Submission to the United Nations OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

**CALL FOR INPUT | SPECIAL PROCEDURES**

**ISSUED BY Special Procedures**

**Call for Input to the report of the special rapporteur on minority issues to the UN general assembly on institutional arrangements of States that enable minority rights to flourish**

**Submitting Organization: BROKEN CHALK**

**May 2024**

**By**

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**Lisa Zians**

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**Rieke Lahrsen**

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**Broken Chalk** is an Amsterdam-based non-governmental organisation (NGO) committed to addressing human rights violations in the education sector. It was established in October 2020. A multinational team of dedicated human rights advocates collaborates extensively on researching violations in every corner of the world.

The organisation's primary activities include removing obstacles to education, promoting peace and tranquillity in society through intercultural tolerance, preventing radicalism and polarisation, and eliminating educational opportunity gaps across different demographics.

Broken Chalk works hard in advocacy and lobbying on behalf of these educational victims, engaging with international organisations to prompt action. Additionally, the volunteers and interns working remotely worldwide at Broken Chalk prepare comprehensive reports for international organisations, stakeholders, and governments, highlighting human rights violations in education. These reports aim to draw attention to the often-overlooked aspects of human rights violations, providing stakeholders with a complete understanding and calling for the international community to act in cases where conflict halts access to education and endangers civilians’ lives. This approach ensures that awareness is raised and necessary actions are taken to address these violations. Broken Chalk is genuinely international, achieving a local and global perspective in its work.

1. [Do you consider the interests of persons belonging to minority groups appropriately considered in your country? If yes, how? If no, why? 4](#_Toc166159054)

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# **Do you consider the interests of persons belonging to minority groups appropriately considered in your country? If yes, how? If no, why?**

India's long-standing values of diversity and multiculturalism are being tested by a growing inclination towards an exclusive national identity cantered around religion. The past few years have witnessed a worrying decline in the conditions of religious freedom, notably affecting minority religious communities, following the re-election of the conservative government in May 2019 [[1]](#footnote-1). Utilizing its bolstered parliamentary majority, the central government has enacted policies on a national scale that erode religious freedoms throughout the country, with a disproportionate impact on the Muslim minority community.

The government has ignored acts of violence targeting minority groups and has allowed hate speech and encouragement of violence to persist unchecked[[2]](#footnote-2). There has been a notable increase in incidents involving threats and hate speech directed at religious minorities. Alarmingly, acts of violence such as killings or lynching, often justified under the guise of "cow protection" or vigilantism, are celebrated as acts of heroism.

Concerning the legal framework, India has laws and policies aimed at protecting minority rights and combating discrimination. The Constitution guarantees fundamental rights to all citizens, regardless of religion, caste, or creed[[3]](#footnote-3). Additionally, specific laws like the Protection of Civil Rights Act, 1955, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, aim to safeguard the rights of marginalized communities. However, enforcement of these laws can be inconsistent, and there are gaps in addressing the specific needs of various minority groups, particularly religious minorities and indigenous communities[[4]](#footnote-4).

Concerning representation and participation, there is some level of minority representation in decision-making bodies, including the parliament and state legislatures. Several political parties have minority leaders, and reservations are provided for Scheduled Castes, Scheduled Tribes, and Other Backward Classes in legislative bodies[[5]](#footnote-5). However, the representation of religious minorities, such as Muslims and Christians, remains relatively low compared to their population size. Furthermore, despite representation, the effectiveness of minority voices in policymaking processes can be limited, often due to systemic barriers and unequal power dynamics.

Concerning social Inclusion, India has initiated various programs to promote social inclusion and equitable access to resources for minority groups. Initiatives like the Prime Minister's New 15 Point Programme for the Welfare of Minorities aim to address socio-economic disparities by providing scholarships, skill development programs, and infrastructure development in minority-concentrated areas[[6]](#footnote-6). Additionally, efforts to promote cultural diversity and inclusive practices are evident in educational institutions and public awareness campaigns. However, challenges persist in ensuring equitable access to opportunities and combating societal prejudices and discrimination faced by minority communities[[7]](#footnote-7).

# **Are there institutional arrangements that guarantee (or facilitate) effective political representation of persons belonging to minorities?**

As a federal democracy, India is generally considered as a guarantor of ethnic, linguistic, and religious diversity. Multi-layered and overlapping identities make it difficult for Indian to accommodate diversity. India’s post-independence constitution grants regional states with important powers over local governance[[8]](#footnote-8). This was further enhanced as India states were reorganised along linguistic lines in the 1950s. India’s constitution upholds the principles of proportional representation. Article 81 requires seats in the Lok Sabha (Lower House, translated as House of the People) to be distributed in ‘such manner that the ratio between the population of each constituency and the number of seats allotted to it is […] the same throughout the State’[[9]](#footnote-9). This territorial vision exposed India’s federal issues as several demands for new states on linguistic lines emerged, leading to their formation in some cases[[10]](#footnote-10). However, territorialism led to the development of new minorities and has failed to answer the demand for non-territorial power-sharing[[11]](#footnote-11).

