless the entry of members of historically disadvantaged groups was facilitated by special measures, the constitutional provisions of equality of opportunity for all citizens would remain mere paper declarations. Here, a distinction was being drawn between formal and substantive equality of opportunity, or as advocates of quotas put it, between 'paper' and 'real' equality. It was argued that the constitutional provisions guaranteeing equality to all individuals were not sufficient to ensure substantive equality of opportunity for members belonging to historically disadvantaged groups. Quotas were required to rectify the continuing effects of historical practices of discrimination against these groups, to remedy the structural forms of discrimination that would persist even after equality of opportunity had been formally instituted and discriminatory practices outlawed.<sup>104</sup> Quotas were being defended here as an extension of the norms of equal treatment of all individuals.<sup>105</sup> Such arguments recognized the entitlement of members of 'backward' classes to special treatment as individuals, with their communal membership serving only to identify them as deserving beneficiaries; the entitlement did not vest in a communal group.<sup>106</sup>

A second fairness consideration was to be found in the argument for quotas as reparations for a history of injustice against Untouchable and tribal groups. Here, quotas were viewed as compensation to the victims of past injustices. Further, groups did not merely serve to identify individual victims of injustices, but were themselves regarded as the subjects of historical wrongs.<sup>107</sup> In political arguments for quotas as compensation, the assumption was that the state would compensate for the history of oppression inflicted by upper caste Hindu society upon the lower castes and tribes. Interestingly, Hindu beliefs regarding atonement for the sins of forefathers were invoked to make the case that the current generation of upper castes ought to bear the costs for the discriminatory practices of their forefathers. As such, arguments for quotas as compensation for past wrongs drew upon Hindu beliefs regarding sin as well as considerations of fairness and were cast in a language of paternalistic benevolence.<sup>108</sup>

Quotas for the Scheduled Castes and tribal groups were also advocated in nationalist opinion in general welfare arguments, as a means to the realization of desired social outcomes.<sup>109</sup> The main social goals for which quotas were advocated in nationalist opinion in the Constituent Assembly debates were those of reducing social and economic inequalities, national integration and national development. It was argued that quotas in government employment for the Depressed Classes were necessary in order to reduce the vast socio-economic disparities between groups. Tackling inequality was regarded as desirable not only for itself, but also

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<sup>104</sup> Galanter, *Competing Equalities*, p.552.

<sup>105</sup> *Ibid.* Galanter points out that communities do not have claims qua communities under the Indian Constitution; the only exception is the case of legislative reservations for the Scheduled Castes and Scheduled Tribes.

<sup>106</sup> See Galanter, *Competing Equalities*, Dushkin, 'The Backward Classes'.

<sup>107</sup> Galanter, *Competing Equalities*.

<sup>108</sup> See, for instance, Thakur Das Bhargava: '...this is an oath taken by the House... to see that within the coming years we will provide all the facilities which can be provided by the nation for expiating our past sins...' *CAD*, VIII, p. 946.

<sup>109</sup> On the general welfare theme, see Galanter, *Competing Equalities*, pp. 553-554.



because this would facilitate the integration of 'backward' sections into the rest of the population on the one hand, and national development and progress, on the other. The most prominent argument in favor of quotas for the Untouchables and tribal groups in the Constituent Assembly debates was that these were required to bring up sections that were dragging down the nation and inhibiting its progress. KT Shah argued thus in favor of quotas for the Scheduled Castes and 'backward' tribes:

...any special discrimination in favor of (Scheduled Castes and 'backward' tribes) may not be regarded as violating the basic principles of equality for all classes of citizens in the country. They need and must be given, for sometime to come at any rate, special treatment in regard to education, in regard to opportunity for employment and in many other cases where their present inequality, their present backwardness is only a hindrance to the rapid development of the country. Any section of the community which is backward must necessarily impede the progress of the rest...There are classes of our citizens who may need through no fault of theirs, some special treatment if equality is not to be equality of name only or on paper only but equality of fact.<sup>110</sup>

In the different arguments for reservations in nationalist opinion, however, it was clear that such provisions were being admitted only as a temporary remedy for the inequalities of the 'backward', as a means of moving toward a society in which group preferential provisions would no longer be necessary. The grounds on which quotas in public services for the Backward Classes were regarded as admissible indicate that the intent of such provisions was to eradicate disparities between groups and not to preserve the distinct identity of beneficiary groups.<sup>111</sup>

