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AN EQUAL OPPORTUNITY COMMISSION FOR INDIA: LESSONS LEARNT FROM THE EEOC OF USA AND THE EHRC OF THE UK



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USIPI is committed to materializing this vision by generating facts for effective public policy, articulating policy vision for economic development, diversity, equal opportunity and inclusiveness, provide forum for debate and discourse on strengthening democracy, secular institutions and minority rights in India and the US and strive to stimulate a deep US and India relationship committed to sustainable development.

Development, Democracy and Diversity

Need for Equal Opportunity Commission in India

The Backdrop

Indian Constitution – An Equal Opportunity Guarantee for Perpetuity

Debates have been going on as to whether public programs such as school education, scholarships, health care delivery, access to micro-credit, and so on can be targeted to beneficiaries based on religion. Some consider this ‘unconstitutional’ and argue that it amounts to discrimination on the basis of religion. The Indian constitutional provisions are described below to argue a case that there is nothing in the constitution which bars identification of beneficiaries based on religion. Religious identity is listed at par with race, caste, sex and place of origin, *all in the same line*, and the other traits are used to identify beneficiaries. Identifying beneficiaries using multiple criteria, including religion, is important for proving equal opportunity and a level playing field to the deprived and excluded communities in India.

The Indian Constitution resolve to secure to all citizens ‘... equality of status and of opportunity’, and directs the government to be proactive to ensure equal opportunity. The concepts of equality, equal access and equal opportunity are elaborated in Article 14 (right to equality), Article 15 (access to education) and Article 16 (public employment) that ‘... State shall not discriminate ... on grounds only of religion, race, caste, sex, place of birth ...’. Article 15 (4), states, ‘Nothing ... shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Schedule Castes (SCs) and the Scheduled Tribes (STs)’. Interestingly, ‘socially and economically backward classes’ (SEBC) precedes mention of the SCs and the STs. Clause (5) directs the State to make special provision by law for advancement of the ‘socially and educationally backward classes’ through admission to educational institutions including private, aided or unaided. Article 16 provides for equal opportunity in government employment and cautions it not to discriminate on the grounds of religion, race, etc. Clause (4) provides for making provisions of reservation for appointments

in favor of ‘any backward class’ which, *in the opinion of the State*, is not adequately represented in the services under the State. Thus, the onus of identifying ‘backward group/class’ rests with the State.

All the explanations relating to Articles 14, 15 and 16 emphasize that the group classification should not be arbitrary, but must be compatible with the ‘objective of classification’. Already existing inequality should not be ignored. Therefore, any group of citizens (not arbitrarily formulated), including those named in the Constitution—namely, religion, race, caste, sex, decent, and place of birth / residence—should form the basis for backwardness. Backwardness can also be assessed based on traits such as occupation, work place, age, language etc., which are not arbitrary in nature.

The State is directed by the Constitution ‘to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, institutions of the national life’ [Article 38(1)]. An amendment in 1976 states that ‘The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations’ [Article 38(2)].

Generally, government collects and collates data for SCs and STs, for example, to measure levels of literacy and higher education, share in state employment, etc. Similarly, multi-dimensional gender discrimination and regional disparities reflected from the place of birth/origin/residence are measured. One fails to understand, therefore, as to why an assessment based on ‘religion’ is taboo. The perception that religious comparisons at the levels of achievements in development indicators are ‘unconstitutional’ appears to be due to lack of understanding of the spirit and intentions of the Indian Constitution. Religion in India is a dominant social identity next only to sex and caste and, therefore, it cannot be singularly sidelined or ignored.

Further, religious identity lends itself to double whammy. Studies show unacceptably large compounding effects of

sex, age and regional discrimination interacting with those linked to religion. Muslim and Dalit women (and children) living in less developed states are the most excluded of all types of socio-religious groups in India.

Empirical evidence is essential to developmental knowledge. It is reassuring that modern empirical and econometric methodologies accurately estimate and identify characteristics of backwardness. Caste and religion stand out as dominant social identities of backwardness along with occupation (or source of household income), and residential and regional identities. Empirical analysis of process indicators (literacy, higher education, formal employment, access to banking and credit, political participation, etc.) according to religious communities excluding the Hindus, confirm Muslim placement below the line of average. If the SCs/STs are compared with religious groups, one finds that Muslims, in most of the measures, are about the same as or even lower than them. With adjustments for initial conditions of Muslims relative to the SCs/STs have worsened over the years (Sachar Committee Report, 2006). Such evidence suggests that policies and programs of national and state governments are less accessible to Muslims, to the extent that they can be labeled as discriminatory.

Applying the standards set by the Indian constitution one can argue the existence of systemic bias based on religion. The only way to eliminate such bias is to ensure equal opportunity and access to programs that generate benefits proportional to the size of the population. Naming programs specific to the deprived community, even if it has to be done based on caste and/or religious identity, must be the public choice. It is clear that there is no catch 22 situation as often it is made out to be or it is not even 'unconstitutional'. Since the Indian constitution grants the states the responsibility of identifying the 'backward communities', it is the bounden duty of central and state governments to bring the caste and religious communities facing exclusion, especially the Muslims, into the fold of mainstream policies and programs as recommended in the Sachar Committee report. Note that Article 25, while setting the parameters of the right to freedom of religion, has named select religions to bring a certain degree of clarity as to who constitute the Hindus. And this Article does not preclude naming Muslims and Christians (two large religious communities) in public documents and legal enactments.

Institutional-Inclusive Support: Enabling and Imperative

It is essential to identify channels and mechanism that underscore the importance of diversity of the public discourses, narratives and decision making at the national and state levels. Such mechanisms need to be institutionalized. In the Indian context, establishing an equal opportunity commission (EOC) is imperative to improve diversity and eliminate deficits in various outcome measures, especially amongst deprived SCs/STs and Muslims, the largest of the minorities. The focus must be on mechanisms to achieve the Millennium Development Goals (MDGs) through institutional facilitation of EOC. This essay makes a strong case for the establishment of an EOC in India and draws upon the institutional frame and the best practices of the Equal Employment Opportunity Commission (EEOC) of the United States of America (USA) and Equality and Human Rights Commission (EHRC, earlier EOC) of the United Kingdom (UK).

Need for an Equal Opportunity Commission in India

India being a highly diverse economy and society in transition, differentials in the social and economic outcomes are

but expected. Assurances of accessibility to programs that promote literacy, education and skills, health and longevity, food consumption and nutrition, employment, housing, development credit and markets are made by the governments and substantial resources are also allocated. Yet access to and use of these services is uneven and often with unacceptably large differentials. Such differentials are due to systemic failures on the part of the societal structure, governance and power play of the majority within the democratic polity of India.

At the instance of Prime Minister Dr Manmohan Singh, the Sachar Committee (2004–06), for the first time in Independent India, highlighted the existence of large differentials in social, economic and educational standards according to socio-religious categories and also pointed out the deepening exclusionary effects with respect to the Muslim community. The deprivation of the Muslims has occurred while SCs and STs are able to catch up on a sustained basis made possible through constitutionally guaranteed and institutionally supported (see above) affirmative policies and reservation benefits. Public employment, development credit, higher level education, political participation

through electoral system, guaranteed participation in the third tier of governance and civil society participation are dominant areas where the religious minorities, especially the Muslims are found to be excluded in India.

One of the logical arguments in this regard is that while differentiation in outcome measures are but expected, it is essential to ensure equal opportunity of access and utilization of such services so as to enhance diversity and participation within the programs. Equity is a concurrent objective, which has to be ensured as development takes place, and equity has to be achieved in a time-bound manner. Therefore, intuitional provisions to address the deprivation of minorities, especially the Muslims, are the need of the hour. Sachar Committee in its recommendations proposed establishment of an Equal Opportunity Commission (EOC) so that opportunity of 'access and use' is ensured equally and justly that also provides a 'level playing field' to all socio-religious communities. This recommendation was made after considerable deliberations on the existing institutions that are designed and established in India that are not capable to address the issues on and associated with 'equal opportunity' except that such provisions are enshrined in the Indian constitution. Often reference is made to the existence of independent courts and many special purpose institutions such as commissions of backward classes, minorities, SCs/STs, and so on. There is also a human rights commission in India because India is a signatory to international covenants. All these listed institutions have their own specialized missions and objectives, but none address the issue of 'equal opportunity'. Further, the very fact that one finds large disparities in achievement levels and exclusion from public spaces of specified communities and differentiated access to public services is evidence enough to suggest both failure of existing institutions and the absence of an institution adequately empowered to address the issue of equal opportunity. Such an effort may necessitate affirmative action programs which are also constitutionally binding on the State as enshrined in Articles 14, 15 and 16 of the Indian Constitution on ground of social and economic backwardness.

Government Response to Sachar Committee Recommendations

Government of India accepted the Sachar Committee report fully and flatteringly and soon initiated a process to consider establishing an EOC. Ministry of Minority Affairs (MMA), as an evidence of the intention to implement the Sachar Committee report, constituted a committee of experts to determine the structure, scope and functions of

EOC. The committee submitted a draft bill along with its report to the government in February 2008. The recommendations include a number of advisory, advocacy and auditing functions to the proposed EOC, with almost no powers for grievance redressal. It will function as a civil court but with no penal powers.

Concurrently, another expert group was constituted to work out a methodology to assess diversity in development programs, employment and welfare programs and prepare a diversity index so as to monitor improvements of diversity in public space and achieve 'unity in diversity'. Although this group has provided methodologies to compute quantitative diversity index, one has not seen any further progress effected in this regard either by MMA or for that matter any other ministry focusing on issues where diversity such as education, employment, poverty alleviation, banking and micro-credit and so on is essential.

Current Position of the Government on EOC

There is a certain level of political consensus for the establishment of an EOC at the national level. After the EOC committee report was submitted, there were apparently several meetings at the top level bureaucracy. The Prime Minister has constituted a group of ministers (GoM) to get the process of establishing EOC initiated. Yet, a number of hurdles are impeding its establishment. The decision of whether to establish the EOC or not is currently kept in cold storage by the GoM which was authorized by the Prime Minister to initiate action towards the establishment of EOC. It would be important to investigate as to why a few cabinet ministers are dragging their feet from getting the EOC established.