The constitution also calls for the reallocation of seats based on updated demographic figures after a census is completed[[12]](#footnote-12). However, unequal demographic development has widened the malapportionment of seats in the Lok Sabha. Indian states have grown at very different rates leading to unequal representation. Malapportionment also affects the lower castes as it may change the number of constitutionally reserved seats for Scheduled Caste and Scheduled Tribe candidates which is determined on a state-to-state basis[[13]](#footnote-13). The caste system remains prevalent in Indian society although article 46 of the Constitution promotes the ‘educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. The Constitution establishes the reservation of several seats for certain castes and tribes as article 243D affirms that seats shall be reserved for ‘the scheduled castes’ and ‘scheduled tribes’ with one third of those being reserved for women.

While the term ‘minority’ is not defined in the constitution, it recognises religious and linguistic minorities and includes a clause establishing the right of minorities to ‘establish and administer education institutions’[[14]](#footnote-14). The National Commission for Minority Educational Institutions (NCMEI) Bill was passed in 2004 to safeguard the educational rights of minorities[[15]](#footnote-15). The NCMEI is the highest statutory body and has the power to cancel the minority status of an educational institution but also to inquire into the complaints of violation or deprivation of minorities’ educational rights[[16]](#footnote-16). Only six religious minorities, Muslims, Christians, Sikhs, Jains, Parsis and Buddhists, as well as linguistic minorities, are notified by the central government[[17]](#footnote-17). While more than 13,000 educational institutions were granted minority status in 2019, it has also been the source of issue within the Indian educational system[[18]](#footnote-18). The exemptions granted to minority institutions had drastic consequences on students from minority communities. No existing guidelines have led minority schools to function arbitrarily, with on the one hand elitist schools and on the other ‘ghettos of underprivileged students languishing in backwardness’, as noted by the National Commission for Protection of Child Rights report[[19]](#footnote-19). The system in place thus increases the alienation of minorities in every field of society, including education.

# **Are there minority issues insulated from (or not subject to) State authorities’ decisions (including the Parliament)?**

Minorities have two categories of rights under the Indian Constitution: "common domain”[[20]](#footnote-20) and "separate domain." All our nation's people are entitled to the rights that are in the "common domain." The only rights that belong in the "separate domain" are those that affect minorities exclusively and are set aside to safeguard their identity. The Constitution maintains and safeguards the distinction between "common domain" and "separate domain," as well as their combination. The State is declared to be "secular" in the Preamble to the Constitution, which has particular significance for Religious Minorities. Particularly pertinent to them is the proclamation found in the Preamble of the Constitution that all citizens of India are to be secured ‘liberty of thought, expression, belief, faith, and worship and ‘equality of status and of opportunity.’[[21]](#footnote-21)

A multi-religious, multicultural, multilingual, and multi-racial Indian society bound together by a shared goal of national integration and social harmony is what the various Articles of the Constitution that grant rights to minorities clearly and firmly point out. The Indian Nation is made up of two different groups of constituents, not only a collection of individual residents of this State, according to the standard that the Constitution's founders accepted and distilled into its provisions. The Indian nation is divided into two distinct commonwealths: the individual citizens and the various religious, linguistic, cultural, and ethnic groupings that make up the country's population.[[22]](#footnote-22) The people that make up the vast nation of India are also members of their own distinct branches, which take the shape of linguistic, cultural, religious, and ethnic groupings. Additionally, all these groupings have the same fundamental duties to fulfil and the same fundamental rights to enjoy as do all individuals.

India's social pluralism, which is reinforced by the distinctive idea of secularism found in the Constitution, highlights the need for the protection and advancement of many marginalized groups within the Indian population, regardless of whether these groups' "weakness" is measured in terms of population size or by their social, economic, or educational standing. Thus, the Scheduled Castes, Scheduled Tribes, Religious and Linguistic Minorities, and Backward Classes are all mentioned in the Constitution, and special provisions of differing kinds and significance are either made for them or left open.

In India, hate politics have consistently targeted the Muslim and Christian minorities.[[23]](#footnote-23) Violence against these communities has existed since the creation of the Indian nation-state, but the trends of these recent incidents show that India's political balancing act, which was successful in the early decades of independence, is failing to support India's commitment to equal citizenship against India's commitment to communities. The State has been supporting and perpetuating violence against minorities in these recent cases.

