

Negative action

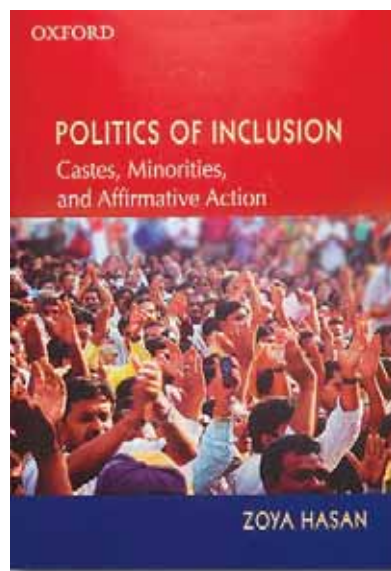
The book seeks to demolish precepts that deny the benefits of affirmative action to the minorities. BY V. VENKATESAN

FOR long, the debate on the equality provisions in the Indian Constitution has centred around the issue of compensatory discrimination in favour of the Scheduled Castes, the Scheduled Tribes and the Backward Classes. Any mention of affirmative action (AA) in favour of the deprived minority groups in India has always invited derision as it is construed as a manifestation of communalism. Zoya Hasan, professor of political science at Jawaharlal Nehru University and a Member of the National Commission for Minorities, has to be commended for writing *Politics of Inclusion*, an extraordinary book, which questions many of the precepts and stereotypes that figure in Indian debates on equality.

One such precept is that the concept of exclusion is applicable primarily to historically oppressed groups and not to minorities. The author seeks to demolish this assumption by relying on Amartya Sen's distinction between active and passive exclusion: the former works by fostering exclusion through deliberate discriminatory policy intervention, while the latter works through social processes such as the caste system.

Exclusion, she says, leads to the denial of economic opportunities and consequent powerlessness. Low income, low merit and low productivity are not the causes but the consequences of such exclusion, she suggests.

Among the minorities, Muslims constitute a significant segment – 13.4 per cent – of Indians. The Sachar Com-



IN REVIEW

POLITICS OF INCLUSION: Castes, Minorities, and Affirmative Action

by Zoya Hasan; OUP, 2009;
pages 302, Rs.675.

mittee Report found stark underrepresentation of Muslims and systematic evidence to show that they are in many respects as disadvantaged as the lowest caste groups among Hindus. She points out that caste divisions remain central to the definition of disadvantage, and thus disadvantages suffered by lower castes in terms of development and access to public services are well documented and addressed through policy intervention. For the minorities, however, knowledge and concern are invariably centred on is-

suues of security and identity and not on equity and justice, she observes.

It is argued that the policy of AA cannot apply to minority communities as it militates against the constitutional project, which seeks to make religious identities less salient for participation in the economic and political processes.

According to the author, it is not clear whether recognising the minorities for policy attention is against the rules of a secular democracy or whether it is unacceptable because it leads to communalisation of the polity. Dwelling on the Constituent Assembly debates, she observes that the trade-off between preferential treatment for lower castes and cultural rights for religious minorities proved to be disadvantageous for the latter as it meant that the real problems of minority citizens in terms of livelihood and access to resources were not tackled.

The two key issues with regard to inclusion, according to the author, are backwardness (which in principle covers the Muslim community but is not specific to it) and underrepresentation (which is specific to the Muslim community). Drawing from the data compiled by the Sachar Committee, the author points out that the absence of Muslims in positions of power and at the decision-making level is as marked today as it was 55 years ago when Jawaharlal Nehru, the Prime Minister, drew attention to it. Muslims' share in government jobs is 4.9 per cent and their representation in the armed forces is believed to be just 2 per cent. The Sachar Committee showed that only 8

per cent of urban Muslims were part of the salaried classes compared with the national average of 21 per cent for urban India. It reported severe underrepresentation in government jobs even in States in which Muslims constituted large minorities.

The author reveals that the situation is worse in the private sector. According to one survey, just over 1 per cent of corporate executives are Muslim. One effect of this exclusion in the economic sphere, she claims, has been the slowing down of the emergence of a Muslim middle class.