Yet the vested interests galore, and emerging from institutions such as the National Commission of Minorities (NCM) that consider that the mandate of ensuring empowerment and economic and social welfare is its own forte. EOC, as it has been conceived, is not only meant to protect the interests of minorities, but also to ensure equal opportunity to all citizens of India, irrespective of religious, caste, linguistic or geographic differences. Note that there can be a case in India where under certain circumstances one can find discrimination against high castes. But given their relative educational and social superiority, they find new avenues of development in the private sector and often abroad. The mission for establishing 'equity and equality of opportunity' is enshrined in the Indian Constitution. So far the existing institutions have in fact failed to deliver

results. It is only because of the current institutional failure that the demand for an EOC has emerged, that too more than 60 years after Independence and existence of constitutional directives.

Inadequate Redressal Mechanisms: The Case for EOC

There are currently a number of mechanisms of redressal available in India. Yet one finds an institutional gap to deal with situations such as huge disparity in access to policies

and programs which generate equity in social, economic and educational situations. Given that India is a large country in terms of both geography and population, there is an urgent need for independent institutional structures that open up to citizens in real time to identify, articulate and find solutions to existing problems so as to enable equal access to opportunities that help individuals excel and contribute to the national GDP. The prevailing institutional provisions with comments as to why they do not address the systemic exclusion in the areas of social, economic and educational spheres in India are listed in the following Table.

Existing Institutional Provisions	Mechanisms and Inadequacies
<p><i>Bureaucratic Procedures</i></p> <p>Bureaucratic procedures followed by public institutions, government departments, delivery centers, local security centers and so on.</p>	<p>It is common to approach an officer superior to the decision-maker for relief. But in the Indian situation, formal appeal and request for reconsideration of a decision is rarely possible. The bureaucratic chain of command is rigid, opaque and not easy to break in by common citizens. Since these institutions themselves are the executors and implementers of government policies and programs, they do not accept their defects and are not amenable to providing reasonable redressal. In brief, the administrative recourse gets easily exhausted without relief.</p>
<p><i>Legal Recourse through Courts of Law</i></p> <p>Various levels of legal institutions and courts –local to district, state and national.</p>	<p>This is one of the independent wings of the democratic structure of India. The courts and the hierarchy are not easily accessible to common citizens. By design the courts do not ordinarily address the systemic bias that leads to exclusion and marginalization as a matter of routine and / or priority. There is no legal process to enforce social equity and stop inequity to happen and prevail. The court judgments take awfully long time, tedious procedures, long waiting time and are unaffordable to the poor.</p>
<p><i>Human Rights Commission (HRC)</i></p> <p>As a signatory to international covenants HRC was established in India in 1993. In over 20 major states HRCs are in place.</p>	<p>HRC in India mostly functions as an extended wing of the central government. It generally does not initiate procedures against the government in power. It generally deals with issues and situations which are normally dealt with by the local police and security agencies. Systemic bias and discrimination in the social, economic, educational and employment spheres has never been addressed by HRC in India. It has poor record of documentation and research.</p>
<p><i>Specified Special Purpose Commissions</i></p> <p>The National Commission of Minorities (NCM), Commission for Backward Classes (latter not discussed)</p>	<p>These are the special purpose vehicles established by the government generally under a ministry of the central government. For example, NCM is now under the administrative control of MMA. The mandate and objectives of NCM are wide ranging and include those relating to societal, economic and educational opportunities for the minorities. NCM has a statutory responsibility under Section 9 (1)(g) of the NCM Act, 1992, to evaluate progress of development of the minorities and to suggest appropriate measures to be taken by the government, in respect of any community. Functionally NCM has never undertaken any such tasks and it has failed to deliver especially in the areas of ensuring accessibility to education, economic and social services to the minorities and Muslim community in India. This has happened mostly due to lack of independence of NCM as well as poor quality bureaucratic and financial support. Annual reports of NCM, having been tabled in the Parliament, have never been discussed or debated there.</p> <p>NCM itself accepts the fact that it has to work out the adequacy of its scope and that it has to increase coverage both in terms of issues as well as geographic reach. NCM claims that it has not received the expected support from MMA.</p> <p>NCM itself considers that it is not authorized to monitor government programs and one has to work at the level of the district and become sensitive to the peoples' needs. Accordingly even the Ministry of Statistics and Program Implementation and / or the Ministry of Urban Development and Poverty Alleviation are actively not involved. Thus one finds total failure of NCM to address the issue of equal opportunity and equity.</p>

A review of the evidence suggests that none of the above formal institutions and structures have specialized in addressing a systemic relative deprivation and exclusions taken shape during the last six decades or so. Further, such deprivation has occurred in the areas of social, economic and educational spheres, all of which enable human development attributes essential for human welfare.

Equal Opportunity: A Virtue and Evidence of Democratic Maturity

Given that India is a large and diverse country which follows electoral democratic structure and principle of majority rule, it is often difficult to set up new institutions for improving governance. However, a number of new institutions are evolving to suit and support the new economic initiatives such as the regulatory bodies, ombudsman, independent research and policy centers, and so on. On the societal side as well there is need for institutional provisions to evolve and prevail to facilitate redressal for any individual, group or another institution which can prove that discrimination has occurred. Currently in India there is lack of institution which can directly address these issues.

There is lack of intuitional provision to address issues such as disparity and exclusion which has occurred due to systemic, structural and lax implementation of progressive polices. Some efforts have gone into the need and scope for an EOC, and although there is support from most political parties, the real test occurs when a bill is formally introduced in the Parliament to seek a majority vote. It is of utmost importance that research-led advocacy must operate so as to bring back the demand to establish an EOC which was first made by the Sachar Committee in 2006 and later agreed to in principle by the central government. In this regard a few essential issues are listed below which must be articulated and incorporated in the institutional framework of EOC India.

1. Institutional mechanism and structure to ensure functional independence of EOC.
2. A funding model which ensures independent functioning of the EOC. Funds appropriation through the Parliamentary process is an appropriate mechanism.
3. EOC's functions to be invested with power to adjudicate, issue 'right-to-sue' rulings and also take up individual cases that would set the course of future equal opportunity framework.
4. EOC decisions to become binding on the central and state governments when one of the parties is a depart-

ment or an agent of the respective governments.

5. EOC to develop protocols and motivate private sector to accept the concept of equal opportunity and incorporate it along with corporate social responsibility.
6. EOC to function as the institutional frame that assesses diversity in public employment, public programs, higher level education, institutional credit, access to markets and welfare programs.
7. Policies such as 'public sector equality duty' to be implemented and 'measurement frameworks and protocols' to be developed for regular assessment, monitoring and evaluation.

EOC essentially intends to support and enhance the performance of governments through research, analysis and policy strictures on public system, private markets and civil society. There is need to develop and foster a culture of 'retrospective analysis'. Further, it should give access to individuals and groups of people—what can be described as 'class action'—when they have a basis to seek relief on situations of discrimination and exclusion. In this regard it is useful if functions of international EOCs are reviewed to identify their concepts and best practices.

USA is one the few democratic countries in the world which has a functional equal (employment) opportunity office (EEOC) based on the principle of 'civil liberties' and equality of access to opportunities to minorities. Similarly, UK is a pioneer in establishing an EOC which was subsequently transformed to 'equality and human rights commission (EHRC)'. An understanding of the structure and functional mechanisms of these international institutions will help design a durable EOC in India. Besides, the views and level of satisfaction of government—both polity and bureaucracy—and affected people in the form of documenting the best practices will go a long way in supporting the establishment of an EOC in India. EEOC of the USA and EHRC of the UK are reviewed in the following sections.

Democratic Features Differ to Suit Local Situations

There are a few differences between India on the one hand and the UK and USA on the other in terms of the type, the extent and the scope of diversity.

In many respects diversity in the US and UK is the result of careful opening up of the international borders through selective migration programs. On the other hand, the diversity in India is innate and is the result of a long history. In the case of US and UK the variety and number of diversity categories are large, well identified and classified. In India although the variety is large and somewhat classified, these are not clearly identified. Identification in contemporary India is based on bureaucratic decisions that are often cause of favoritism leading to bias. In US and UK the countries of origin and ethnicity are well known. But in India broad caste groups have been created in terms of SCs/STs, and OBCs and thus the minority identity has been established.

In the UK, EHRC (earlier EOC) has been moved from the administrative control of one ministry/secretary to another. It is due to reorganization of the ministerial positions tagged on with certain personalities, always headed by a woman (mostly the same person) as the secretary (equivalent to a minister in India). There is also the influence of

EU's human rights mandate, although UK is not part of the financial union. In matters of EHRC EU is the office of appeals recognized by the sovereign UK government as well.

UK's volatility in terms of the ministerial control is specific to that country. There is also an effort to downsize the staff as a result of austerity measures. These events do not undermine the institution itself and make it redundant. In the case of UK the merging of EOC with HRC appears a logical progression. Thus there is scope, for example, in India to create a new 'Ministry of Equal Opportunity' by amalgamating MMA, NHRC, NCM, the national commission for backward classes and the welfare ministry. This will, however, need political will and desire to reduce budgetary costs through rationalizing and redefining of the objectives, setting of appropriate targets, accesses and appropriate budgetary allocations and both political and bureaucratic power.

In the case of USA, the school level diversity program is a well thought out strategy to integrate people of different social, cultural and economic backgrounds. The affirmative action policies in fact encourage the minorities and those who are numerically less in number to join the mainstream such as colleges and universities and even public employment as a matter of well thought-out government policy at different levels.

Equal Employment Opportunity Commission (EEOC) of the United States of America

The American Equal Employment Opportunity Commission (EEOC) is about sixty years old. Besides the federal EEOC with its many offices across the US, many states have established their own EEOCs. The concept of equal opportunity is now so popular that practically all departments of the governments, all the universities, both private and public, and private corporate sector maintain an office of EEOC. In fact even at the level of the county (equivalent to a district in India) there are strong diversity programs in school and college admissions. Often the country not only exempts a minority student (defined in a number of ways) from paying fees, but also offers scholarships and other motivational incentives to ensure the students' continued enrolment. Further, in each school at all levels, one can find real time information, data and analysis of their respective diversity programs, including the linkage between the diversity of the students matched with the diversity of the households and population residing in the geographic confines of school-districts and counties.

