CHAPTER - IV
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NATIONAL COMMISSION FOR MINORITIES
ORIGIN, FUNCTIONS AND ITS ROLE IN PROMOTING MINORITY RIGHTS IN INDIA

From the study of Indian constitution, it becomes very clear that minorities in India do enjoy all the fundamental rights and freedoms, which have been offered to the citizens of the country in general, as well as some special rights granted to them in particular. Moreover, the constitution has assured all Indian citizens socio-economic justice and civil liberties with absolute equality of status and opportunities without any discrimination based on the consideration of religion, language or ethnicity. But for its effective implementation and bringing into practice this constitutional guarantee of equality and equal rights required effective monitoring and constant vigilance by officially established quasi-judicial bodies. In course of time various such bodies have come up in the country and one among them is the National Minorities Commission - now known as National Commission for Minorities (NCM). NCM was established by an act of Parliament with an aim to promoting and protecting minority rights. It is supposed to be an important constituent of human rights enforcement mechanism in India.

The present chapter attempts to evaluate the role of NCM and its effectiveness so far as its existence is concerned. Many questions can be raised about its performance and effectiveness as one of its former Chairmen, Prof. Tahir Mahmood, dubbed it as having a “minor role in major affairs”. This very remark needs to be seen from a very critical point of view. In order to do so, we will go
deep into history as to ascertain the original design behind its establishment in terms of its role. In doing so it discusses its present structure, power, position and functioning.

**Genesis & History of Formation**

During the initial thirty years of independent India, there was no institutional arrangement made to oversee the constitutional guarantee of equality of status and opportunity for all Indian citizens without regard to their religious, cultural, ethnic, linguistic background though there had been some instances of aberration and deviation. But after the dark days of emergency, the political scene in the country was completely changed. A new government came to power under the leadership of Morarji Desai. It was during this time that perceptible change in country’s governance and dispensation of justice were felt.²

It was in this changed political climate that a quasi-governmental institution called minorities commission came into being at the Centre. The Commission was worked out under the guidance of the then Union Home Minister, Choudhery Charan Singh, which was in line with the promised election manifesto of ruling alliance to make suitable arrangement for the protection of the rights of minorities guaranteed under the constitution. Prior to this, state minorities commission had already been established first in U.P. and then in Bihar while a minorities board was working in Gujrat which provided impetus to the process of formation of minorities commission at the Centre.³

On the 12th January 1978 the Union Home Ministry notified a government resolution stating:
Despite the safeguard provided in the constitution and the laws in force there persists amongst the minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote national integration the government of India attaches the highest importance to the enforcement of the safeguards provided for the minorities and is of the firm view that effective institutional arrangement are urgently required for the enforcement and implementation of all safeguards provided for the minorities in the constitution, in the central and state laws and government policies and administrative schemes enunciated from time to time. The government of India has therefore resolved to setup a minority's commission to safeguard the interest of minorities whether based on religion or language.4

Following the model of UP, Bihar and Gujarat, the resolution effecting creation of Minorities Commission at the Centre enumerated the following functions: 5

- To evaluate the working of the various safeguards enshrined in the constitution for the protection of minorities and in the laws passed by the Union and State governments.

- To make recommendation with a view to ensuring effective implementation and enforcement of all the safeguards and the laws.

- To undertake a review of the implementation of the policies pursued by the union and the state government with respect to the minorities

- To look into the specific complaints regarding deprivation of rights and safeguards for the minorities.

- To conduct studies, research and analysis on the question of avoidance of discrimination against minorities.
• To suggest appropriate legal and welfare measure in respect of any minority.

• To serve as a national clearance house for information in respect of the conditions of minorities, and

• To make periodical reports at prescribed intervals to the government.

As far as the composition of the proposed Commission was concerned the government resolution stated that it would have a chairman and two members whose term would not ordinarily exceed three years. It further stated that the Commission would devise its own procedure and that the special officer for linguistic minorities as provided for under Article 350-B of the constitution would function as its secretary.6

The resolution also stated that all the Central Government Ministries and Departments will furnish to the Commission all informations, documents and assistance required by the Commission trusting that the same will be done by the state government etc. as well.7 It required the Commission to submit to the President of India Annual Report "detailing its activities and recommendations". In addition to this it also made provision for submitting to the government Special Report if it felt necessary on issues concerning its jurisdiction. Moreover, Commission's Annual Reports were required to be laid before each house of Parliament with action taken report also giving the reasons for non-acceptance of a recommendation if any.8 As a result of this resolution a three members Minorities Commission came into being on 22nd February 1978. It was headed by a Parsee Chairman with two members taken from Muslim and Christian communities each. The appointment of a member of the smallest minority of the country as the Chairman
created some uproar. It understandably disappointed the biggest minority, which was thousand times larger. It was generally thought that as a matter of policy probably the chairmanship of the Commission might always go to any of the smaller minorities.9

Within few months the Commission was reconstituted on 28th July 1978, this time with a Muslim Chairman and four members representing all four prominent minorities i.e Christian, Sikh, Buddhist and Parsi. Its objects, functions, terms and conditions remained the same as spelt out in the original 1978 resolution. A little earlier on July 21, 1978 by another resolution government had decided to appoint a Commission for Scheduled Castes and Scheduled Tribes with a Chairman and four members. This may have led to the decision to raise the number of members to four also to the Minorities Commission. The establishment of first Scheduled Caste and Scheduled Tribe Commission almost coincided with Minorities’ Commission reconstitution with a Chairman and four members.10

From the very beginning the Morarji government wanted to bestow constitutional status on the Commission, its very executive order was considered just as an initial arrangement. So in order to get this done to Minorities’ Commission together with Scheduled Castes and Scheduled Tribes Commission, the government on 3rd August 1978 introduced the Constitution (Forty Sixth Amendment) Bill 1978. Its purpose was to do away with office of special officer for linguistic minorities as well as Scheduled Castes and Scheduled Tribes as was existing respectively under Article 350-B and 338 and to replace them with two constitutionally sanctioned Commissions by adding Article 338-A. Provisions of the Bills relating to the work to be discharged by the two Commissions in their respective areas were identical, e.g.
• To investigate all matters relating to safeguards provided under the constitution:

• To report on the working of those safeguards;

• To recommend additional measures for their effective implementation; and

• To discharge such other functions as the President may by rule specifies.