She attributes the educational backwardness of Muslims to their perception that they will not be able to get government jobs in comparison to other communities, and hence there is no incentive to complete higher education. This encourages them to drop out and take up self-employment. The author admits that it is hard to establish the existence of any discrimination against Muslims in public employment but points to evidence (in the form of court cases) that Muslims feel they are affected by biases in selection. The Sachar Committee cites a number of instances of discrimination against the Muslim community.

Zoya Hasan believes that educational backwardness can explain Muslims' underrepresentation at the higher levels of employment but cannot account for their near-complete absence from the lower levels of employment, for instance, at the level of Class IV jobs such as drivers, messengers and constables. For example, in 2003 when the Archaeological Survey of India (ASI) was asked to excavate the Babri mosque site at Ayodhya following the Allahabad High Court's orders, it turned out that of the 55 or so diggers it engaged, not one was a Muslim. However, after the court's intervention in the matter, the ASI hired a few Muslims.

She argues that it is imperative to promote participation of ethnic minorities in public institutions and the hierarchies of power so that these groups do not become vulnerable to exclusion from the broader policy dis-

course. According to her, it is because of reservation in public employment that a middle class has emerged among the S.C.s, and this has in turn provided a measure of energy and leadership to the community in its struggle for equity, dignity and justice.

Zoya Hasan notes that by and large all the States have listed backward Muslim groups as Other Backward Classes (OBCs), but States with a high demographic concentration of Muslims have not been able to provide adequate representation to Muslim OBCs in government employment. AA is possible on the basis of social backwardness defined in caste terms but not on the basis of minority identity.

The author finds from the data collected by the Sachar Committee that Muslim OBCs have not benefitted from their inclusion in the OBC list: it has had no significant impact on their access to jobs or education, nor has it contributed to an improvement in their welfare. Muslim OBCs constitute 40.7 per cent of the Muslim population, and their share among the OBC population of the country stands at 15.7 per cent. But this is not reflected in their representation either in public employment or in educational institutions, Zoya Hasan laments.

TARGETED INTERVENTION

The Sachar Committee recommended special measures and targeted intervention to help the disadvantaged minority, but it was not in favour of reservation for the community as a whole because it lacks legitimacy as against caste groupings. However, the committee's emphasis on the institutional deficit of Muslims bolstered the long-standing claim of the Muslim community that it has been unfairly treated by successive governments. Zoya Hasan agrees that mandatory reservation is not the best solution to problems of institutional deficit and that AA need not be synonymous with reservation. She suggests that AA can give preference to minorities in public institutions and higher education.

She seeks to justify this kind of AA because making political elites and

legislatures more representative is an important objective that stands on its own. The demand for AA or a sub-quota for Muslim OBCs, according to her, is not a radical one, yet a positive response to that can signal a major conceptual shift in the approach towards the minorities, particularly the Muslim minority, which has been outside the developmental and constitutional discourse on social justice and equity, and facilitate its integration into the national mainstream.

Zoya Hasan succinctly sums up her central thesis in the concluding chapter: "Reservations on the basis of religion are not permissible under the Constitution, yet from the beginning religious criteria have been inherent in the process of classification and designation of beneficiary groups and the definition of backwardness, since the government as well as the court have conceived caste as a constituent of Hinduism."

This is obvious, she says, from the continuing exclusion of Dalit Muslims and Christians from the S.C. list. She believes that AA minus reservation in employment or education may address the deprivation and disadvantage among Muslims, but even this faces opposition on the grounds that it violates secularism. Targeted intervention through the 15 per cent budgetary resource allocation for minorities in all government welfare schemes could help address empowerment issues, she says. End of exclusion, on the other hand, would require bolder initiatives, such as the recruitment of Muslims in government, she suggests.