Origin of Equal Opportunity Laws in the USA

The origin of the American Civil Rights Movement can be traced back to 1948 when President Truman signed Executive Order 9981 which states, "It is hereby declared to be the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion, or national origin". This was followed by the Supreme Court rules on the landmark *Brown v. Board of Education of Topeka, Kansas* case in 1954 unanimously agreeing that segregation in public schools is unconstitutional. The ruling paved the way for large-scale desegregation. The decision overturned the 1896 *Plessy v. Ferguson* ruling that sanctioned "separate but equal" segregation of the races, ruling that "separate educational facilities are inherently unequal."

Sooner in 1957 Martin Luther King, along with Charles K. Steele and Fred L. Shuttlesworth, established the Southern Christian Leadership Conference (SCLC), which became a major force in organizing the civil rights movement and based its principles on non-violence and civil disobedience. According to King, it was essential that the civil rights movement did not sink to the level of the racists

and hate-mongers who oppose them. "We must forever conduct our struggle on the high plane of dignity and discipline", he urged.

Over the spring and summer of 1961, student volunteers began taking bus trips through the Southern parts of the USA to test out new laws that prohibit segregation in inter-state travel facilities, which included bus and railway stations. Several of the groups known as the 'freedom riders' were attacked by angry mobs along the way. The program, sponsored by the Congress of Racial Equality (CORE) and the Student Non-violent Coordinating Committee (SNCC), with over 1,000 volunteers including both black and white. Later, James Meredith became the first black student to enroll at the University of Mississippi. Violence and riots surrounding the incident caused President Kennedy to send 5,000 federal troops to the university campus. Soon after the assassination of President Kennedy, the new President Johnson signed the Civil Rights Act of 1964. The most sweeping civil rights legislation since Reconstruction, the Civil Rights Act prohibits discrimination of all kinds based on race, color, religion, or national origin. The law also provides the federal government with the powers to enforce desegregation.

Further developments took place around 1990s. Overriding President Reagan's veto, in 1988 the Congress passed the Civil Rights Restoration Act, which expands the reach of non-discrimination laws within private institutions receiving federal funds. Further, in 1991 after two years of extensive debates, vetoes and threatened vetoes, President Bush backtracked and signed the Civil Rights Act of 1991, strengthening the existing civil rights laws and providing for damages in cases of intentional employment discrimination.

In the most important and compelling affirmative action since the 1978 *Bakke* case, the Supreme Court in 2003 upheld (5-4) the University of Michigan Law School's policy, ruling that race can be one of many factors considered by colleges when selecting their students because it furthers 'a compelling interest in obtaining the educational benefits that flow from a diverse student body.'

It is just about 50 years since President Kennedy sent 5000 troops to ensure that the first black student enters the threshold of a university. Now there is a black President in USA (Obama), that too elected for the second time in a row.

How could this happen in a country which was far too divided on racial lines not far ago?

Matured democratic institutions such as the Congress, enabling legal provisions and implementation are the most important. Respect to rule of law generates an extraordinary amount of mutual trust and amity amongst the communities irrespective of diversity in terms of race, language and religion and so on.

The US Equal Employment Opportunity Commission (EEOC) is an independent federal law enforcement agency that enforces laws against workplace discrimination. EEOC investigates complaints of discrimination based on an individual's race, color, nationality, religion, sex, age, perceived intelligence, disability (such as alcoholism) and retaliation for reporting and /or opposing a discriminatory practice. It is empowered to file discrimination suits against employers on behalf of alleged victims and to adjudicate claims of discrimination brought against federal agencies.

The American Congress passed a landmark legislation in 1964 named the Civil Rights Act. This was intended to protect racial minorities, especially African-Americans and women and to end racial segregation in schools and workplaces. Title VII under this Act extended protection to employees against discrimination on the bases of race, color, religion, sex and nationality. In essence, Title VII prevents employers from making decisions related to employment based on the traits noted above. Partial or whole exceptions have been granted to employers of four types under this Act, such as religious groups, native American tribes (federally recognized only), bona fide non-profit private membership organizations and Federal Government.

A set of laws are implemented through EEOC in the USA. Primarily several of types of discrimination are covered through codification of laws, regulations and policy guidance which are: Age, Disability, Equal Pay/Compensation, Genetic Information, National Origin, Pregnancy, Race/Color, Religion, Retaliation, Sex and Sexual Harassment. EEOC's mission is to promote equality of opportunity in the workplace and enforce federal laws prohibiting discrimination in employment. Its regulatory program supports effective enforcement of six employment non-discrimination laws:

EEOC and Religious and National Origin Discrimination

In the aftermath of the September 11, 2001 terrorist attacks, the US EEOC determined that special measures were needed to combat a backlash of employment discrimination against those perceived to be Muslim or Arab. Unfortunately, more than ten years later, this type of discrimination still continues. In response, EEOC has remained vigilant and worked both to prevent and remedy national origin and religious discrimination involving the Muslim, Sikh, Arab, Middle Eastern and South Asian communities.

In the initial months after 9/11, EEOC saw a 250 percent increase in the number of religion-based discrimination charges involving Muslims. Our initial efforts included creation of a specific code to track charges of discrimination directly related to 9/11. Between 9/11/2001 and 3/11/2012, 1,040 charges were filed related to attacks by an individual who is, or is perceived to be, Muslim, Sikh, Arab, Middle Eastern or South Asian.

While the number of charges directly related to 9/11 has dwindled, the Commission continues to see an increase in charges involving religious discrimination against Muslims and alleging national origin discrimination against Muslims or those with a Middle Eastern background.

The Commission has filed nearly 90 lawsuits alleging religious and national origin discrimination involving Muslim, Sikh, Arab, Middle Eastern and South Asian communities, many of which involved harassment. The alleged harassment included taunts such as "Saddam Hussein", "camel eater", and "terrorist".

In addition, EEOC has intensified its outreach, created fact sheets on immigrant employee rights (<http://www.eeoc.gov/eeoc/publications/immigrants-facts.cfm>) and discrimination



based on religion, ethnicity or country of origin (http://www.eeoc.gov/laws/types/fs-relig_ethnic.cfm). EEOC has also provided information to employers concerning their responsibilities in employing Muslim, Arab, South Asian and Sikh workers (<http://www.eeoc.gov/eeoc/publications/backlash-employer.cfm>).

We will continue our efforts to eradicate discrimination in the workplace by enforcing federal anti-discrimination laws and educating employers and employees about their rights and responsibilities.

All the mandates for an EEOC were enshrined in Title VII of the Civil Rights Act of 1964, and were established as an independent law enforcement agency on July 2, 1965. The Chair is responsible for administration and implementation of policy for and financial management and organizational development of the Commission. The President also appoints a General Counsel to support the Commission and provide direction, coordination, and supervision to EEOC's litigation program. The annual budget for EEOC is approved by the House Appropriations Committee and the Senate Appropriations. Once the budget is voted in the House and Senate, both chambers' bills are reconciled.

Recent Appointments to the USEEOC

It is important to note that President of the USA directly appoints the Chair and commissioners of EEOC.

Stuart J. Ishimaru was appointed a Commissioner who was confirmed by the Senate in 2003 and 2006. He served as Acting Chair of the Commission from January 20, 2009 to December 22, 2010, when the U.S. Senate confirmed Jacqueline Berrien to be the chairperson. She had been nominated as chairperson by President Barack Obama in July 2009. In September 2009, Obama chose Chai Feldblum to fill another vacant seat. Feldblum was reported by Fox News to be controversial among conservatives and certain religious groups because of her prior activism on gay rights.

On March 27, 2010, President Obama made recess appointments of three Commission posts: Berrien, Feldblum and Victoria Lipnic. With these appointments, the Commission had its full complement of five commissioners: Ishimaru, Berrien, Feldblum, Lipnic and Constance Barker, who was confirmed by the Senate in 2008 to be a Commissioner. The President also made a recess appointment of P. David Lopez to be EEOC's General Counsel.[13] On December 22, 2010, the Senate gave full confirmation to

Berrien, Feldblum, Lipnic and Lopez.

Currently EEOC has approximately 2,500 personnel, located in 54 offices across the US to carry out the agency's charge and is headquartered in Washington, D.C. It is the Congress which has entrusted the Commission with the responsibility of enforcing the employment non-discrimination laws. These laws reflect Congress' vision of justice in employment in the workplaces all over USA. Over the years EEOC has become responsible for enforcing and administering the following laws:

- Title VII of the Civil Rights Act of 1964, as amended (prohibits discrimination based on race, color, creed, national origin, or sex);
- The Age Discrimination in Employment Act of 1967 (ADEA) (prohibits discrimination based on age);
- The Americans with Disabilities Act (ADA) (prohibits discrimination based on physical or mental disability);
- The Equal Pay Act of 1963 (EPA) (prohibits paying one gender less than the other for work requiring equal skill, effort, and responsibility);
- Sections 501 and 505 of the Rehabilitation Act, as amended; and
- Title II of the Genetic Information Non-discrimination Act.

EEOC's institutional setup exists at the level of the Federal government, respective state governments and private corporates, each of them independent of each other. However, any serious unresolved issues from states and corporates can be referred to the federal EEOC.