However, tenure or composition was not specified for any of the Commissions, it was to be determined by the President. The Bill proposed to make certain changes in the existing arrangement with a view to making it more effective. With regard to this government noted:

The government is of the view that appointment of a commission to safeguard the interests of all minorities, whether based on religion or language, would provide a more institutional arrangement for achieving the desired objective. A minority commission was, therefore, setup by an executive order. Such a commission would, if setup in pursuance of constitutional provisions, inspire greater confidence among the minorities.\textsuperscript{11}

While the Bill still under consideration in Parliament, the Prime Minister chose to write letters to Chief Ministers of all the states informing them about the proposal to accord constitutional status to both minorities and Scheduled Castes and Scheduled Tribes Commissions. He also advised them to give required status and importance and extend fullest cooperation to the two Commissions and ensure that their chairpersons and members were given the same courtesies and facilities which are extended to Central Ministers.
The Bill seeking constitutional amendment however, could not be passed in Parliament and eventually lapsed. Neither members of ruling combine nor the opposition was showing enthusiasm about it for different reasons. The action of government came in for public criticism from some quarter especially for its stand on Minorities Commission, there was none to criticise the government for other Commission. The constitution (46th Amendment) Bill thus derailed and the two Commissions could not take off.

Yet again Morarji government made another attempt in that direction and introduced in Parliament the Constitution (51st Amendment) Bill 1979 keeping all the provisions of the similar Bill of 1978 intact but adding an additional duty for the two Commissions namely “to examine specific complaints”. The Bill was debated but was defeated for lack of necessary support. The government wanted to make another attempt in that direction in the specially extended Lok Sabha session. In the mean time, a no confidence motion was hurriedly brought against it which it decided not to face. Home Minister, Choudhry Charan Singh became the Prime Minister and remained in office for next six months. Even he could not be able to revive the abortive Bill of 1978-79.

After Choudhary Charan Singh’s resignation from the government in 1979, Congress came back to power and continued to rule for about 11 years. By this time the Central Minorities Commission had already consolidated its position in the government set up. Its activities and reports started engaging attention of the government of the day. The change of government however did not affect its existence. The two year old Commission was allowed to complete its tenure, which according to the original government resolution of 1978 would not ordinarily exceed three years. It was perhaps under the newly gained political wisdom that the congress
government chose not to act in contrary or hasty manner. But it did not have much respect for the Commission either. Not taking cognizance of its existence, the government appointed on 10th May 1980 a separate high power committee which later came to be known as Gopal Singh Committee to study the causes of economic backwardness of minorities, depressed classes and other weaker section of the society. What is intriguing that not a single member from Central Minorities Commission or any of the then existing state Minorities Commissions was regarded worthy enough to serve on the Gopal Singh panel.13

At the end of the first Commission’s term in 1981 the government decided to constitute a new one. It thought fit to have an alternative better than winding up the Commission by placing it in most favourable hand. As expected the new Commission for the next seven years did oblige the government by acting as its “faithful spokesman”.

As we know, initially at its birth the Commission was attached to Home Ministry. In 1984 when Congress government returned to power, it gave yet another term extension to the second Minorities’ Commission. But at about this time it detached the Commission from the Home Ministry and put under the newly created Ministry of Welfare. This changed the very orientation and original design of the Commission. What was regarded to be and started as rights enforcement mechanism became a welfare agency. In Tahir Mahmood’s words “this was not only downgrading of the Commission but a conceptual and foundational change in its basic objects and thrust of activities – effected unmindfully if not thoughtfully. And it was fully unwarranted both by the Commission’s history and the nature of minority problems in the country which it had to take care of”.14
In 1987 the same Commission was given an adhoc extension and during this period government took another drastic measure in the reverse direction. As a result of this the Commission was deprived of its jurisdiction over linguistic minorities of the country. The government's decision to reduce the original mandate was notified on 30th March 1988. This goes to show that the government was least bothered to enhance Commissions status. Even without this change, earlier provision of 1978 resolution regarding the appointment of special officer for linguistic minorities as Commission's secretary was never implemented. The head of second Commission even after the expiry of first Morarji appointed body remained unchanged for seven years. It was only in 1988 that fully new Commission came into existence. But the government all these years kept rejecting all its pleas for restoration of the Commission’s original mandate. No further attempts were made by any of the succeeding government in this respect. Minorities Commission continued to function virtually as a government department. The work and jurisdiction of Minorities Commission later suffered many adverse changes and curtailment.

Debate on Conferring Constitutional Status

In spite of government’s indifference and apathy, demand for a constitutional status for both the Minorities' Commission and the Scheduled Castes and Schedule Tribes Commission kept raising. Both Indira and Rajiv government remained averse to granting either a constitutional status or simple statutory status. They were even opposed to investing it with powers exercisable under the Commission of Enquiry Act 1952. This was officially confirmed when government made statement in both houses of Parliament on 25 November and 2 December 1988 denying such demand. After the
change of government once again by non-Congress government headed by V.P. Singh, fresh demands were made for a proper constitutional status. The V.P. Singh government told in Parliament on 22 December 1989 that a proposal to accord statutory status to Commission was very much under consideration in fulfillment of promise made in the ruling National Front’s election manifesto in this regard. Once again in 1990 a proposal was slated on the government agenda for according constitutional status to both the Minorities Commission and Scheduled Castes and Scheduled Tribes Commission together. But when it came for actual enactment it talked of a National Commission for Scheduled Castes and Scheduled Tribes only. The hapless religious minorities were thus left behind all alone. The Minorities’ Commission failed to find a place in the constitution and it only got statutory status by way of enactment of the National Commission for Minorities Act 1992 by Parliament amidst stiff opposition from parties like BJP. Divulging the reason for not including Minorities’ Commission in the constitution (65 Amendment) Bill, the then Welfare Minister told in Parliament on 11 May 1992 that:

“We could not pass the Bill in 1990 when our government was in power. Our limitation was that the men of BJP were with us in the government”.

This statement provides us a living example of compromising ideological commitment in search of political gains.