Representatives of the 'backward' classes defended their case for quotas in the public services in the terms of the legitimating vocabulary of the period. Their arguments invoked the fairness and general welfare considerations discussed above. Thus, it was typically argued that quotas in the public services for the Backward Classes, far from detracting from the norm of equality of opportunity for all individuals, were necessary for its realization. This was for at least two reasons. First, the presence of members of the Backward Classes in the public services was required in order to prevent discrimination against candidates from these groups at the time of recruitment to these services.<sup>112</sup> Second, quotas for the Backward Classes were necessary to give effect to the principle of equality of opportunity because members of these groups faced barriers to their access to the public services on account of their past exclusion from these arenas. These arguments in favor of preferential treatment were compatible with the principle of merit,<sup>113</sup> as was another consideration advanced in support of quotas, namely, that criteria of selection were biased in favor of the upper castes as a result of their centuries long monopoly over these services. While these were individual fairness considerations, group fairness and

<sup>110</sup> CAD, VII, pp. 655-656. These arguments were not unique to the debates on quotas in government employment, but were employed in defense of all kinds of special provisions for the Depressed Classes.

<sup>111</sup> See also Galanter, *Competing Equalities*, Dushkin, 'The Backward Classes'.

<sup>112</sup> See, for instance, HJ Khandekar: 'The condition is so deplorable that though the candidates of the scheduled castes apply for certain Government posts, they are not selected for the posts because the people who select the candidates do not belong to that community or section...the scheduled caste people though they are well qualified do not get opportunity and fair treatment in the services.' CAD, VII, p. 691. See also S Nagappa, CAD, IX, p. 620.

<sup>113</sup> Galanter, *Competing Equalities*, p. 553.

general welfare considerations of the kinds discussed above were also invoked in the arguments of Scheduled Caste representatives in favor of quotas.<sup>114</sup> Moreover, recognition by the state and share in state power were regarded as important not just in instrumental terms, as a means for the realization of equality, but also in symbolic terms, as a marker of equal status for groups that had been historically excluded from such arenas on account of their presumed inferiority.<sup>115</sup>

Arguments for quotas in the services for the 'backward' classes also invoked other concepts from the legitimating vocabulary. For instance, it was argued that unlike other minority claims, the demand for quotas for the 'backward' classes was not a 'communal' claim,<sup>116</sup> that quotas were directed against the communal practices of the dominant castes that had excluded the 'backward' classes from the administration.<sup>117</sup> Importantly, in debates on reserved quotas in the public services, the status that representatives claimed for their groups to denote entitlement to preferential provisions was that of backwardness, and not minority status per se.

There were differences of opinion about which groups were to be included in the 'backward classes' for purposes of quotas. Most Untouchable representatives favored a narrow interpretation of the term 'backward' that would render the Scheduled Castes the sole beneficiaries of quotas, whereas other lower caste representatives favored a broader interpretation.<sup>118</sup> Claims for quotas in the public services for lower castes other than the Untouchables were based on the contention that their social and economic condition was similar to that of the Untouchables, and so the grounds on which Untouchables had been accorded special provisions required that such provisions be extended to other 'backward' castes as well.<sup>119</sup>

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<sup>114</sup> Thus Yashwant Rai, defending the claim that there be representatives of the Scheduled Castes on public service commissions, held: '...to give equal status to those communities which are backward and depressed and on whom injustice has been perpetrated for thousands of years and if you want to establish Indian unity, so that the country may progress....' *Ibid.*, p. 619.

<sup>115</sup> On this point, see Galanter, *Competing Equalities*.

<sup>116</sup> VI Muniswamy Pillay argued: '...the case of the Scheduled Caste is not pleaded on a matter of communalism, because they have been left in the lurch and due to their lack of social, economic and educational advancement for years and decades it is necessary...it is not the object of any of the leaders of the Harijan community to perpetuate the communal bogey in this land for ever, but so long as they remain so backward in getting admission into the services, it is highly necessary that they must be given some protection.' *CAD*, VII, p. 689.

<sup>117</sup> PS Deshmukh, introducing an amendment for the recruitment of 'backward' classes in public services in proportion to their population asserted: '...there are departments after departments where ninety per cent and more of the incumbents come from a specific community. Sir, if this is not communalism, what is communalism?' *CAD*, IX, pp. 601-604.