EEOC presides over scheduled meetings to examine the following:

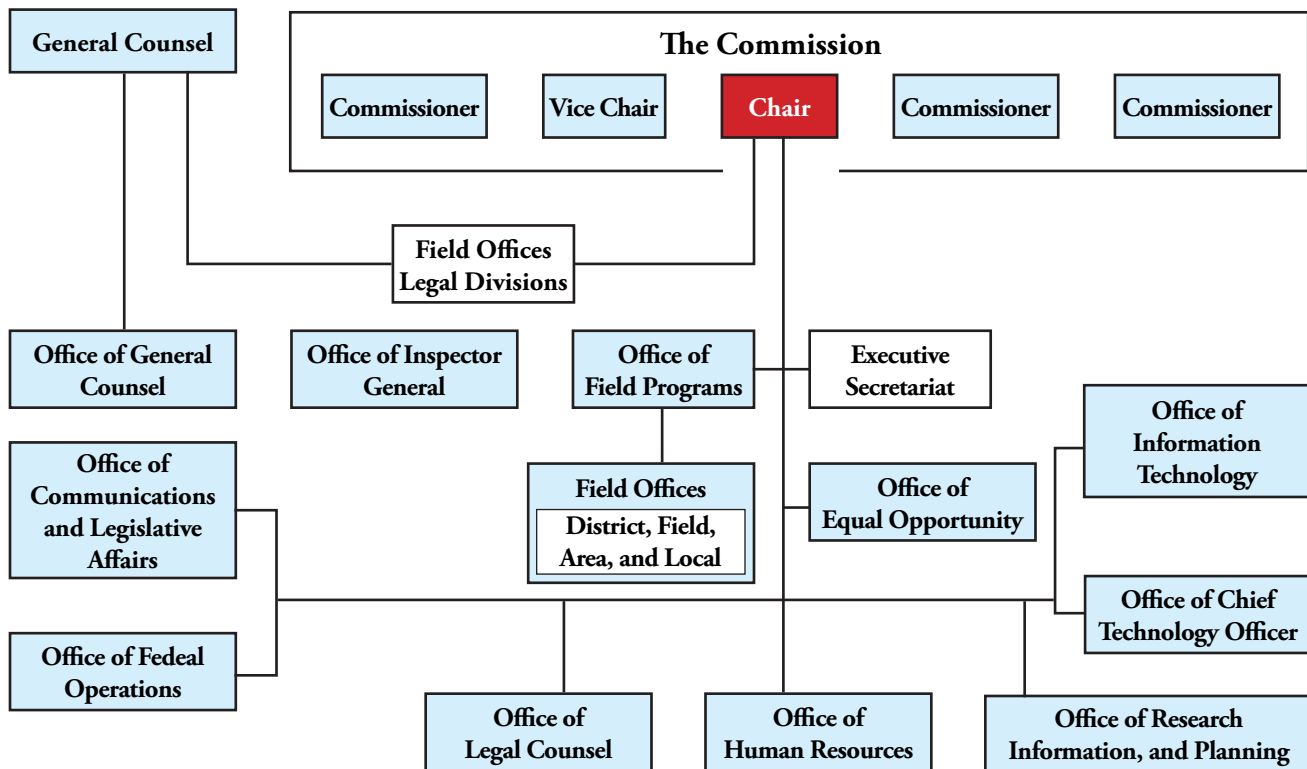
- Arrest and conviction records as a hiring barrier
- Treatment of unemployed job seekers
- Human trafficking and forced labor
- Impact of economy on older workers
- Age discrimination in the 21st century – Barriers to the employment of older workers
- Issues facing specific people such as Hispanics and Asian migrants.

Organization and Administration of EEOC

The administrative functions as well as financial and overall development of the Commission rest in the hands of the Chair. The Vice-Chair and the Commissioners participate equally in the development and approval of Commission

policies, issue charges of discrimination where appropriate, and authorize the filing of suits. In addition to the Commissioners, the President appoints a General Counsel to support the Commission and provide direction, coordination, and supervision to the EEOC's litigation program. (<http://www.eeoc.gov/eeoc/commission.cfm>).

EEOC Organization



Functions of EEOC

EEOC has two types of powers: (1) investigation and (2) conciliation. Under these powers a number of services are provided such as Charge Receipt, enforcement, mediation, legal functions, federal services and outreach prevention.

The following are the 'Leading Diversity Management Practices' identified by experts which can become a model for devising EOC in India.

- (1) Commitment to diversity as demonstrated and communicated by an organization's top leadership;
- (2) Inclusion of diversity management in an organization's strategic plan;
- (3) Diversity linked to performance, making case for a more diverse and inclusive work environment to help improve productivity and individual and organizational performance;

- (4) Measurement of the impact of various aspects of a diversity program;
- (5) Management accountability for the progress of diversity initiatives;
- (6) Succession planning;
- (7) Recruitment;
- (8) Employee involvement in an organization's diversity management; and
- (9) Training for management and staff on diversity management.

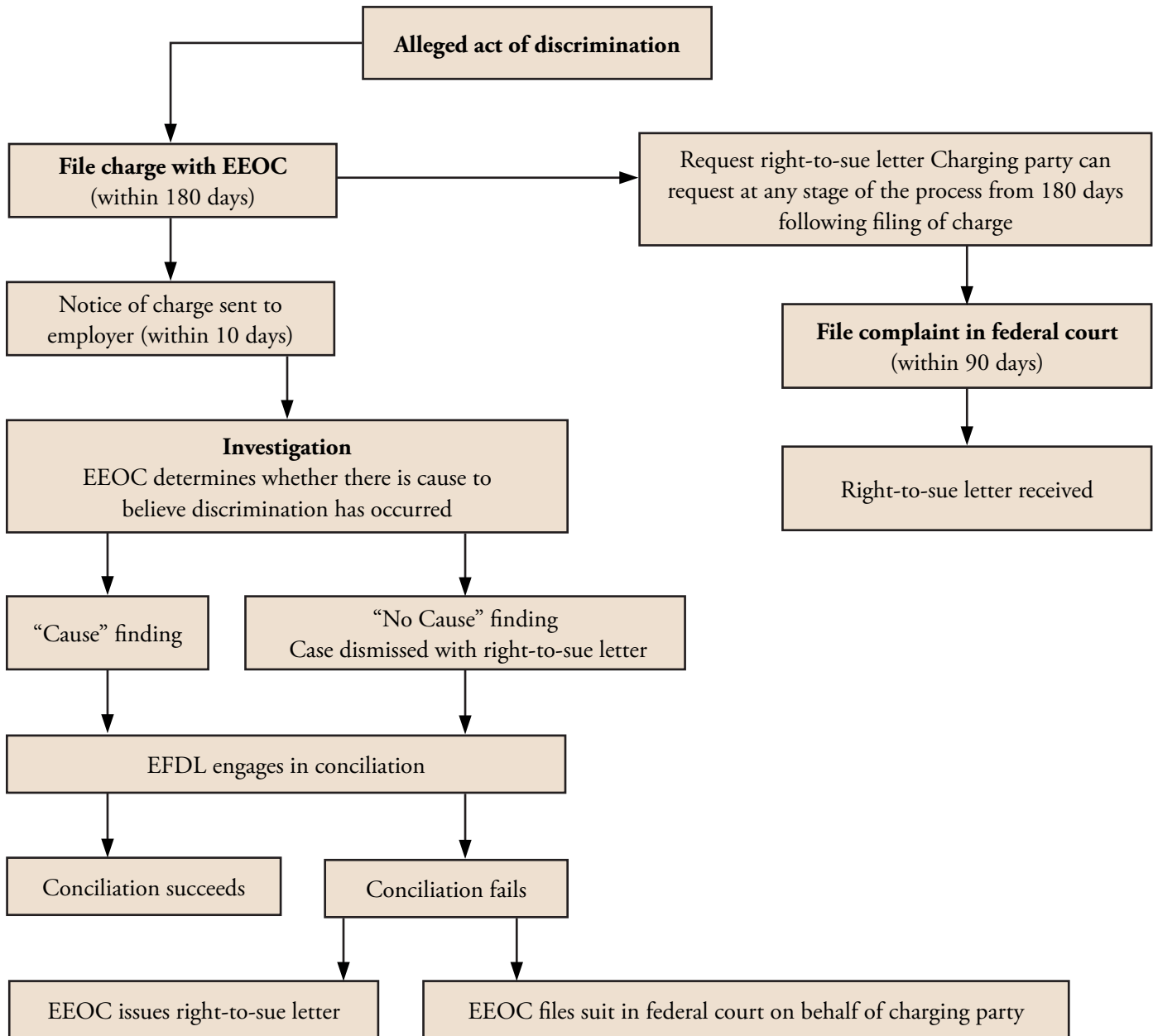
Experts generally agree that some combination of these identified practices should be considered when an organization develops and implements diversity management (<http://www.gao.gov/assets/250/245069.pdf>).

Procedure

If EEOC concludes that the above cited rights have been violated, it may issue a Letter of Determination that finds ‘reasonable cause’ that the employer has violated one of the laws. The agencies try to resolve the complaint informally

with the employer, so that no lawsuit is required. If informal resolution is not achieved, the EEOC will decide on issuing a right-to-sue letter, or retaining it and filing a lawsuit against the employer.

EEOC Procedures in Cases Involving Private Sector



Private sector cases: The procedures followed by EEOC in private sector cases are presented in the above figure. In jurisdictions where there are state or local laws prohibiting employment discrimination the time period is set to 300 days. The above figure has been arrived at based on an EEOC chart that describes the procedures for processing charges brought under Title VII of the Civil Right Act. These procedures generally apply to the processing of charges brought under the other statutes for which EEOC has responsibility.

The future plan: To accomplish this mission and achieve this vision in the 21st century, the EEOC is committed to pursuing the following objectives and outcome goals:

- *Combat employment discrimination through strategic law enforcement, with the outcome goals of:* (1) have a broad impact on reducing employment discrimination at the national and local levels; and (2) remedy discriminatory practices and secure meaningful relief for victims of discrimination.
- *Prevent employment discrimination through education and outreach, with the outcome goals of:* (1) members of the public understand and know how to exercise their right to employment free of discrimination; and (2) employers, unions and employment agencies (covered entities) better address and resolve EEO issues, thereby creating more inclusive workplaces.
- *Deliver excellent and consistent service through a skilled and diverse workforce and effective systems, with the outcome goal that all interactions with the public are timely, of high quality, and informative.*

Retrospective Review of Regulations

EEOC fosters a ‘culture of retrospective analysis’ so as to improve the public access and participation. EEOC is committed to dialogue with its stakeholders about its Retrospective Review Plan. In March 2011, the agency solicited and received public comments on how to structure this plan and which regulations to review first. There were a total of 53 comments from 38 parties, some of whom filed multiple comments. Based on these responses a team was formulated with total independence who would undertake the ‘retrospective review’. In the past EEOC had conducted retrospective analyses of regulations on several bases, as listed below.