During the next general election held after Rajeev Gandhi's tragic death, the Congress reviewed its stand on the Commission and promised to accord constitutional status. On returning to power in 1991, it however opted for an ordinary statutory status and not constitutional status which had already been given to the Scheduled Caste and Scheduled Tribes Commission.
On 4 May 1992, Welfare Minister, Sitaram Kesri introduced in the Lok Sabha a National Commission for Minorities Bill. Its accompanying statement of objects and reasons said:

The Minorities Commission with a statutory status would infuse confidence among the minorities about the working and effectiveness of the Commission. It would also carry more weight with a state Government/Union territory administration and the Ministries/Department and other organisations of the Central Government.\(^\text{19}\)

The Bill was debated in Parliament on 11-12 May. Explaining its background and purpose, the Minister said:

The Congress Party had made an important commitment in its election manifesto of 1991 general election to provide constitutional status to Minorities Commission to make it more effective. The Hon'ble President had also reiterated it in his Presidential Address delivered in Parliament in July 1991. The Prime Minister had also assured the house about the introduction of a bill during the current session to serve the purpose while replying to the Motion of Thanks on Presidential Address recently. Therefore I have moved a motion in this house on 4 May 1992.\(^\text{20}\)

The then leader of opposition in Lok Sabha, L.K. Advani chose to speak first on the Bill. He made long speech opposing the Bill on some basic ground. Terming it as ill conceived and retrograde, he said that he first wanted to refer Bill to a select committee but he thought it would in theory commit to accept the principle of the Bill. Most of the arguments in his speech was based on the quotation from B. Shiva Rao and D.D. Basu's writings on the constitution and Sardar Patel speeches in Constituent Assembly which he used as a ground for opposing the Bill. He also rejected the government claim that the Bill would serve any useful purpose but he did not deny that he was also a party to the creation of Minority Commission in 1978 when Janta government was in power. Advani was dead opposed as
it was his considered view that the bill would be mainly for the benefit of the Muslims;

This kind of Bill is addressed in name, of course to the Christian, to the Parsees, to the Sikhs etc, but actually it is addressed only to one section ....I can only warn you. Your earlier congress government made a historical blunder when you succumbed to the fundamentalist lobby on the issue of Shah Bano in 1985. You are going to commit a similar kind of monumental and historical blunder by passing this Bill.²¹

Moreover he boastfully stated that because of BJP's strength in Parliament the government was unable to accord constitutional status to the Commission. In his opinion apparently giving constitutional status to the Minorities' Commission would have been nothing short of national tragedy. Obviously Advani's ideological moorings kept him so averse to government moves seeking parliamentary mandates for constitutional status. Besides Advani other BJP members who were equally opposed to the Bill included Guman Lal Lodha of Rajasthan and Madan Lal Khurana of Delhi. However, there were scores of MPs who stood firm in defence of the Bill. Prominent among them were Mani Shankar Ayar, Digvijay Singh, Ibrahim Suleman Sait, Akbar Pasha, Sheela Gopalan, Bhogendra Jha, R.Naidu Ramaswamy, Lal Jan Basha, Chitta Basu, Syed Shahabuddin, M.Yunus Saleem, E Ahmed and Nitish Kumar.

On the other hand former Prime Minister, V.P. Singh and his cabinet colleague Ram Vilas Paswan asked for not only statutory but constitutional status which they themselves had not been able to give. To their plea Welfare Minister Kesri replied thus:

"The question of the constitutional powers or legal status shall come up later and, if the need is felt for it, then that will be brought".²²
MPs participating in debates both in favour and against stretched the discussion too far spending time and energy even on issues having no direct relation to it. The objective of debates otherwise could have been achieved in much shorter time. Numerous amendments were also suggested in the Bill, but most of them were either withdrawn or rejected. Very few changes suggested by them were adopted. Ultimately the Bill was passed in the Lok Sabha. Later it was also passed in the Rajya Sabha. President R. Venkataraman gave his assent to it on 17 May 1992.

Commision’s Composition and Functioning

The National Commission for Minorities Act 1992 (NCM Act) as it is called today, is a brief law consisting of five chapters and sixteen sections showing broad categories of rules. The NCM Act provides for a seven members Commission including a chairman. They are to be appointed by the central government from among persons of eminence, ability and integrity found in minority communities. It however, makes no mention of specific procedure to be followed in the selection of the chairman and members. The Act leaves this entirely to the discretion of the government. The only condition to be eligible for this post laid down in the Act of 1992 is that those to be appointed must be persons of eminence, ability and integrity. None of them, not even the chairman is required to have any knowledge or experience leave alone expertise in any matter concerning minorities. The whole process of this selection can thus become subjective. Who will decide that the candidate is really a person of eminence, ability and integrity. Of course it requires no testimonial nor any particular educational qualification or known record of public service. Contrary to NHRC law, under the NCM Act there is no search committee and no role for the opposition in the
selection process. What matters most in this is the subjective satisfaction of the government. It all depends on the subjective judgement of government in power or its Minister in charge.

A three years term has been fixed for the chairman and each member. But the government reserved the right to remove any of them on as many as six specified grounds – the last one of which provides that if the person has in the opinion of central government so abused the position of chairperson or member as to render that persons' continuance in office detrimental to the interest of minorities or public interest. This clause again leaves room for subjective judgement of the government. Although there is provision for right of hearing to be given to the person to be removed, yet it hardly makes difference. After all who would care to hear the case in such situation? The removal clause was inserted in the Act so as to keep a tab on the Commission despite its newly gained statutory autonomy. Notably no such provision has been made in the laws of SC/ST Commission. The Chairman and the members of the NCM being appointees of the Government of India do not usually show any independence and do not generally choose to embarrass the government.

As far as the functions of the Commission are concerned, the NCM Act kept intact all earlier functions entrusted under 1978 resolution except its responsibility to serve as the national clearing house for information regarding condition of minorities. With regard to three most important of its statutory function it mentioned under section 9 (1), namely (a) evaluating progress of the development of minorities under the union and the state, (b) monitoring working of the safeguard for minorities provided in the constitution and in the central and state laws and (c) looking into specific complaints regarding deprivation of rights and safeguards of the minorities. It
also authorises the Commission to exercise all powers of a civil court.\textsuperscript{27} This judicial power specifically relates to (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath (b) requiring the discovery and production of any document (c) Receiving evidence on affidavits. The Act under section 14 also declares the Chairman, members and employees of the Commission within the meaning of section 21 of the Indian Penal Code. It implies that section 172 to 190 of IPC relating to contempt of law, full authority of public servant will be applicable to its work.