# **Are there institutional arrangements and/or political practices that de facto exclude persons belonging to minorities from effective participation in decisions at the national – and, where appropriate, regional level – concerning the minority to which they belong?**

Muslims and Dalits face considerable barriers to political participation, including voter suppression tactics and discriminatory electoral laws. In the 2019 national elections, activists stated that 40 million Muslims and 30 million Dalits were disenfranchised, as they had been deleted from electoral rolls or were deemed ineligible to be included[[24]](#footnote-24). Other estimates state that up to 120 million voters could have been missing nationally, specifically in Muslim and Dalit communities in areas with lower literacy rates and education[[25]](#footnote-25). Moreover, in 2024, with new national elections approaching, Narendra Modi’s Bharatiya Janata Party (BJP) government has begun implementing the Citizenship Amendment Act (CAA), which was originally launched in 2019. The law accelerates the process of awarding Indian citizenship to Hindus, Sikhs, Parsees, Buddhists, Jains, and Christian refugees who came to India before 2015 after fleeing religious persecution in their Muslim-majority home countries Pakistan, Bangladesh, and Afghanistan. However, the act does not cover Muslims, who are not provided a fast track to citizenship. For example, after the CAA was implemented in the state of Assam in 2019, over a million Muslims in the state were designated “foreigners” and “stateless”. Therefore, the law is criticised for being discriminatory against Muslims, preventing them from attaining citizenship and consequently, excluding them from elections[[26]](#footnote-26).

Further, while the representation of Dalits is ensured by a framework of reserved seats in the Lok Sabha (the parliamentary house), women and Muslims continue to be underrepresented in Indian decision-making bodies. While Dalits’ involvement in the government was limited in the past, their underrepresentation has been mitigated through a system of reserved seats, with 84 seats appointed to Dalit representatives[[27]](#footnote-27). While the turnout of female voters has increased over the past years and women now vote at similar rates as men, the proportion of women representatives in Indian parliament has remained low compared to the male representatives, with less than 15% since the 2019 elections[[28]](#footnote-28). Even though India has the third-largest Muslim population worldwide and its Muslim population has increased in the past years, the representation of Muslims in Indian parliament has consistently remained under 10% and has declined over the past 15 years to less than 5% of representatives, or 23 out of 545 seats. The decline has been especially apparent since the 2019 elections, where Modi’s Hindu nationalist BJP has won the elections for the second time. The BJP excludes Muslims from its list of candidates but refute accusations of discrimination based on religion by stating that excluding Muslim candidates is merely a strategy for the party to attract voters and win the elections[[29]](#footnote-29).

In conclusion, while certain issues, such as the voter turnout among women and the representation of Dalits in parliament have improved in the past years, there remain considerable barriers to political participation for Muslims, Dalits, and women through voter suppression tactics, discriminatory electoral laws, and underrepresentation in decision-making bodies.

# **Are there legal, administrative, or other barriers that prevent persons belonging to minorities to participate effectively in cultural, religious, social, economic or public life?**

India constitutes one of the most religiously diverse countries in the world with 79.8% of the population identifying as Hindu and a Muslim minority of 14.2%. Other religions present in the country include Christians (2.3%), Sikhs (1.7%), Buddhists (0.7%) and Jains (0.37) with even smaller ones not being included in these figures. Notable is that in recent years, hostility, discrimination, and intolerance has dramatically increased specifically towards the Muslim minorities in India. As a result, persons belonging to the Muslim minority in India are hindered, legally and socially, from effectively participating in public life.

**Discriminatory Laws and Policies**

Prejudices of the currently ruling Hindu nationalist Bharatiya Janata Party (BJP) have led to the adoption of laws and policies that systematically discriminate against Muslims.[[30]](#footnote-30) Misrepresentation in parliament has also stagnated. In the 2019 elections, Muslims held just 5% of seats. Since 2022, there were no Muslim members left in its party. Consequently, convictions of Hindus accused of violence against Muslims have been overturned or withdrawn entirely.[[31]](#footnote-31)

In December 2019, the BJP party led by Prime Minister Modi passed the discriminatory Citizenship (Amendment) Act (CAA) which made religion a basis for granting citizenship or not.[[32]](#footnote-32) Religious minorities from Bangladesh, Pakistan and Afghanistan that entered India before December 2014 were now able to apply for Indian Citizenship.[[33]](#footnote-33) However, since this law only applies to non-Muslims, it heavily discriminates against Muslims that have lived in India for years waiting to apply for citizenship. Due to the prejudice of the BJP, this instated perpetuous fears in the lives of millions of Indian Muslims, who are now scared to be deported.