Legal: When the Congress and President enact new federal EEO laws, or when the Supreme Court issues a decision on the laws enforced by the Commission, EEOC reviews existing regulations to determine whether any regulatory changes need to be made. For example, the Commission’s rule making ADEA’s disparate impact burden of proof and “reasonable factors other than age” defense, which is now in the final rule stage, involves updating the EEOC’s ADEA regulations in the light of two Supreme Court decisions.

Congressional and Executive Branch Input: Both Congressional input and comments from other federal agencies

are considered by EEOC and, as appropriate, may prompt review of an existing regulation.

Clarity and Interaction with Other Laws: The EEOC maximizes clarity of language and coordination with other laws, considering (a) whether significant regulations are clear to those with rights and responsibilities under the law, and (b) whether the regulations take into account the existence of other laws enacted after they went into effect and how they interact with those laws.

Stakeholder Input: Both employees and employers, including organizations representing their respective interests, provide their inputs to the agency through meetings, letters, telephone calls, and questions at conferences. In addition, EEOC Chair Berrien has instituted a process for stakeholder comment following Commission meetings. EEOC staff considers all inputs and responds as appropriate depending on the nature of the request.

A Few Expert Views

In the US each university has an equal opportunity officer (EEO), and all departments are watchful on the issue of diversity. There is a need to document and understand as to what kind of policies work and many do automatically. Time is a crucial factor.

The Wal-Mart gender discrimination case was a high profile one. There is an ombudsman for each office with legal powers.

EEOC arose out of the Civil Right Act and applies both to government and private jobs. Although open to all citizens of the nation, more case referrals relate to the minority as there is more discrimination against them in the society.

Courts do intervene and are supportive. There is the recent case of a person from the Middle East, who worked in a hotel. It so happened that a delegation from Israel was visiting and stayed at this hotel. The employee, who belonged to the Middle East, was not assigned to the services of the members of this team. The fact is that the state department was also involved, whose responsibility it was to see that the delegation was protected. When approached by this employee, EEOC issued a ‘right-to-sue letter’. That person could not have gone to court directly; it was possible only through EEOC. Generally the investigation process with EEOC happens faster. The EEOC could itself have pressed as it was easier to prove as the factual evidence was clear and it would have a broader impact. It was, therefore, considered

that the case was to be handled by the courts and, therefore, EEOC supported with the 'right-to-sue' and also financially.

US office has to facilitate even in the case of employment generated by the state government. The states are empowered to enforce the federal laws as well.

Private employees go through a federal equal opportunity agency. The investigator can hold a hearing and can bring both the parties together to agree to a compromise.

Need for Further Research

How are the federal laws implemented at state level? What are the mechanisms used? Was there a choice to the states to follow the federal law or not? Was it mandatory? How did the different parties respond to this law? What was the

evolutionary process?

Currently, what is the link between the state EEOC and the federal EEOC? Is the federal EEOC an appellate authority? That is, if someone is unhappy with the decision at the state EEOC, can they approach Federal EEOC?

When and how this law was made mandatory was based on the choice of the private sector. In what way is the private sector implementation different from the public (federal and state)? Again, if there is a problem in the private decision where can the appeal be made and what is the process?

Above all, what are the time and cost constraints? Does the government bear the cost of the process? For example, if someone is affected adversely and is out of job until EEOC takes the decision, what kind of public or monetary support is available other than the normal social security?

Equality and Human Rights Commission (EHRC) of the United Kingdom

The UK is one of the few countries which sought institutional mechanisms, next only to the USA, to promote inclusive society by establishing 'the commission of racial equality', 'the equal opportunity commission' and 'the disability rights commission'. In 2006, all the three institutions were amalgamated to form the Equality and Human Rights Commission (EHRC) with enhanced objectives to 'prohibit (racial) discrimination', 'ensure equality of opportunity', 'eliminate discrimination based on disability', and 'to promoting good relations'.

The study of UK's institutional structure and financial model suggests that the concept of equal opportunity is deep rooted and inseparable from the canons of democracy. Further, when it comes to the understanding of the concepts as well as implementative independence of the EHRC, the UK has agreed to draw upon the 'European Commission' as well as the 'United Nations', to the extent that the right to hear appeals against decisions of EHRC now rests with the European Council of Human Rights located in Strasbourg, Germany.

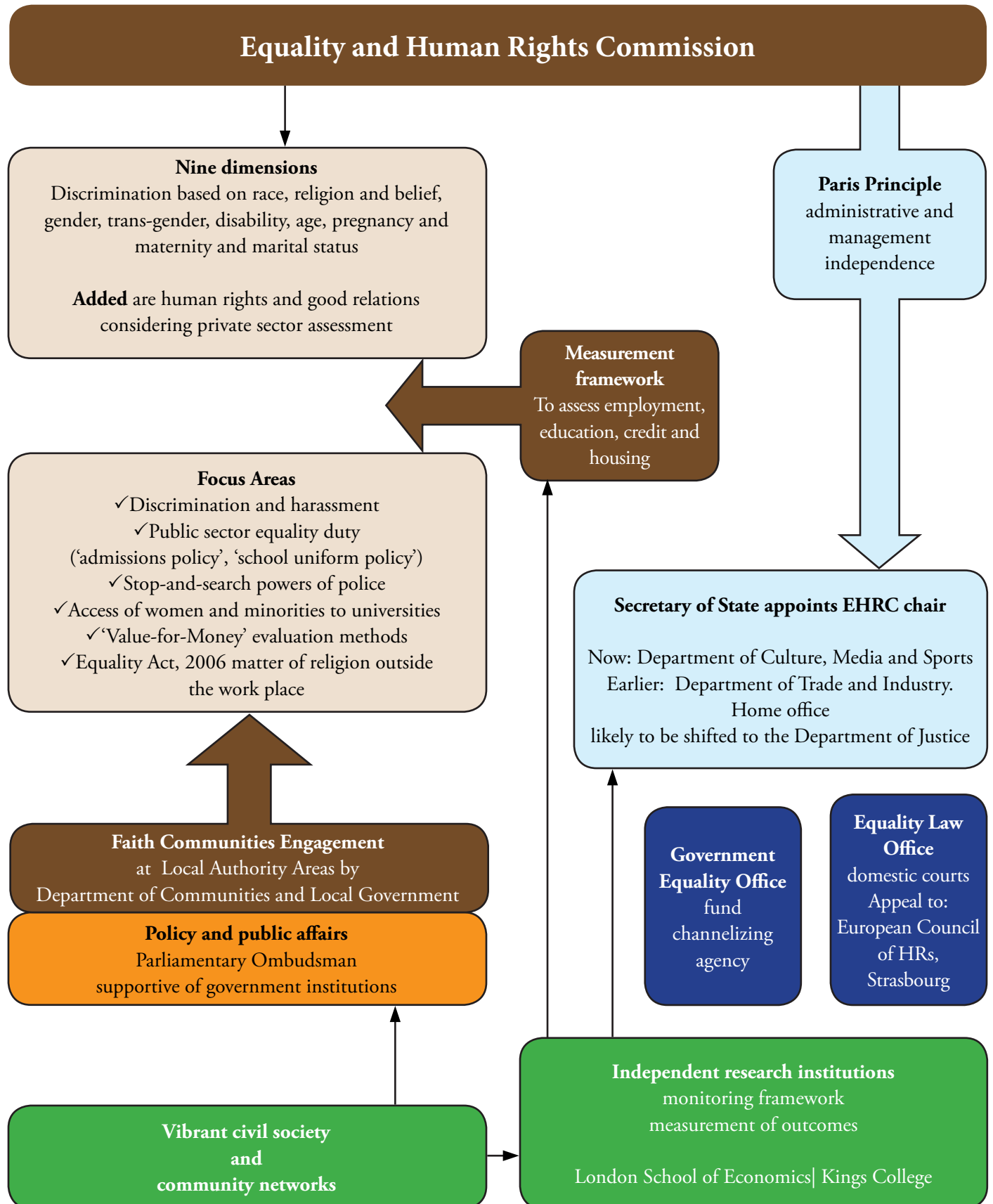
UK's EHRC is also strongly supported by purely public institutions such as the Government Equality Office, the Department of Communities and Local Government, and the Department of Policies and Public Affairs (Office of the Ombudsman), and so on. The EHRC seeks research and evaluation support from no less than the London

School of Economics and King's College. There is strong and vibrant civil society which operates both domestic and international level programs in the areas of equal opportunity and human rights.

Government Equality Office (GEO)

The Government Equality Office (GEO) is the nodal agency to channelize finance to EHRC in UK. However, GEO itself has shifted its bureaucratic linkages from Department of Trade and Industry to UK Home Office and now to Department of Culture, Media and Sports. GEO, and through it EHRC, is likely to be shifted soon to the jurisdiction of the Department of Justice. Such a merry-go-round has occurred due to the key minister-in-charge, who happens to be a woman, has been shifted from one department/ministry to the other and she has continued to oversee EHRC as well. One can, therefore, see that the whole ideology of the equality of opportunity and human rights is being spearheaded by select individuals and through them the parliamentary system has been positively responding. In the same manner, even the identity of EHRC as an institution empowering people is by-and-large identified through its chairperson among the common public.

EHRC has powers to investigate to support claimants / individuals facing discrimination and harassment. One of the new objectives is to ensure 'public sector equality', i.e. within



the government system and bureaucracy and foster good relations with no discrimination and harassment. Another milestone has been that EHRC contested the 'stop-and-search' powers of the police in an effort to earn the respect it deserves so as to protect the rights and lives of the people at large. Another key area in which EHRC has come out strong is to ensure women's access to universities and this mandate is directly covered under GEO.