The obligation of preparing and forwarding Annual Report by the Commission to the government for each year was retained in the Act. But it added also that Commission's recommendations for effective implementation of safeguards for protection of the interests of minorities by the central or state government, as the case may be, shall be laid in Parliament or state legislature respectively along with details of action taken or proposed to be taken and reasons for non acceptance if any.\textsuperscript{28}

Though the NCM Act of 1992 had become law on 17\textsuperscript{th} May 1992, but nobody was caring to bring it into force. It hardly engaged the attention of the then Prime Minister, Narsimha Rao who was very much involved in Ayodhya issue. The old Commission continued in office even after the enactment of NCM Act for over one year with vacancy of the Chairman. It was in May 1993 only that government awoke to finally constitute the first statutory Commission. It was at this point of time realised that the Act had yet to be officially notified for commencement. The notification of the Act and composition of the new Commission were issued simultaneously on 17\textsuperscript{th} May 1993.
The founding resolution of Minorities Commission of 1978 had not enumerated minorities who were to come under Commission's purview. In the first instance it had chosen a Parsee, Muslim and Christian and later Sikh and Buddhist. In effect these five communities came to be treated as national level religious minorities. Soon after the enforcement of the NCM Act, the government institutionalised this definition by issuing an official notification to that effect. The notification said that it was being issued in exercise of power conferred by clause (C) of section 2 of the NCM Act. The understanding of intricate constitutional matters could not be expected from a person like Sita Ram Kesri who was then heading the nodal ministry. Definition given by government was very flawed.

This exercise of power by the government, in the opinion of expert, was based on confusion and misconception. Section 2(C) of the Act was rightly criticised by the then leader of opposition for this justifiable reason.  

Clause(C) of section 2 of the NCM Act defines that minority for the purpose of this Act means a community notified as such by the central government. Can this be called a definition? And was it at all necessary to define the word minority which the constitution left undefined. As a result of this flawed definition many other minorities were kept outside the purview of the Commission. The impact of the notification defining the word minority has been very damaging. The state laws of both Madhya Pradesh and West Bengal took reference to this definition in determining who will be the minorities in the states.  

This definition of minorities has generally given rise to argument that minorities not mentioned in the notification can not be treated as minorities. The idea is very unjustified because it leaves out many distinct religious communities such as Jews, Jains and
Bahai from getting cover. It ignores the fact that in many parts of India Hindus are a minority. It also overlooks the fact that quite a few tribal faiths have been identified as an independent religion in census report. Despite these flaws in the notification, no body in the Commission did question the validity and desirability of this notification when it was issued during the term of first statutory Commission.

In September 1995, an amendment to NCM Act was introduced so as to create a position of Vice Chairman and to reduce the number of member from original six to five. The amending Act was quietly passed in Parliament and brought into force without debate and discussion. Consequently one of the sitting members was appointed as the first Vice Chairman of the Commission just few months before the completion of his term. Except the first Chairman of non-statutory Commission and the present Chairman of statutory Commission, all have belonged to the largest minority namely Muslim community. Policy of choosing from the largest minority seems to be reasonable and is in line with democratic traditions. But in the selection of Vice Chairman, this principle has not been followed. With the exception of last one, Vice chairman appointed so far has generally been from the Sikh community only.

To perform its function efficiently, the Commission is provided with a secretary and other necessary staff by the government. The provision of a member secretary makes the Commission somewhat independent of bureaucracy. This is however, not always possible. The true implication of this statutory provision is generally not appreciated by the incoming officer which does affect the independence of the Commission.
Besides Annual Report, the NCM Act also enables the Commission to submit Special Report to the state government. While the first statutory Commission submitted no such report, the second one submitted many Special reports to the central and state government. Some of these reports were tabled in the respective state legislature as required by law.\textsuperscript{31}

The NCM Act under section 13 requires the Central Government to table in Parliament each Annual Report of the Commission with action taken report but this requirement has not been fulfilled ever since the enforcement of the Act in 1993. The Annual Report of the Commission last tabled in Parliament was of the pre Act Commission and related to the year 1991-92.

Apart from the Annual Reports, each recommendation of the Commission for the effective implementation of safeguards for the protection of minorities by the central and state government made under section 9(i) (c) of NCM Act is also to be laid in parliament or the concerned state legislature. But no government has ever complied with this very specific provision of the Act.

In 1994, by an important legislative measure National Commission for Minorities was recognised by Parliament as a pre existing human rights institution to monitor enforcement of human rights of particular section of people called religious minorities. Referring to National Commission for Minorities and its 1992 Act, The Protection of Human Rights Act 1993 proclaimed NCM chairman as an ex officio member of National Human Rights Commission for a number of statutory functions. This recognition was a meaningful step towards officially confirming the important role of the NCM in protecting human rights. This was not the first time that the role of NCM was recognised in national affair. In famous Sarla Mudgal case
the Supreme Court of India had registered the existence of the National Commission for Minorities and suggested that the law commission should examine the issue of reforming personal laws in consultation with this Commission. This very sound advice of the India's Apex Court was reiterated later in a full bench judgement of 1997 in what is known as AWAG case.

The Supreme Court of India delivered another judgement in 1997. When the abolition of the state Minorities Commission in Maharashtra was challenged in the court, the Supreme Court of India came out with a clear verdict on the importance and utility of the National Commission for Minorities. Referring to the NCM Act 1992 the court held:

By operation of section 3 read with section 9, it is the duty of Central Government to constitute a national commission and it shall be the duty and the responsibility of the National Commission [for minorities] to ensure compliance with the principle and programme enumerated in section 9 of the act protecting the interest of the minorities for their development and working of the safeguard provided to them in the constitution and the laws enacted by Parliament as well as state legislature. The object thereby is to integrate them in national main stream in the united and integrated Bharat providing facilities and opportunities to improve their economic and social status and empowerment.

Actions, Intervention and Recommendations

NCM, in discharge of its statutory obligations has been taking steps in terms of various actions, interventions and recommendations done for the benefit of minorities in India. As part of its duties, it has to involve itself in a number of activities affecting the life, property and rights of the minorities.
During 1987-88 the Commission had received 235 representations from members of various minority communities and organisations which were examined by the Commission. Action was initiated on 102 grievances, out of which 77 individual grievances and 25 pertains to general grievances.  