In November 2020, the BJP passed another discriminatory law to curb any interfaith relationships. This legislation change was motivated by the claim that Muslim men lure Hindu women into marriages to convert them to Islam, known by the term ‘love Jihad’. Through the law of ‘Prohibition of Unlawful Religious Conversion Ordinance’ interfaith couples are now required to receive approval from district authorities before marrying otherwise men face a punishment of up to 10 years of prison if coercion, fraud, misrepresentation, or inducement are found to be at play. While the controversial law applies to all individuals of interfaith, right extremists have persecuted mainly Muslim men in interfaith relationships.1

Civil society groups and NGOs have also been obstructed in receiving funding due to changes in bureaucratic and administrative practices. The Foreign Contribution (Regulation) Act (FRCA), currently no longer meets international standards, leading to their funding being revoked. In turn, civil society groups and NGOs attempts to promote and protect minority rights have been restricted, leaving Muslim Indians even more isolated and helpless.[[34]](#footnote-34)

**Consequences for the Lives of Muslim Indians**

The changes in laws, policies and administrative procedures have had profound consequences for the cultural, religious, social, economic, and public lives of Indian Muslims. Particularly Muslim women have reported being harassed and humiliated in disputes over their traditional headscarf, the hijab. In Karnataka, these women were even denied entry in educational institutions such as college.[[35]](#footnote-35) The Muslim Indian woman reported feeling threatened and polarized by these actions, particularly because hijabs and burkas in general are not uncommon in India. Instead, the acts seem to be targeted at *Muslim* Indians which has left them feeling unsafe in openly wearing religious and cultural attire.

In terms of social and economic life, Muslims in India are overall less educated due to their discrimination. Due to lacking access to education, Hindu Indians take on positions in government offices and more advanced sectors, while Muslim Indians sort into lower-skilled professions. Only 5% of Muslim women have completed their secondary education and the average income of Muslims is 11% below the Indian average.6 Consequently, Muslim Indians often reside in marginalized neighbourhoods, further leading to social exclusion and reinforcing the barriers to participating in public life.

# **What are the benefits and/or challenges of recognizing and granting sectoral (for example, concerning sectors like education) or territorial autonomy to minorities?**

### Benefits of Recognizing Autonomy:

* **Empowerment and Self-Determination**: Granting autonomy to minority communities, whether in specific sectors or territories, empowers them to govern themselves according to their own cultural, social, and political norms[[36]](#footnote-36). This recognition acknowledges their distinct identity and facilitates their participation in decision-making processes. This empowerment fosters a sense of self-determination, allowing minorities to shape policies and programs that directly impact their lives[[37]](#footnote-37). Consequently, it enhances their sense of belonging within the larger society and encourages active engagement in civic affairs.
* **Tailored / Personalized Solutions:** by allowing for autonomy, policies and solutions can be personalized to the specific needs and concerns of the minority communities. By allowing greater control in terms of governance at the local and regional levels, initiatives can be better tailored to challenges faced by specific communities in specific regions.
* **Preservation through education:** Recognizing the autonomy of the Muslim population in the education field allows Muslims to preserve their culture and practice their religion. This is especially important in the context of the rising anti-Muslim sentiments in India, with the ruling BJP party passing controversial laws that are being criticised for marginalizing Muslims[[38]](#footnote-38).

### Challenges of Recognizing Autonomy:

* **Resource Allocation Issues**: One of the primary challenges associated with recognizing autonomy is the equitable distribution of resources. When autonomy is granted to specific sectors or territories, questions arise regarding the allocation of funds, natural resources, and public services[[39]](#footnote-39). Disputes may emerge over control of valuable resources such as land, water, or minerals, leading to potential conflicts between the autonomous entity and the central government or neighbouring regions. Moreover, managing taxation authority becomes complex, as different regions may have varying economic capacities and fiscal needs[[40]](#footnote-40). Balancing these disparities while ensuring fairness and transparency in resource allocation requires robust governance structures and effective mechanisms for negotiation and resolution. Failure to address these challenges can exacerbate socio-economic inequalities and undermine the stability of the autonomous arrangement.
* **Risk of Further Division:** by dividing autonomy based on ethnic or religious minority groups, the divisions within the country are at risk of becoming more pronounced. Decentralized governance could deepen the existing in/out group divisions which in turn exacerbates tensions and conflicts than possibly further deteriorate the unity of India as a nation.
* **Fragmentation in educational lines**: Recognizing the autonomy of the Muslim population in the education field, and allowing separate Islamic schools, increases the risk of fragmentation along religious lines. Separate education systems for separate religions might divide the population. According to the high court, providing education is a primary duty of the State and must remain secular[[41]](#footnote-41).



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