The most important interface of EHRC as an independent institution emerged from the fact that often the 'case-in-point' will be against the government or a public institution. This is an evidence of the independence of the commission from government control. However, there are issues of finance and funds flow which occurs through GEO to EHRC. Often it can interfere in the independent choice of experts and the cost at which such expert advice or enquiry can be assigned to.

There has been a difference of opinion regarding EHRC helpline which was managed by EHRC itself until recently. But now the government has taken control of it. There is also the staff payment issue between GEO and EHRC which has often generated differences of opinion. The government now use what is known as 'value-for-money' evaluation methods to assess as to how much to spend and how to measure the benefits. EHRC is subject to similar norms of funds management as any other government department and demand transparency; but some argue that given the unique nature of the mandate of EHRC there is need for more financial independence.

GEO identified the following as the role of EHRC:

- Raise awareness of the law among the people at large
- Promote human rights
- Enforce the law. Which law is a matter of strategic choice and case specific? Indeed there is a certain degree of selectivity. For example, if someone is discriminated, EHRC gives legal aid, helps in approaching the employment tribunals and appeals tribunals and it can climb up to the ladder of the judicial system in the UK.

In the recent 'Sharon Coleman case', the petitioner had a disabled child and requested flexible work, but was refused by the employer. In another situation, however, an employee with children was allowed flexible hours so as to enable him to attend to the children's needs. This was considered discriminatory by EHRC. It took this case up and ensured that the mother of the disabled child got flexible working hours.

EHRC, when takes up a case for processing, funds the claimant. It funds the whole case, and costs paid, including legal representation. Compensation for lost wages is also considered; even compensation to emotional distress caused can be claimed. EHRC builds the case and courts take the decision which is binding. Regular unemployment benefit may also be given by the normal sources to claimants during the period of the case.

Legal Framework for EHRD: A certain amount of 'noise and decibel level' often becomes necessary to secure the parliamentary support which is essential in articulating this law and its implementation. However, UK's EHRC initially goes through the domestic courts. Thereafter it appeals to the European Council of Human Rights located in Strasbourg, Germany. The European Council decisions are binding. A good example is the 'sexual orientation issue' that evolved partly through European law and partly from UK for protection of differently sexual oriented in UK.

Equality Act 2010 is the culmination of 40 years of different laws of UK and Europe and consolidates all the primary and secondary legislations. The Labor government reviewed all the existing laws and prepared a white paper. The general public also expressed its opinion and the government responded. However, the political drive was the key, the Labor government was keen and the Liberal Democrats were fine with it, but the Conservative opposition had some reservations. Over a period of time, broadly all were in favor of pulling many exclusive laws over to one place in an integrated draft of the Equality Act 2010. The time line was also influenced by the European Council. UK 2003 Legislation in Employment was in compliance with the European directives.

Equality Act 2006 was extended to include matter of religion outside the work place. Incitement to Racial and Religious Hatred Act 2006 is another piece of important law. A break into the equality legislation has been an 'Order of the Parliament' so as to make 'caste' equivalent to 'race' and now is recognized in the UK law. Section 215 can be applied to the issue of discrimination based on castes such as in case of the untouchables (of India). Equality Act 2010, Section 9 also provides for considering caste discrimination equivalent to an act of racial discrimination.

There has been a case of the Christen lobby. Certain employers objected to their employees wearing the Cross. Four such cases were referred to the European court. The domestic courts, acting under the existing equality laws,

especially Article 9, held that the employers could discipline the employees and the UK courts upheld the employers' point of view. But the Appeal court in the European courts of human rights over-turned these decisions favoring the employees.

The EHRC Act extends its coverage to both private and public employment. Further, the public functions are covered for allocation of housing and housing policy and, therefore, under the EHRC Act as well.

However, civil and criminal laws are differently processed in UK. The criminal laws are home-bound and are resolved through domestic courts. The civil cases can go to European convention and, thereafter, the European directives are binding. When a case goes to the European courts, essentially that case is against UK government. The interaction of the human right is between individual and the state and, therefore, any case referred to European Council becomes a case against the UK government.

There was a catastrophic failure of the State after the Second World War in the case of human rights. Yet it may be noted that the UN conventions on human rights are not binding on states and UN has no mechanism to enforce its decisions. Compared to this, the European Council has been a strategic champion of human rights.

The legal group at EHRC attributed the origin and history of race relation law in UK to the experience of people during 1965. One could 'advertise discrimination' in the past, but it was outlawed in 1965. By 1976, the law on equality got better. Some of it was due to the impact of the European legislation. Employments in public places such as restaurants were done from among the new immigrants from Carrabin. They were subjected to high levels of abuse and discrimination. The human rights lawyers supported the immigrant's cause and felt the need for stronger anti-discrimination law. By 1976 a stronger piece of legislation was put in place. The 1970s saw the passing of the Sex Discrimination Act and Race Relation Act. They both gave the individuals the right to bring cases in front of tribunals and power to adjudication was put in place. They also had powers of financial allocations.

Public Sector Equality Duty: Because of the sheer increase in the number of litigations during 1975–2000, it had become necessary to have many improvements in the legislation as well as institutional reforms. In this regard it is worth highlighting the Public Sector Equality Duty incorporated

in the Equality Act 2010. This law now holds people, especially the bureaucracy, accountable. For example, the department of education, down to the village will have a legal responsibility; and the impact has been to eliminate exclusion from the schooling system in the UK. There were 'admissions policy', 'school uniform policy' and many more such policies which were exclusionary; and also that the Roma, Gypsy and indigenous nomadic groups were to be made inclusive.

The UK Census during the last two rounds has collected information on religious affiliation of the citizens. This has helped bring in equality in the public sector. The local authorities also pick up from the equality law and practice. In the meantime the courts have also started accepting and understanding these concepts based on religion much better. However, since people were feeling it expensive to go to courts, the employment tribunals have become specialists in equality act in the recent past.

Mediation and reconciliation process is also a mechanism to circumvent the expensive courts and reduce cost and time loss. Therefore, where a number of institutional needs and reforms were evolving and one had to look for different ways to deliver justice, the equality institution was handy and it got its place in the maize of institutional setups delivering justice in the UK. There are a lot of processes that can be expedited through EHRC. However, EHRC tends to do more strategic cases where law is ambiguous. If the situation is repetitive, there can be an enquiry to identify the root cause and address it accordingly. The ultimate objective of EHRC is not to address each and every individual case but rather to generate a culture of equality and work toward equal opportunity in the administrative system across and up to the local level. One of the main purposes of EHRC now is to serve the purpose of abating problems to emerge in the first place.

There is an amalgamation of equality law and the human rights issues. They are considered together, not separately. The private sector is also regulated by the anti-discrimination law. EHRC is a political institution and, therefore, it is evolving over time. Mainstreaming and dedicated centers are needed. What can be a better institutional setup is being still evaluated. Impact at the local level is most important; one has to make sure that any such institution has an impact at the local level. One example from the UK has been the formation of '(race) equality councils' which could be the format for the newly developing institutional structures. There are also the 'commu-

nity relations boards' which help in extending the EHRC mission to the masses.

Equality and Human Rights Commission: A meeting with the officials of EHRC provided additional leads about the scope and expanse of the objectives. Accordingly, now EHRC covers a total of nine dimensions including discrimination based on race, religion and belief, gender, trans-gender, disability, age, pregnancy and maternity, and marital status. Added to these are human rights and good relations. The good relations mandate mostly applies to public sector and this is now in the process of being removed from EHRC.

Counter terrorism issues: There is also a proposal to bring in the Counter Terrorism issues into the ambit of EHRC. In this connection the 'stop-and-search' (raids) section of the counter terrorism act give powers to police and border agencies, and they are being applied disproportionately against the Muslim community. EHRC was successful in reducing the pre-charge police detention to 14 days from a high of 28 days. However, for all other crimes including the heinous ones the police detention period is only four days. EHRC is still working towards reducing the stop-and-search linked number of detention period to four days.

With respect to the *format of EOC*, it may be noted that the European Union mandate provides for two kinds of equality commissions in Europe—one, the Ombudsman type and the other Promotional type. UK's EHRC is of the promotional type and is subject to periodic review, and right now a review is going on.

There are some efforts to work towards '*private sector assessment*' of the EHRC issues. This can be done by focusing on industry and trade where majority of the labor force is likely to be migrants, minorities and the deprived groups, such as in the meat and poultry industry. This industry is under scrutiny because this sector is entirely manned by migrant labor. Similarly, the super market and supply chain is also under focus. They are strong lobbyists and often they are members of the industry bodies. Many super market reforms led to making the 'suppliers' change their work place practices. One example from which a lot of lessons were learnt is the 'Fair Work Ombudsman' in Australia.

The issue of EHRC's *functional independence* was emphasized and it is entirely linked to the source of money. It is the secretary of state (equivalent to a cabinet minister in India), who appoints the EHRC commissioners, chairperson and members. One can work towards a situation where

the Committee of Parliament, instead, can choose the commissioners and also provide funds. There is a need to follow the 'Paris Principles' which deals with the issue of administrative and financial independence of institutions such as EHRC. At the moment the 'home office' ask value-for-money. This creates conflict-of-interest and institutional problems. Now there is a directive for the recruitments to be undertaken through internal resource such as the government department. Can reappoint a public functionary so that government avoids the redundancy pay for a while and so on.

Faith Communities Engagement: In the UK there are a number of areas where the Muslim population is about 5 per cent, yet in many 'local authority areas' their share can be as much as 50 per cent. The Department for Communities and Local Government (DCLG) is making efforts to integrate the Muslims into the mainstream. The local area integration policy has come a long way from the early situation of the 1960s, when there used to be advertisements such as "no Blacks, Asians and Dogs". A number of protests took place followed by several legislations, as responses to such social issues over time. Legislation, thus, has seen to be in response to social issues raised at times. The current government thinks differently. Where there are promotional policies for upward social mobility through various approaches rather than only legislation. There can also be positive discrimination policies, but the UK government is not yet engaging in this direction.