The community wise breakup of the representation received is as follows:

(i) Muslim – 166  
(ii) Christian – 28  
(iii) Sikh – 21  
(iv) Buddhist – 3  
(v) Parsi – Nil  
(vi) Others – 17  
Total – 235  

In 102 cases, the issues were taken up with appropriate authorities at different levels by writing letter, meeting with the officers or hearing the individual concerned with a view to understanding their problem closely. The remaining 133 cases were closed after preliminary examination of the representation on the ground of being not pertaining to Commission's jurisdiction.  

Earlier in 1986-87 between 1st April 1986 to 31st March, the Commission received, scrutinised and examined and took action on 265 representations from minority communities. Action had been initiated on 213 individual grievances the remaining 52 were related to general grievances. Only in 188 cases where investigation was
considered necessary, the matter was taken up with authorities concerned.  

**Minorities Representation**

The question of representation of minorities in the central Police Force has been constantly engaging the attention of the Commission. Though the Ministry of Home Affairs had issued instruction to the five central police organisation, namely CRPF, BSF, CISF, Assam Rifles and ITBP to give representation to the minorities in recruitment committees and in police force, the Commission had found it difficult to ascertain the progress of its implementation. Moreover, the Commission in 1999 put forth a proposal before the Election Commission to ask political parties to ensure adequate representation of the minorities in Parliament and state legislature in accordance with their populations at national and local levels.

Having a national level population of nearly 20% minorities should be entitled to at least 100 seats in Parliament whereas their actual number in Parliament has been much below this figure. While the Election Commission endorsed NCM viewpoint political parties except a few showed no interest in this issue.

**Studies**

Under its terms of reference, the Minorities Commission is required to conduct studies research and analysis on the issue of prevention of discrimination against minorities. It is also required to evaluate the working of various safeguards provided in the constitution for minorities and in laws passed by the union and state.
governments. It enables the Commission to recommend appropriate legal and welfare measure in respect of minorities.

The Commission had identified a number of issues affecting minority communities as subject of study and analysis particularly in respect of socio-economic conditions of minorities and implementation of 15 Point Programme for their welfare. However it has been handicapped in this regard for lack of necessary staff and funds. In spite of this, the Commission conducted some studies through its chairman and members.\(^{41}\)

As the first report on religion data was published, the NCM decided to set up a four member expert committee headed by Dr. Ashish Bose, chairman, Society for Applied Research in Humanities on 15.9.04. It was to analyse the 2001 census data of religious minorities and to submit a report to the Commission about each religious minority community.\(^{42}\) The expert committee is to suggest the corrective measures to be implemented for all round socio economic progress of the religious minorities. A plan of corrective measures for each community is required from the expert committee so that NCM can pursue the same vigorously with the concerned government agencies. Such studies assumes particular significance particularly in view of reported decline of male female population ratio among certain communities especially Sikhs.

**Advisory Opinion**

The Commission has given its opinion on the request of Ministry of Home Affairs on some private member bill moved in Lok Sabha and Rajya Sabha dealing with freedom of religion.\(^{43}\) This included
(I) The Freedom of Religion Bill 1985 by Shri S M Bhattam, MP Lok Sabha seeking prohibition of conversion from one religion to another

(II) The Constitution (Amendment) Bill 1987 by Sri Shanta Ram Naik, MP, Lok Sabha seeking amendment to Article 25, 26 and 28 and the insertion of a new Article 28 A in the constitution

(III) The prevention of misuse of religion and religious institution bill 1987 by Sri M C Bhandare, MP, Rajya Sabha aiming at preventing misuse of religion and religious institution

(IV) The Constitution (Amendment) Bill 1987 by Sri M C Bhandare, MP Rajya Sabha seeking amendment to Articles 26, 102 and 191 and insertion of a new Article 17A and 26A in the constitution.

While the Commission had considered the first and second Bills as unnecessary and ill advised and therefore had recommended that these should be dropped, it has extended qualified support to fourth Bill. The Commission had also extended its support to third Bill namely the Prevention of Misuse of Religion and Religious Institution Bill 1987 moved by M C Bhandare MP, in particular to its provision seeking a ban on excommunication of any Indian citizen by any person claiming to exercise that authority in the name of religion.

The demand of continuing concession and facilities to Scheduled Caste converts to Buddhism and Christianity also engaged the attention of the Commission. The Commission examined the issue and observed in a communication to Ministry of Home Affairs the following: 44
If it was true that the Christian as well as other converts from scheduled caste communities continue to suffer from social disabilities because of their educational and economic backwardness, they should be similarly treated. In view of the fact that the benefit of certain social welfare and educational scheme had been extended to scheduled caste converts to Buddhism known as neo Buddhists, the commission was of the view that the same consideration should apply to the scheduled caste converts to Christianity and Islam, and accordingly the concessions and benefits of a non-statutory nature may be extended to them also on broad humanitarian grounds.

Besides, the Commission took a number of opportunities to render its opinion on important legislative matters. On question of Uniform Civil Code raised in Sarla Mudgal case by Justice Kuldip Singh putting government in the dock, the Commission took considered view of the matter. It resolved that time was still not ripe to legislate Uniform Civil Code. It however opined that Personal laws could be rationalized as to bring them in tune with the requirements of assuring human rights and human dignity to remove gender injustice. Legislation on Uniform civil code will have to await enactment of separate rational personal laws of minority communities.

**Communalism**

India has a long history of communal riots involving minority and majority communities. The issue of creating communal harmony has been high on the agenda of the National Commission for Minorities since early days. In this connection the Commission has organised several conferences, seminars and lecture by academicians and policy makers. It has also been examining the incident of communal violence occurring in different parts of the country suggesting effective steps to check escalation of
disturbance, recommending compensation and rehabilitation measure to the governments. The efforts made by the Commission and follow up action taken by the concerned authorities on its recommendation have produced positive results in certain cases.

As part of its efforts to curb the menace of communalism especially in the light of U.N. Declaration on the Elimination of All forms of Intolerance and Discrimination, the Commission in December 1997, decided to constitute a committee under the chairmanship of justice V M Tarkunde on Communal Riots: Prevention and Cure. The committee was required to suggest legislative and administrative measures for prevention and cure of evil of communal riots. The report of this committee was forwarded to the Union Ministry of Home Affairs and Social Justice and Empowerment as well as to the Chief Secretaries of the States/Union Territories.