A recurrent theme in the book is that while India has been relatively successful in addressing discrimination and disadvantage among caste groups, it has not been equally alive to discrimination against minorities. She makes a plea for taking a fresh look at the Supreme Court's rejection of the economic criterion in framing AA yardsticks in the Indra Sawhney judgment in 1992 as, in her view, rapid economic and social changes in the past 15 years have increased the stakes of those who face marginalisation. □

The taming of Kalat

A fascinating study of a sub-nationalism in which tragedy and farce are closely intertwined. BY A.G. NOORANI

KALAT was Pakistan's Hyderabad. Both princely states refused to accede to the Union of the country to which they properly belonged. Both received Mohammad Ali Jinnah's legal advice that on the lapse of British paramountcy on August 15, 1947, they become independent sovereign states. There were standstill agreements in both cases. Hyderabad had to be brought into the Indian Union by armed action on September 13, 1948.

The British were dismayed at Jinnah's legal advice to Kalat. It was never independent, nor was Hyderabad. The Khan of Kalat acceded to Pakistan only on March 20, 1948, when his intrigues with New Delhi and Kabul were exposed. However, in mid-July the Khan's brother returned from Afghanistan where he had fled with a lashkar (army). Pakistan's army had to engage them. Unfortunately, successive governments neglected Balochistan and its sensitive part, Kalat, fuelling Baloch nationalism.

The book is an excellently researched study of that early phase until 1955. Policies pursued thereafter were no wiser, especially by Z.A. Bhutto and Zia-ul-Haq. The author is a German political scientist who did laborious field work in Sindh, the North West Frontier Province and the Iran-Pakistan transborder region of Balochistan. He is currently engaged in research on the evolution of Baloch nationalism and the role of the province's rich natural resources as cause and target of the current conflict in the region. President Asif Ali Zardari, significantly, remarked that Balochistan has the first claim on its resources.

BOOK FACTS

Back to the Future: The Khanate of Kalat and the Genesis of Baloch Nationalism 1915-1955

by Martin Axmann;
Oxford University Press,
Karachi; pages 336, Rs.495.

The Baloch ethnic identity's "transformation" to Baloch national identity is an arresting phrase. It can be used for upsurge in any region. The pioneer in the field was Innayatullah Baloch's book *The Problem of Greater Balochistan: A Study of Baloch Nationalism* (1987) published in Germany. The author had worked at the University of Heidelberg. The Khan of Kalat, Mir Ahmad Yar Khan, also wrote his memoirs, *Inside Baluchistan*, which were published in 1975. Once the States of Kharan, Makran and Las Bolo acceded to Pakistan, his territory was diminished. The ones he considered to be his feudatories acted independently. Worse, he lost the precious seaboard.

The author holds that the roots of the present crisis lie in the period from 1930 to 1955 and portrays the evolution of Baloch national identity as a reaction to the territorial, political and

cultural inclusion on the part of the All India Muslim League and the Pakistan movement. He argues that the birth of the Baloch nation was a consequence of the birth of the state of Pakistan in August 1947 and a result of the annexation of the Baloch proto-state of Kalat by that new state in March 1948. "Annexation" is surely a wrong word to use. It reveals the author's approach, if not, indeed, his pro-Baloch bias.

There was nothing inevitable about the troubles that arose. They were the result of bad policies. The author has delved into the archives of Balochistan extensively. The narrative is written in a lucid style.

In March 1952, the government of Pakistan announced the merger of Kalat and the other three States in a "Balochistan States Union". After a promising start, the Union was dissolved and all four States were merged with Pakistan. Their rulers were pensioned off.

Unlike the Nizam of Hyderabad, the Khan of Kalat tried desperately to revive his demand for independence. He failed miserably but served as Governor of Balochistan from 1974 until his death in 1977.

Pakistan used high-handed methods most of the time to quell unrest in Balochistan. But the Khan had ceased to be a symbol of popular aspirations. On June 24, 1963, Nawab Khair Bukhsh Narri complained on the floor of the National Assembly of Pakistan that "people working for the Khan of Kalat had gone to the gallows while the Khan himself had returned, was forgiven and had become a patriot". This is a fascinating study of sub-nationalism in which tragedy and farce were closely intertwined. □

There was nothing inevitable about the troubles that arose.