There are innovations, the 'apprentices' are new strategies for properly training the unemployed and underemployed for new types of jobs, not necessarily through university education process. 'City Gateways' is the nomenclature for such programs, especially focusing on women. There have been situations where the foreign sounding names were discriminated against. This has happened in the UK. There was also what is known as the zoning. The new mechanisms to address these issues, for example, are, not displaying the names of the candidates during the process of job seeking and interviews. The procedure being used is a type of 'blind review'.

There is also a 'quality strategy' to assess equal treatment and equal opportunity. For several decades these laws have been implemented. But still women are paid about 12 percent less and the Muslims are at the bottom of the economic ladder. It is not the introduction of more legislation, but effecting behavioral changes in the society that will bring change. However, the British Muslim community ap-

pears to be one of the most integrated, yet it remains at the fringes of the British economy.

UK is under a scheme of austerity, but actions under the following strategies are yielding cost-effective results.

Integration: There is strong realization that local communities need to integrate. There is focus on the Muslims in the recent past. One mechanism to achieve this aim is to organize programs to impart knowledge of English language.

Monarchy – A virtuous institutional support: A number of programs were organized in which the Muslim groups were made to interact with the Queen of England. This strategy has created large good will. One sure way to approach the Muslim community has been through the community leaders and, therefore, this strategy is creating good results.

Social mobility: Social mobility of clearly identified communities and groups has been undertaken.

Participation and empowerment: These were done at the local area employment offices, post offices, and so on.

Faith based interaction: Interfaith work on a path, a park or a community event. Diwali, for example, for healthy living. Mosques are used for food distribution among the deprived.

Government funds to the inter-faith network: Faith leaders' coming together is very important.

Public Sector Equality Duty: Their main aims are to eliminate discrimination, elimination of harassment and foster good relations. There may be some reports of the EHRC.

Policy and Public Affairs, Parliamentary and Health Service Ombudsman

The institution of Ombudsman was emerged in 1967 directly empowered by the parliamentary system. Complaints against the central government in health area are being focused. Most of the complaints are of the nature of maladministration, not necessarily relating to entitlements. In many cases the complainants have to be supported by a member of parliament.

Of over 1.4 million complaints against central government in a year, about 200,000 are in the area of health and only about 25,000 of such cases become eligible for enquiry. A lot of these may further be rejected. Full investigation

happens in only about 500 cases a year. This institution has semi-judicial role. It is a stand-alone independent institution with no formal link with any other department or institution. Although there was a case of memorandum of association between Ombudsman and EHRC, that has not taken effect yet. The disability-linked complaints, in particular, come to this office. Other regulators such as care quality commission, professional associations and many reforms are also in the offing. Scandals are common and, therefore, there is a strong push to harmonize the system.

EHRC was encouraged by the Ministry of Justice to establish a forum to share the best practice. The office of the parliamentary Ombudsman is a member of the forum. However, there is no specific reason to promote the human rights issues. One wonders how the issue of maladministration can be taken up as a human rights issue. This issue needs to be dealt with by the parliamentary Ombudsman. Public sector equality duty (PSED) is a function of the Ombudsman, but it waits for the individuals to file complaints. Such a situation should be created where some preventive measures are taken through this office and it should also try to address bigger and systemic issues.

So far as the financial allocation and associated independence is concerned, the office of the Ombudsman is not a 'non-departmental public body' but a parliamentary office. There is no sponsoring department and it is directly maintained by the parliamentary system. It operates through the Public Administration Select Committee. Therefore, it is one of the most independent bodies one can expect within UK's governance structure.

The ombudsman also undertakes a judicial review. For example, there is a case of a man with disability who did not get relief. So he resorted to arbitrating process. He failed to get relief from there too. His complaint was then referred to Ombudsman's office. But even before the case could be taken up by the Ombudsman, the claims were awarded to the disabled person for fear of a decision which would be binding. The Ombudsman's office is easily accessible, it is free and the procedures are fairly simple unlike in the court.

The Public Sector Equality Duty

<http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/Schedule-19>

The Public Sector Equality Duty (PSED) came into effect across Great Britain on April 5, 2011.

The PSED, at Section 149 of the Equality Act, requires public bodies to consider all individuals when carrying out their day-to-day work – in shaping policy, in delivering services and in relation to their own employees. It requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between different people when carrying out their activities.

PSED supports good decision making. It encourages public bodies to understand how different people will be affected by their activities, so that their policies and services are appropriate and accessible to all and meet different people's needs. By understanding the effect of their activities on different people, and the way inclusive public services support and open up people's opportunities, public bodies can be more efficient and effective. PSED, therefore, helps public bodies to deliver the government's overall objectives for public services.

PSED applies across Great Britain to the public bodies listed in Schedule 19 to the Act, and to any other organization when it carries out a public function. Schedule 19 includes a broad list of public bodies including, for example, central government departments, local authorities, the armed forces and key health, education, policing and transport bodies.

Specific duties: The Equality Act 2010 (Specific Duties) Regulations 2011 came into effect on September 10, 2011. The specific duties are to help public bodies perform the equality duty better. They do this by requiring public bodies to be transparent about how they are responding to the equality duty—requiring them to publish relevant and proportionate information showing compliance with the equality duty, and to set equality objectives. The government believes that public bodies should be accountable to their service users. Publishing information about decision-making and the equality data which underpins those decisions will open public bodies to informed public scrutiny. It will give public the information they need to challenge public bodies and hold them accountable for their performance on equality. Moreover, knowing that such information will be published will help to focus the minds of decision-makers on giving proper consideration to equality issues.

The Government Equalities Office has published two quick-start guides to help public bodies understand equality duty and specific duties. EHRC is the statutory body established to help eliminate discrimination and reduce inequality. The Commission has published new non-statutory guidelines on:

[The essential guide to the public sector Equality Duty](#)
[Meeting the Equality Duty in policy and decision-making](#)
[Engagement and the Equality Duty](#)
[Equality objectives and the Equality Duty](#)
[Equality information and the Equality Duty](#)

Vibrancy of Research and Civil Society Support

A number of academics, individual experts and civil society organizations support the functioning and utility of EHRC. One can clearly find considerable differences in the views and a fairly critical discourse while practically holding essential the institution of EHRC to ensure a just and more equal society in UK.

The drive behind UK's EHRC has emerged from the European Union, and most of the European nations are in the process of establishing EHRCs. It is an EU directive, yet it is flexible. EQUINA at Brussels is the representative body of all equality bodies in the Europe. The United Nation's 'Universal periodic (equality) review' is a requirement as well. The UN mandate is responsible for pushing for equality origin for Europe as a whole and for expanded equality laws of the European Union.

However, there are a number of conceptual differences between the UN and European understanding. For example, in case of gender equality, the Europeans consider both women and men, whereas for the UN it is only about women. The distinction is between the functionality of law and the legal mandate. For example, the Netherlands needs to implement international laws to promote domestic laws and human rights. Further, the equality bodies are not seen to have the level of independence which the EHRC has. Yet equality laws are much more innovative but not yet independently implemented.

Take the case of the stop-and-search (equivalent to the illegal arrests issue in India). The human rights institutions should have picked up such cases and the principle

of equality could have been enforced. Note that this idea is slightly different from that of equal opportunity. The equality office idea is more to do with the enforcement of 'public sector equality duty' under the EHRC Act. This is just not the role of an Ombudsman.

Consider another case, of Steven Lawrence and the McFalcon Commission of the 1990s. The discrimination law was not sufficient to deal with this case. Ultimately it was the 'self-reflective' need of equality in the society which became the core of the case.

Socio-Economic Inequality: Beyond identity based discrimination there is 'socio-economic inequality'. The Equality Law 2010 address this dimension better. The very first clause of the Act is on socio-economic inequality, by now well-conceived and articulated. Yet this part of the Act is not yet fully implemented. The 'commencement orders' of the parliament are needed but not yet available to deal with such situations in the UK.

Take for example the Child Poverty Act. Its focus falls beyond EHRC because it can have relevance to many other laws beyond its domain such as taxation, resource generation and resource allocation, and so on. UK thought to move towards the socio-economic deprivation as distinct from the identity linked individual discrimination. Evidence-based socio-economic issues need to be addressed. It is in this context that the London School of Economics equality measurement framework has been put in place. Also there is a report on 'How fair is Britain' 2010 report of the EHRC.

There is also a mandate of the *public sector equality impact assessment* but this is not yet taken up in the UK, for which a lot of political will is needed. It is essential to use the institutional setups to challenge the implementation of certain undesirable policies of government in the courts. Many public bodies appeared to be implementing reforms, but in reality nothing was happening.

'District process' is another concept similar to public sector equality duty. Transparency in administration is to be maintained through published records and periodic publishing strategies must show as to how the disabilities will be overcome. Involving local communities in decision making and enhancing participatory democracy is the way to go forward. Such mechanisms also provide an opportunity to legal challenge and facilitate and promote good relations between communities. For example, in French, they are articulated as Liberty, Fraternity and Equality. There is also a need to foster

horizontal relations amongst the people, communities and governance rather than the top down vertical linkages.

There is need to ponder what the limits of the state are and who can be involved—intellectuals, civil society, trade unions, religious bodies and so on. Whether EHRC can give grants, or create and foster new partnerships and so on are the new questions raised and challenges faced. Can EHRC types of institutions have partnerships with international trusts and foundations?

Since the 1976 racial equality there has been a progression which happened because of the labour government. But budget is an issue. It was about 22 million Pound which was later increased substantially. But subsequently it has been reduced. It is projected that in 2015 the budget will be about 20 million Pound. This has happened mainly because of the opposition-led austerity policy. Also the 'value-for-money' (VFM) issue not only limits EHRC's functions but may also be considered as government's interference in its functions. How can one assess this concept of VFM? Promoting value of equality itself is and needs to be considered as an achievement and what methods can assess as to how people feel. Measure outputs in place of outcomes! Capacity to pilot the action research and then carry forward the main study and assessment is an ability which cannot be easily assessed using VFM. In this regard EHRC can function as the pilot body and need to work hard. There is no silver bullet. Also, there is a concept of 'reflexive regulation'.

