Equality beyond identity

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One of the key recommendations made by the Sachar Committee was the constitution of an Equal Opportunities Commission to end discrimination against all deprived groups and to ensure that the composition of social sectors reflects the diversity of our population. Reports of two expert committees (under Professor Menon and Professor Kundu),an open letter by the Centre for the Study of Social Exclusion (Bangalore),and other academic and activist interventions had only kick-started the debate over the substantive nature of the protection that the proposed EOC should offer,when the official discourse was stalled by two turf battles.

Given the EOC🏷s origins in the Sachar Committee report,and the fact that the Minority Affairs Minister Salman Khurshid had invested a good deal of political capital in the issue,the ministry of minority affairs understandably claimed that the EOC should function under its guidance. The problem was that Sachar,Menon,Kundu,other academics and activists,even Khurshid himself,agreed that the EOC should transcend identity politics to tackle discrimination against all deprived groups,instead of focusing on religious minorities alone. Given this wider ambit,the ministry of social justice considered itself the proper shepherd for a post-identity commission. This battle has now been brought to a dignified conclusion with Khurshid commendably prioritising the ecumenical character of the commission over its location in his ministry.

The other turf battle is more cynical. India already has myriad group-specific commissions for women,Scheduled Castes and Tribes,minorities,etc. The fear is that a deprivation-based EOC will render these identity-centric

bodies irrelevant. Given the circumstances,Parliament has three options. First,as the UK legislated in 2006,the existing commissions can be merged into the EOC. Secondly,the EOC could function alongside these existing commissions 🗣 in areas where their functions overlap,some system of institutional cooperation can be worked out. This solution is wasteful,but avoids the need for a constitutional amendment which the other two solutions will require. In between lies the compromise possibility of allowing the existing commissions to fade away over a period of five years or so as their personnel retire or are absorbed by the EOC.

Given the political attention these turf battles have received,one could be forgiven for thinking that the proposed EOC faces no other vexed questions. In the debate so far,however,apparent consensus seems to be emerging only on the following four propositions: (i) that the proposed commission should not be group-specific,but deal with

discrimination against all deprived groups; (ii) that the public as well as the private sector should be included within its ambit; (iii) that civil rather than criminal law is the right tool for implementation; and (iv) that reservations are only one of several possible tools to redress discrimination. These propositions mirror global trends in anti-discrimination law. However,as soon as one moves beyond these fundamentals to the level of detail,confusion reigns. The bill drafted by the Menon Committee,although well-intentioned and praiseworthy for getting the basics right,has only added to this confusion. While the Sachar Committee was concerned with discrimination in education,employment,housing,healthcare and various other sectors,the Menon bill only includes the first two of the aforementioned sectors within the jurisdiction of the EOC.

Another disturbing aspect of this bill is the scant attention paid to effective implementation of the prohibition on discrimination. A bill that has elimination of discrimination as its central objective fails to include a simple declaration that discrimination is unlawful! What it conjures up instead is a behemoth of a commission which possesses all sorts of investigatory and advisory powers,but is largely powerless to directly help a victim of discrimination. Compare this to the South African Promotion of Equality and Prevention of

Unfair Discrimination Act,which designates every magistrates court as an equality court and vests it with wide remedial powers.

Concepts such as direct and indirect discrimination,reasonable accommodation,harassment,victimisation,affirmative action and diversity have been refined over the years and become well-established in the legal vocabulary of many democratic jurisdictions. The Menon bill,while it borrows some of these concepts,fails to appreciate their nuances in light of their historical development. It is essential that we learn from jurisdictions like the United States,the United Kingdom,South Africa,Canada and the European Union which have gathered decades of experience in prohibiting discrimination.

Moreover,it is important to assess how these concepts will translate into the Indian context. A wider public consultation with Indian groups that have worked with women,Dalits,religious minorities,hijras,linguistic minorities,disabled people,adivasis,gays and lesbians,people from the northeastern states,the elderly,and other deprived

groups alone can ensure that the resulting legislation pays more than mere lip-service to its intended beneficiaries.

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