A criminal legacy

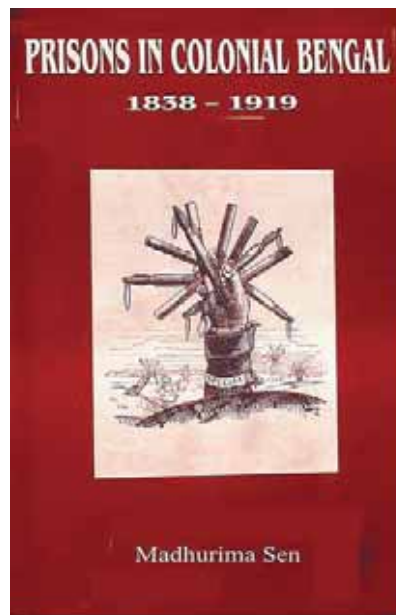
Madhurima Sen's book shows how racism and discrimination characterised colonial prisons. BY BISWAMOY PATI

THE colonial prison has attracted a wide range of scholars. They include historians such as Ranjan Chakraborty, David Arnold and Basudeb Chattopadhyaya and political scientists such as Ujjwal Singh whose monumental work has been on political prisoners.

Issues and themes ranging from the ideological underpinnings shaping the prison and the location of crime/criminality to the life of prisoners – including political prisoners – have already been explored. Madhurima Sen's book, however, introduces one to the makings and the specificities of the colonial prison. She weaves in her story a rich variety of archival sources and reports, harmonising it with the paradigms of interdisciplinary research.

Developing her arguments around the process of India's colonisation and what can perhaps be called the "birth" of the "colonial prison", she draws on European and English history in order to emphasise the way industrialisation and the development of capitalism and urbanisation saw the emergence of the judicial system and the way it located crime as something synonymous with the poor. This, in other words, was a virtual class offensive against the "dangerous classes" that were at the receiving end of the emerging civil society. Thus, the judicial system, prison laws and the setting up of the colonial prison had the distinct footprints of what the coloniser inherited from "home" (namely, England).

This coexisted with serious colonial inventions. One can highlight here the special terms used to define and create "criminal" tribes and castes. Madhurima Sen locates these as a part



IN REVIEW

Prisons in Colonial Bengal: 1838-1919 by Madhurima Sen; Thema, Kolkata, 2007; pages 186, Rs.350 (hardback).

of the colonial knowledge-production system. Perhaps this also needs to be located as an area where the indigenous upper-caste/class order collaborated with the colonialist.

The author delineates certain characteristics of the colonial prison from the time it was put in place. For instance, the Cornwallis Code of 1793, which emphasised "equality before law", was operationalised on the basis of racism. This meant the birth of two legal systems – the Supreme Court in Calcutta (now Kolkata), which examined the cases of Englishmen on the basis of English law, and the Sudder

Nizamats and the subordinate courts, which administered justice for the "natives". As the author rightly asserts, colonialism adjusted and readjusted itself to negotiate changes over time.

These changes were generated, among other factors, by the conflicts in the countryside, like the rebellions (the Fakir-Sanyasi and the Santhal rebellions) that occurred in the first half of the 19th century. The anxieties posed by the rebellion of 1857 and the subsequent takeover of India by the Crown (1858) were also major markers that led to the strengthening of prison laws. The basic thrust was to camouflage the problems that made people rise against the British which were, ironically, created by colonialism.

Focussing on prison discipline, Madhurima Sen refers to its uneven nature. The Sudder Nizamats Adalat made the pioneering effort to formulate rules for administering jails, in 1811. However, the lack of a uniform code of rules left the matter to individual judges and this hardly produced any impact. The issue of prison discipline was viewed seriously only after 1838 when a "worthwhile plan" was adopted for the purpose. The pressing needs of the emerging colonial state blurred any serious possibilities for reforms.