In addition to this, the Commission also sent its team on fact finding mission to many troubled cities and places where atrocities on minorities were committed. On the basis of information gathered by its fact finding team, the Commission has prepared report and made recommendations on the riots in Dumka (Bihar) in September 1997, involving attack and humiliating treatment of the Vice Principal of St. Joseph School in Manoharpur and Ranalai (Orissa) in January 1999, involving murder of Graham Stains and his two innocent children, and large scale destruction of properties belonging to the Christians in Manglore and Surathkhal (Karnataka) in December, 1998 and January 1999 and on riots in Gujarat in 1998 and 2002 involving increasing anti minority violence. These incidents of violence were mainly committed against Muslim and Christian communities. The most important item in these recommendations was about setting up of Fast Track Courts for
disposal of communal riots cases. Further the Commission has recently initiated an exercise of scrutinising the reports of enquiry commissions set up by the central and state governments on communal riots. The Commission did not find it proper to involve itself in Coimbatore riot because of political ramifications and instead sought the help of NHRC.  

**Babri Mosque**

The last non statutory Commission's tenure was the period of disturbing agitation on account of Mandir-Masjid controversy. Its report signed by the chairman S.M.H Burney contained several recommendations and reports. According to its twelfth Annual Report the Commission made a significant recommendations regarding Babri Mosque dispute at Ayodhya. It called for the acceptance of court decision by all parties to the dispute and urged them to renounce violent agitational path. In a conference of state Minorities' Commissions organised under the aegis of central minorities' commission, it was also resolved to recommend a total ban on any kind of militant organisation and sena and maintenance of status quo as on 15 August 1947 in respect of all places of worship. Next year in a communication to the Union Home Ministry, the Commission sought a suitable restriction on religious procession in view of deteriorating law and order over Ayodhya issue.

But it is interesting to note that after Burney's retirement on 31.4.92, the Commission remained headless for a entire financial year with just four members serving on the Commission. These members were not only allowed to continue for the whole year but also given extension to serve on the commission for the next full three years term. This very thing raises doubt in many minds. What strikes in minds is that no report was ever prepared for this financial
year. This was the period when on December 6, 1992 the Babri Mosque was razed to the ground by the most unlawful act of vandalism against country's constitutional order. Why was the report not published? Was it because the Commission had nothing to say about this disgraceful act? Why the period in question was treated to be a zero year? This was perhaps deliberate, not just a lapse on the part of government. Even the next Commission chose not to submit report for this gaping period.

Few years back the NCM had taken an initiative to resolve Ayodhya tangle by constituting two committees as to facilitate a direct dialogue between the leaders of majority and minority communities. But this role of a facilitator has hardly worked and proved to be a dumb squib.

**Individual Issues**

The first statutory Commission, during its three years tenure received a total of 1310 representation from individuals and organisations. In the first 2 years, after scrutiny a total of 350 representations were filed at the initial stage without further action because of they were found to be improper. The Commission specifies four reasons for this. One they were either anonymous, or two they were outside Commission's purview, or three they were sub-judice in court of law, or four they were not addressed to the Commission and did not involve any serious minority issue. The remaining 400 representations only were forwarded for necessary action.

Thus hundreds of complaints are considered by NCM for their redress and this number is growing every year. This is suggestive of both people expectations and minorities' situations. But, according
to the Commission's own admission, in many cases it draws no response from concerned government authorities which hampers its efforts to take these cases to logical conclusion. As a result, affected petitioners get no justice done to them. The NCM has thus to sit helpless in such a situation despite having a power of a civil court. Therefore, demand for the Commission to be vested also with power of investigation becomes imperative. This will help Commission ensure that its memo does not go unanswered.

**Draconian laws**

The Commission headed by Justice Sardar Ali Khan remained successful in dissuading the Maharashtra government from its reported move of excluding the large number of Muslims from the voters list. Opposing TADA, the NCM asked for repeal of it and took up the cases of TADA detenus with the state government. In its resolution dated May 4, 1995 the Commission unanimously declared that:

TADA is an offensive and odious piece of legislation which is contrary to all civilized norms of jurisprudence and the principle of equality and equal protection under the fundamental rights guaranteed in our constitution. It runs counter to the universally valid standard civilized human behaviour.

It was Commission's considered view that TADA was particularly targeted against the minorities. So it spearheaded a campaign for its abrogation.

The first statutory Commission also took no time to condemn the decision of the Maharashtra government to wind up state Minorities Commission and Shri Krishna Commission urging for their restoration and also took serious note of Shiv Sena chief Bal
Thakrey's anti Muslim utterances asking to institute legal proceedings against him under IPC.

Besides, the Commission took a number of opportunities to render its opinion on important legislative matters. On question of Uniform Civil Code raised in Sarla Mudgal case by Justice Kuldip Singh putting government in the dock, the Commission took considered view of the matter. It resolved that time was still not ripe to legislate Uniform civil code. It however opined that Personal laws could be rationalized as to bring them in tune with the requirements of assuring human rights and human dignity to remove gender injustice. Legislation on Uniform Civil Code will have to await enactment of separate rational personal laws of minority communities.\textsuperscript{52}

Another commendable work done by the first Commission was the preparation of data on the very low and meager representation of minorities in public services which was sent to concerned authorities demanding necessary action on priority. Later equally important work was under taken by a sitting member of the Commission, M Vardhrarajan who took the task of preparing a comprehensive report on behalf of sub group on minorities set up by the Planning Commission for ninth five year plan. This report was submitted to the Planning Commission in May 1996 enlisting most of the recommendations made by the NCM from time to time.\textsuperscript{53}

The National Commission for Minorities reports prepared by it during the term of first statutory Commission made as many as twelve important recommendations.\textsuperscript{54} They were relating to

1. Establishment of Department of Minority Affairs by the Central Government
2. Setting up of Minority-Welfare Department in all states and Union Territories having a Minority population of 10% and above


4. Relaxation of educational and other formal requirements for the minorities in central police recruitments like that given to SC/ST;

5. A similar relaxation in state police recruitments;

6. Amendment of the Christian personal law as suggested by the joint Women's programme;

7. Continuation of Scheduled Castes converting to Islam or Christianity;

8. Specific investigation powers for the Commission on the pattern of those enjoyed by the Human Rights Commission

9. Rejection of Maharashtra Assembly’s Child Adoption Bill of 1995 by the President;

10. Declaration of the Jains as a minority;

11. Reconstitution of the Maharashtra state Minorities Commission; and

12. Vesting of the management of Bodh Gaya Temple in the Buddhist community
Jain’s Demand

The question of recognition of Jains as a religious minority separate from Hinduism has been receiving the attention of the Commission since long. The old non statutory Commission once entrusted one of its senior members, Homi J. H. Taleyarkhan to study and report on the position of Jains, who justified the claim of Jains to be recognised on separate religious ground. It is important to note that various Jains individual and organisations had been making representation to the Commission demanding official recognition by the government. In the light of persistent demand the new statutory Commission made a statutory recommendation underlining the validity of their demand.