<sup>118</sup> See *CAD*, VII, pp. 686- 692 for this debate. Scheduled Caste representatives argued that if members of other 'backward' castes were brought under the purview of quotas, they would corner most of the reserved posts, reducing the chances of success of Scheduled Caste applicants. Although the term 'backward classes' was not defined in the Constitution, it is clear that the constitution makers did not intend to restrict the scope of the term 'backward' to the Scheduled Castes alone for purposes of quotas in services. BR Ambedkar noted: '...we have left it to be determined by each local Government. A backward community is a community which is backward in the opinion of the Government.' *Ibid.*, p. 702.

<sup>119</sup> Guptanath Singh, arguing that other 'backward' castes belonging to agricultural, pastoral or artisan classes be given quotas in government service, held: '...there are other sections in the country, whose conditions are not better than the conditions of these friends, the Harijans and the Adibasis...' *CAD*, X, p. 240.

While representatives of religious minorities did not participate much in the early debates on reserved posts in government employment, the restriction of provisions for quotas in the public services to Untouchables and 'backward' tribes in the later stages of Constitution making was vigorously opposed by some Sikh and Muslim representatives.<sup>120</sup> Their claims that these provisions include all minorities as originally planned invoked notions from the dominant legitimating vocabulary. For instance, it was argued that such provisions would assuage minority fears regarding their position in independent India and thus promote national integration. It was also asserted that the religious minorities, or sections within these communities, were backward,<sup>121</sup> and that quotas were required to give effect to the principle of equality of opportunity for individuals, when such individuals belonged to groups that were discriminated against in matters of recruitment to the public services.<sup>122</sup> However, in nationalist opinion in this period, 'backwardness' that now constituted the sole legitimate basis for group preferential provisions was regarded as attaching to Untouchables and tribal groups, but not to the religious minorities. Opposing the amendment moved by Sikh representatives that had proposed that all minority groups receive special consideration in the matter of appointments to the public services as stipulated in the first draft of the Constitution, Vallabhbhai Patel held: 'After all, what is the Sikh community backward in? Is it backward in industry, or commerce or in anything?'<sup>123</sup>

Further, the claims of the religious minorities for reservations in public employment also appealed to the now discredited vocabulary of the duty of the state to balance the numbers of the members of significant social groups in the administration.<sup>124</sup> While this had been a guiding principle of colonial policy, it had few supporters in nationalist circles in this period. In contrast with colonial policy, in nationalist opinion quotas in the public services were not endorsed as 'a general principle of governmental operation',<sup>125</sup> but were admitted as a temporary mechanism for a limited purpose. Quotas were permitted as a means of reducing disparities in the levels of development between different sections of the population and, thereby assisting in the assimilation of these groups as well as in the development of the nation. These grounds were regarded as creating a case for quotas for the Scheduled Castes and tribes, but not for the

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<sup>120</sup> Sikh representatives made bitter speeches, accusing the Congress of renegeing on its commitments. For this debate, see *CAD*, X, pp. 251-262, especially the statements of Sardar Bhopinder Singh Mann and Sardar Hukam Singh. In response, Sardar Patel denied that the Congress had broken its promises and insisted that Sikh representatives had agreed to drop all demands for special provisions in return for four groups within the Sikh community being included in the list of Scheduled Castes in the Punjab.

<sup>121</sup> Mohamed Ismail Sahib pleaded: '...there are backward people among the non-majority people as well. The Christians are backward. As a matter of fact, they are not adequately represented in the services of the provinces. So also the Muslims, and also the Scheduled Castes...' *Ibid.*, p. 693.

<sup>122</sup> See, for instance, Aziz Ahmad Khan, *Ibid.*, p. 682.

<sup>123</sup> *CAD*, X, pp. 247-249. On the insistence of Sikh representatives, the special provisions for Scheduled Castes and Scheduled Tribes with regard to reservation in the legislatures and services were extended to some 'backward' sections within the Sikh community, by classifying these sections in the list of Scheduled Castes. This was opposed by some Scheduled Caste representatives and only reluctantly accepted by the Congress leadership. See *CAD*, VIII for this debate.

<sup>124</sup> See for instance, Sardar Bhopinder Singh Man: '...if for the smooth working of the administration and for creating cordial relations between the different communities, the state decides on some adjustment in the services, then there should be no bar under the Constitution....' *CAD*, X, p. 236.

<sup>125</sup> Galanter, *Competing Equalities*, p. 363.

religious minorities. As in the case of political representation provisions, an analysis of the legitimating vocabulary for reservation in the public services suggests that the retraction of quotas for religious minorities during the making of the Constitution was always a likely outcome.

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