The overwhelming emphasis on punishment and deterrence, along with the mixing of habitual and non-habitual offenders as well as adults and juveniles, led to the emergence of the prison as "manufacturing units of crime". Besides, the jails were overcrowded as they were located within buildings meant for some other purpose. This was the context in which some steps were taken to institute pris-



S. THANTHONI

THE CELLULAR JAIL in the Andamans. The 1857 rebellion supplied the first batch of political prisoners to the Andaman jail after it was resurrected as a site to accommodate political prisoners.

on reforms (1838). However, these proved to be largely ineffective as they ignored vital aspects such as housing women and juvenile prisoners. This was taken up in the Prison Act of 1894.

The author refers to the classification of prisoners into the categories “habitual” and “casual” primarily as a strategy to avoid “contamination” of the latter. Alongside, there were “under-trial” prisoners and the problems involved in allowing some of them who were innocent to mix with convicts.

Of course, the colonial prison had inmates whose segregation was desired by the government. This meant curbing the liberty of individuals whom the government could not tolerate. Aspects like preferential treatment for European and Eurasian offenders meant the entry of racism into the jails.

A point that comes out rather sharply is the deplorable hygienic conditions in the prisons, leading to high mortality. The prisoners were exposed to “prison diet” as well as “penal diet”, and punishment included solitary confinement and the use of handcuffs and fetters. These factors together precipitated prison offences, which included escaping, refusing to work and disobeying prison authorities.

The basic idea of putting people in prison was to make prison sentences as distasteful as possible and to extract hard labour. Another aim was to spend as little as possible over these enclaves.

The author refers to the colonial prison as a distorted caricature of what existed in contemporary England. This was especially so as the attempt was to blend the contradictory worlds of “modernity” and “backwardness”, and “indigenous” and “foreign”.

The author’s effort to examine the official staff within the prison is laudable since this is a relatively unresearched area. The prison staff included the “superior” white staff, who were paid well, and the “natives” who were recruited as the “subordinate” staff. Here again, racism was clearly inscribed on the colonial prison. The colonial administration depended on the “natives” to administer the prison. However, the inherent problem of low salaries and corruption plagued the “subordinate” staff.

As outlined in the book, the prison reforms led to the setting up of central jails, with the first one being built in Agra (1846). This was followed by the construction of several other presidency jails, including the one at Alipore (Calcutta) in 1864. The second major aspect involved the recruitment of inspectors-general for these jails.

The penal reforms failed to achieve any success. Although this was attributed to the “corruption of the native mind”, the author sees the failure to be clearly rooted in a system that was based on racism and discrimination. Moreover, there was a lack of desire to put in resources to improve the condi-

tion of the jails and to see the problem as one beyond crime and criminals.

The author looks at two methods of punishment associated with prison labour and transportation. Prison labour was founded on the logic of confining people as cheaply as possible, without any major investment. A closely connected aspect involved making profits out of prison inmates’ labour. An unarticulated aspect involved producing a demonstrative effect in order to make the prison a terror house.

This was supposed to act as a deterrent and help maintain law and order. Consequently, reforming the inmate was not an issue; it was suggested for the first time by the Jail Committee in 1919, along with some other points, to humanise the prison.

However, the most macabre aspect involved transporting convicts to “kala pani” – the Andamans. Interestingly, it was a committee that included F.J. Mouat, a doctor who was a specialist in the building of jails, which suggested a site that existed in the 1790s and was abandoned subsequently. Political exigencies – counter-insurgency operations and the need to wipe out memories of those involved in the 1857 rebellion – led to the choice of this location. The 1857 rebellion supplied the first batch of political prisoners to the Andaman jail after it was resurrected in 1858 as a site to accommodate political prisoners. Consequently, the logic of transportation saw the colonialist creating a “penal colony” to stamp out any opposition to his rule.

As one concludes reading the book, one wonders about the remarkable continuity between the colonial prison and the prison system of free India. Although we do not have ‘kala panis’ any more, the class component associated with the criminalisation of the poor and aspects of repression seems to be still prevalent. After all, some imprints of the colonial penal system have been preserved as a “valuable” legacy of colonialism. And, coupled with the absence of police reforms, the echoes of the past most certainly haunt our present. □