It is pertinent to note here that the government of India does not mention Jains in the list of officially recognised minorities under its notifications. There are however various grounds for them to be recognised as a separate religious entity. First their religious and cultural heritages give them a distinct identity. Under the constitution and modern Hindu code 1955-56, Jains are bracketed with Buddhist and Sikhs. Moreover, like them they are listed as a distinct religious community in all government sponsored census reports. For these reasons perhaps Rajasthan High Court also has ruled that Jains are a minority community and as such they are entitled to all constitutional rights enjoyed by other minorities in India.

But very recently NCM has received a setback in its long time efforts when Supreme Court rejected a demand for direction to the Union Government to notify Jains as a minority within the meaning of NCM Act. The Supreme Court has, in fact asked the Commission that instead of making plea it should discourage listing religious...
group as minorities as this will create further divisions in the country leading to more social tensions and strife undermining secular nationalism.\(^5\)

Buddhist Temple

The issue of Bodh Gaya Temple management has been a cause of concern for NCM in recent past. It has been taking up the matter with the Bihar government from time to time. As pointed out under statutory recommendations the Commission called for the review of the working of Bodh Gaya Temple Act, 1949. However, it was suggested that till the Act is not amended, some minor adjustment at the government level would help in meeting the demands of Buddhist community. In a letter addressed to the Chief Minister, the Chairman of the NCM advised to have more Buddhist member in the temple management committee so that they can maintain the tradition of this historical monument. He recommended that Secretary of the Board should be a Buddhist and the chairman should be District Magistrate of Gaya. He also recommended that in the existing Committee there should be 5 Buddhist members and three Hindu members.\(^6\)

Again on 2.11.2004 Chairman took up the matter with the Chief Minister, Bihar suggesting that number of Buddhist members in the management of the Bodh Gaya Temple may be increased by one. As per present practice, there are 4 Buddhist and 4 Hindu members and District Magistrate is the Chairman of the Committee. If one more member from Buddhist community is taken, at least the Buddhists will have the satisfaction that they are in majority. Secondly, he suggested that the Secretary of the management
committee should be a Buddhist so that he can properly understand and run the administration.\textsuperscript{58}

**Educational Issue**

A number of very serious cases affecting one or another minority community in the field of education were handled by the NCM. The first case was about the complaint of St. Stephen College against the Delhi University on issue of reservation in admission for Scheduled Castes. It was a time when on the same issue, another minority institution AMU, Aligarh was served ultimatum by the U.G.C. to stop grant. The Commission examined general constitutional and legal aspects of the issue and the relevant judicial decision.

In this context it is interesting to note that while by law of India no Christian or Muslim could ever be considered as Scheduled Caste, how then a Christian or Muslim institution be forced to reserve sizeable part of their admission and faculty intake for non Muslim, non Christian Scheduled Caste. It was very much decided in the Supreme Court verdict in 1992 in St. Stephen College case that in every minority institution the founding minority could get 50% seat reserved for their candidate while rest 50% would be filled on purely merit basis. Based on this Court decision the Commission issued an explanatory ruling in favour of St. Stephen College. Sometime later in response to a clarification sought by Wizarat Rasul of Hyderabad about the position of founding minority candidates qualifying on their own merit, the commission gave another explanatory ruling observing that such candidate would be admitted against that 50% of intake which is to be filled purely on merit.\textsuperscript{59}
These two explanatory rulings given on behalf of the Commission brought relief to a number of minority institutions but Commission's third ruling given to Orissa Government was not taken notice of. The Orissa Government had put a blanket ban on the recognition of private teachers training colleges. In this ruling Commission had indicated to the Government of Orissa that its action violated Article 30 of the constitution.\textsuperscript{60}

Another serious problem of the minorities in the field of education which the Commission had to deal with was the attempted spiritualisation of school education. It was about compulsory teaching of a particular religion and obligatory observance of its ritual.\textsuperscript{61}

**Gujarat Carnage 2002**

At the outbreak of unprecedented communal violence in Gujarat, the Commission led by its chairman Justice Mohd. Shamim visited the worst affected city of Ahmedabad to get first hand account of situations there. In its visit to Shah Alam Relief Camp in the city, the experience of the Commission was very horrendous as it found women, children, elderly and the sick narrating woeful stories of burning, killing of persons and properties, raping of daughters in front of their mothers, and burning such rape victims for destruction of evidence. It left the Commission completely horrified.

As the violence in Gujarat continued and the state machinery failed to control the situation, the Commission decided to invoke powers vested in it under section 9(4) (a) and (c) of the National Commission for Minorities Act, 1992 and summoned the Chief Secretary, Additional Chief Secretary, Home Secretary and D.G.P,
Gujarat to appear before the Commission on 06.04.2002. Chief Secretary and those representatives of state administration who appeared before the Commission were asked to give their version with all facts and figures. Dissatisfied with the government handling of the situation, the Commission directed and issued guidelines to them in respect of restoring of minorities confidence in state police, transfer of honest dutiful officers, compensation to victims and rehabilitation and rebuilding works, which were required to be taken immediately.

However, the Action Taken Report submitted by the state government in reply to these guidelines suggested a rather negative approach of the government. For example; the ATR does not find any fault with state Police and administration. It says “the Police as well as the administrative machinery have taken firm and effective action at every level to control violence. This is amply demonstrated by the figures pertaining to Police firing, bursting of teargas shells, arrests made etc. A large number of deaths have occurred as a result of Police firing, which shows the effectiveness of the force used.” Police which has been mainly accused of conniving or siding with the rioters was not found to be wanting. Who would deny then that many deaths occurred not due to firing by the Police?

Further in a related case of Best Bakery Trial, the NCM intervened when all the 21 accused in this case was acquitted by the Fast Track Court for want of evidence. It was alleged that eye witnesses went back on their statement in the court because of the fear of backlash. Expressing concern on the judgement, the Commission asked the Gujarat government to file an appeal against it presenting correct facts. It also wanted the government to ensure safety and security of eye witnesses so that they did not act under duress. This direction of the court was somehow complied with. In
this context it can be said that whatever success it could achieve can not be singly attributed to it alone. It was also due to the concerted efforts of many institutions and agencies that stand for justice and human rights.

CONCLUSION

The National Commission for Minorities as it exists today represents a model of Institutional arrangement which was visualised and promised by the founding fathers of our Constitution to ensure constitutional guarantees of protection for Minorities. As is evident from reading of its history minorities in India were left without any such institutional arrangement in the early three decades of post independence period. It was only in 1978 under a new government of altogether a new party that the necessity of having an institutional mechanism in respect of minorities was felt. The realization on the part of government of the day ultimately led to the creation of a body called Minorities Commission.

The resolution of the government does make statement of lofty genuine concern for minorities. But given the nature of government order by which it was created, the Commission was initially destined to work as a department under the subordination of the government without autonomy and independence. The Parliamentary Act passed in 1992, however brought about some elevation of status to the Commission and the Commission was allowed to function with relative autonomy under changed name as National Commission for Minorities. It will not be out of place to note here that NCM has had to cope with indifference and neglect from the government and those in power. Often its letters remains unanswered and recommendations unacknowledged. A pertinent example is necessary to cite here\textsuperscript{64}. In March 2001 during communal riots in
Kanpur, the PAC personnel allegedly killed 11 Muslims and burnt and looted their shops during curfew hours. When a delegation of minority organization called on the Commission to demand effective role of the NCM along with National Commission for Human Rights in bringing to justice the guilty and for reforming the law enforcement machinery, the Chairman pleaded helplessness. He told them that letters and fax messages Commission sent to the Government of U.P for report of incidents had remained unacknowledged and unanswered.

While during the last few decades, for the purpose of different sections of society many commissions have come up with constitutional status with greater autonomy and powers whereas Minorities Commission is left with just statutory status with lesser powers. When one peeps into the actual powers enjoyed by the NCM, one gets the feeling that it is crippled in many ways. The Commission makes recommendations but cannot get them implemented. The discretion of acceptance of recommendations in its case fully lies with the government. The NCM Act 1992 empowers the Commission with power of a civil court but it has been allowed very little clout. It has no power of investigation even as provided under Commission of Inquiry Act. For the Commission to play a more effective role it should have been given not only power to go to the court directly to get its recommendation implemented but also have power to correct wrong done to any minority. Moreover it should have been vested with power to seek legal relief against those who have committed the wrong. Like NHRC it should also have power to get compensation for victims.

While NCM has been given a wide ranging functions but power sanctioned to it is quite limited. The effectiveness of Commissions role can mainly be gauged on this very basis. A columnist for this
very reason perhaps has termed the Commission as “victim of omission”.

Endnotes

1. See Preamble to the constitution of India which in an unambiguous term sets goal for the people of India


3. Ibid, p. 117


5. Ibid, Clause 4

6. Ibid, Clause 3

7. Ibid, Clause 6

8. Ibid, Clause 7


10. Ibid, p.28

12. Clause 3, N.4

13. The High Power Panel initially consisted of 7 members in addition to Dr. V.A. Syeid Mohammad as its chairman. But following his appointment as India's High Commissioner in London and some member's change of responsibility, the panel was revamped and Dr. Gopal Singh, a senior member was appointed as chairman in his place. At the time of making its report, the Panel comprised of 10 members, namely – 1. Dr. Gopal Singh (Chairman) 2. Dr. Rafiq Zakaria M.P. Member Secretary 3. Dr. L Bullayya, Former V.C, Andhra University, 4. Shri Arvind Netam M.P (Former Union Deputy Minister for Social Welfare), 5. Prof. N.C. Prashar, M.P, 6. Shri I.D. Jawahar Raj, Advocate, 7. Shri J. Leon D' Souza, M.P. (Former Mayour of Bombay), 8. Shri L.R. Naik, ex M.P. and former member, Backward classes commission, 9. Smt. Aloo. J. Chibber, M.L.C, Maharastra, 10. Ven'ble Lama Lobzang, Director, Ladakh Budha Vihar

14. Tahir Mahmood n.9, p.33

15. Ministry of Welfare resolution No. IV 12011/2/88 CLM of 30 March 1988 amending clause 2 & 3 of the original Home Ministry Resolution of January 1978, see appendix 111 in Tahir Mahmood, n.9,pp.244-46

16. Tahir Mahmood, n.1,p.120


18. Statement of the Welfare Minister, Ram Vilas Paswan, qoted from Lok Sabha Debates vol. XII No. 47, p.130
19. Cited in Tahir Mahmood, n.9, p.36

20. Quoted from *Lok Sabha Debates*, vol. XII, No. 47, p.90

21. Ibid, p.98

22. Ibid, p.158

23. National Commission for Minorities Act 1992, Section 3 (2)

24. Ibid, Section 4 (1)

25. Ibid, Section 4 (3)

26. Ibid, Section 4 (3) (f)

27. Ibid, Section 9 (4)

28. Ibid, Section 9 (2) (3)

29. Tahir Mahmood, n.9, p.43

30. Ibid, p.44

31. Tahir Mahmood, n.9, p.137

32. AIR 1995 SC 531

33. *Ahmedabad Women Action Group V Union of India*, AIR 1997 SC 3614


36. Ibid

37. Minorities' Commission, *Ninth Annual Report*

39. Tahir Mahmood, n.9, p.141

40. Ibid (Tahir Mahmood, n.9, p.141)


42. Minorities India (Special issue), December 2004, pp.25-26.


44. Ibid, pp.39-41.

45. *Minorities India* (Special Issue), December 2004, p.37.

46. Ibid, p.38.

47. Tahir Mahmood, n.9, p.114.

48. *Minorities India* (Special Issue), December 2003, p.18.

49. According to NCM *Annual Reports* for 1993-94, 1994-95 and 1995-96, number of representation received were respectively 360, 390 and 560.


53. Tahir Mahmood, n.9, p.87.


58. Ibid

59. Tahir Mahmood, n.9, p.122.

60. Ibid, p.123.


63. Ibid, p.118.

64. For this and other examples, see Iqbal A. Ansari, ‘Intolerance and Discrimination Against Muslims. As a Religious Minority in India’, paper submitted at a Work Shop at United nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 27 August – 7 September 2001, Durban, South Africa.