Capability – good equality concept: The Centre for Analysis of Social Exclusion (CASE) at London School of Economics (LSE) has taken up the research and analytical task of preparing the 'measurement of outcomes' and developing a 'monitoring framework'. One of the favored views was that intellectually the amalgamation and creation of EHRC from out of three different but parallel institutions was good, although there was some opposition to it. The opposition was partly due to stake holder disagreements. Human right is the central concept. But the equal opportunity issue has evolved through a series of frameworks. One such was the capabilities framework enabling measurement of multidimensional deprivation through surveys and so on. Capability is a good equality concept to understand the 21st century economic and social domain¹. This institutional reform was also useful for CASE to monitor the outcomes so as to establish the institutional efficiency in an integrated manner.

1 Monitoring equality in the Indian context; the Asia Center and London School of Economics have a joint program and intend to collaborate with Tata Institute of Social Sciences, Mumbai.

In the framework, in all there are ten domains including social class, religion and sexual orientation, added by UK. The government already has large number of surveys and these issues will be dealt with by them, and do not recommend separate surveys. The survey data already available have sufficient samples to undertake disaggregated analysis at the desirable level, although sometimes ethnicity causes sample size problem which is being handled through well discussed and articulated recoding procedures. The (First) Triennial Review report prepared by CASE is on the Internet and a number of background papers including Research Report 31 of EHRC are useful references.

The discussion continues at the Kings India Institute of Kings College where a case was made out that the UK law did draw upon the US EEOC. The Civil Rights Act of the US was pressed in to address high discrimination based on disability, race and gender, prevailing then. There are also many historical origins and link between the US, the UK and India.

UK's EHRC

1. *Accuracy and Review:* EHRC is quiet effective at collecting accurate data. Presentation of the Triennial Review report in the Parliament is mandatory as per the 2006 Act (Fionna Glen did the triennial review). Quarterly reporting system is enforced. Data on religion are now collected in the national census for the second time and these will be handy to review discrimination based on religion.
2. *Design Differences:* There can be design difference between the UK and the Indian systems. India's regional variation needs to be addressed, as it is a large country with many states. Federal commission and commissions at state level need to be planned. Canadian model, with a fair degree of administrative linkages between the federal and state agencies, may be useful. Australian and German models can also be consulted.
3. *Institutional Independence:* 'Paris Principles of the UN'² that facilitates institutional independence should be fol

2 The Paris Principles were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris during October 7-9, 1991. They were adopted by the United Nations Human Rights Commission by Resolution 1992/54 of 1992, and by the UN General Assembly in its Resolution 48/134 of 1993. The Paris Principles relate to the status and functioning of national institutions for the protection and promotion of human rights.

lowed. EHRC can be brought directly under and the financial allocations can be routed through the Parliament instead of a ministry. Adequate and consistent flow of funds is essential. Recently, the staff of EHRC, which expanded to over 400, has been shrunk to 160 due to economic austerity measures and there are talks of further downsizing it. Such government decisions can be counter-productive.

There also a number of new areas where research studies need to be undertaken, foreexample the impact of recession on employment of the minorities. The private sector has also adopted the diversity and equality policy primarily to safeguard itself from litigation. Can we conceive local level institutions on the lines of Race Equality Councils? Federal legislation with state level councils could be a better model, followed in Germany.

Expert Views

1. EHRC is not without criticism, but the principles are right and some issues of governance need to be addressed. Cost benefits are often talked about and a number of economies of scale emerge due to amalgamation. There are also many strategic benefits which accrue. Another pertinent query is, how do people view EHRC? The need of the hour is to spread awareness among the masses rather than seek support for the institution; and media has been supportive in this regard. The government's or the establishment's attitude can be aggressive precisely because EHRC is successful. The very fact that EHRC is successful meant that it was against the government functioning, views or even policies.

Conceptually the two, equal opportunity (EO) and human rights (HR), are interconnected but in practice they are different. EHRC originated from a private and individual initiative including the private sector. On the other hand, human right is an obligation which directly falls on the state.

Two arguments are relevant in contextualizing India. (1) Avoid multiple institutions; unification generally improves efficiency and performance. (2) If human rights institutions are not doing their job, then there is need to establish EOC which can do this as a specialized job.

However, the newly created institution must be independent and well-funded with adequate powers and better articulated objectives and functions. On the whole EHRC, or other similar institution, helps in addressing the government's objective of economic growth and make a global presence. Yet the economic growth idea can be overcome easily by showing that there is automatic creation (trick-

ledown effect) of economic opportunity and that the tax subsidy regime exists. One way to make a case for EOC is to review regional level MDGs and link them to development directing resources to where it is most needed.

The institution may be established first. The structure will evolve itself; the way EHRC was evolved. But in India's case one should note the rigidity of institutions. However, there are a number of potential cost benefits of having a single body and single point of contact, a media rallying point and many such benefits. This Act provides for substance to the equality law. There still is scope for different forms of discrimination to be defined and positive action and special measures to be codified.

India also has binding human rights obligations and the civil society is increasingly challenging the government. Creating a coalition of civil society organizations may yield good results. But it has not provided protection from discrimination through any institution so far, although many laws exist such as those against untouchability, child labor, and so on. One way to make a case for an EOC in India is to give examples of differentiated access to (public) employment, higher education, access to credit and social infrastructure.

Articulating policy goals is a good strategy as this move can be shown to be consistent. India seems to have taken a different policy perspective.

2. The grounds on which to seek EOC should be compelling. For example, public institutions need to protect its people. But they are not able to do it in spite of the existence of a number of avenues. The scope and grounds are expanded as the business begins and the demand for EOC/EHRC escalates. The UK institution covers expanded grounds such as age, race, gender and sexual orientation. However, EHRC is still struggling with this expanded model.

Public Sector Equality Duty (PSED). The institutional powers should address the equality duty of the public sector, not only in its implementation but also to find out 'how local governments interpret PSED'. PSEDs are identified as to (1) prohibit discrimination, (2) ensure equality of opportunity and (3) promote good relations. Public sector recruitment and promotional conditions are covered under PSED but some sort of proportionality is needed. Further, the difficult task is to effect implementation at the local level. It appears too difficult for the local authorities to imple-

ment these duties. The local level institutions are expected to publish the 'strategy' as to how they will achieve these objectives.

EHRC brings out a 'race equality impact assessment' (EQIA) on a regular basis. India can think of bringing out a 'religious equality impact assessment'. For example, the social class and social structure issues are carefully monitored in the pre-school meals scheme in the UK. Creating an index of multiple deprivation (IMD) is another strategy. Data on religious identity is now collected as a matter of routine through the decennial census. The 2011 census data can be used for public policy. In case of Muslims, the global situation is making them identify more on religious grounds as opposed to their ethnic origin.

Class Action: A number of administrative and procedural issues are yet to be better articulated by EHRC. For example, in case of Equality Act in the UK, one cannot bring a collective case called class action. An action always has to emerge from the individual. Even the gender issues which are a good case for class action have to emerge from individual cases, but not on the basis of women as a group. Exceptions appear in the implementation of PSED principles. It may still be possible to seek Class Action. One needs to explore this concept further.

Monitoring and technical studies are crucial. It is good to monitor, but if there is no associated action, it would assume more urgency and meaning to argue for greater enforcement measures. There is also the objective of 'cultural change and public opinion', that is challenge to EHRC. It also has to oversee fostering and establishing good relations in the public sector.

Public announcements and messages with respect to certain types of identities and nationhood were in vogue in the UK in the past. For example, there were exclusionary advertisements against blacks, Asians, etc. in the past. Positive advertisements can, however, be used for good public relations. In this context, can one conceive a public announcement, 'I am a Muslim and I am an Indian' in India?

3. An EHRC type institution in Ireland has a much liberal policy. Some of the civil society approach has been built upon ideas and literature created by human development stream of research. There is also a culture of dominance by personalities during debates and not the institutions. For example, EHRC was known and identified more by the name and personality of its chairperson rather than the

institution. Similar views were expressed during a meeting with EHRC during a follow-up meeting. Nonetheless, it was a good move to integrate EHRC body, not necessarily as a austerity measure, but also from conceptual and administrative points of view. One needs to follow and understand the 'changing the way institutions are changing'. Ultimately it is the government that needs to implement and change its principles of governance. Yet the administrative and bureaucratic culture and attitudes need to change. Women's commission was part of government. This national commission has now been disbanded. Institutional changes are taking place in fast pace and often it extends and expands the State's role. Yet there is urgency in keeping EHRC away from the vagaries of elections. Ultimately, the government of the day must be held accountable. Institutional problems do appear at inception but will mature and get resolved as work progresses. The EHRC mandate must expand to cover social and economic rights as well.

4. Government thinks that EHRC is widening its scope too much. Yet the popular feeling is that it needs more powers to promote equality in the society. The worry, however, is that the government intends to control EHRC. The civil society thinks strongly against government influence, which emerges from the mechanism of money (budget) flow from the office of the secretary of state (equivalent to a cabinet minister in India) and the minister (equivalent to a Secretary to Government of India). There is a demand to overcome this through direct fund flows from the Parliament, but it is not in sight yet. The government in fact exercises high level of control. UK EHRC intends to keep the UN accredited human rights institutional status. The UN is also watching the issue of government control. The civil society wants the power of EHRC to flow from the Parliament instead of the government bureaucracy.

Academic research should be the basis of EHRC as it empowers both the concept and the mission. Arts and Humanities Research Council, London, funds academic work of this nature. Some independent academics such as Colm O'cinneide, University College, London; Sara Spensor, Oxford; and Colen Harvey and Sandara Fredman, Professors of Law, Oxford have long standing interest in how equality institutions function. Equality institutions can illustrate the deprivation and diversity, can measure and demonstrate that they can help overcome the problems although they may not do it themselves.

Steven Lawrance was murdered in 1989. The case was solved in 2012 after a decade and a half. The case went

through a long process of public enquiry which strengthened the institution of EHRC. In this case the *institutional discrimination* was established and a positive responsibility to address equality of opportunity was strengthened. The investigation was known as McPherson Enquiry. The idea of institutional discrimination is not something which people easily understand, but this happens and in the above enquiry it was established in the UK. After this enquiry, this concept, which was very commonly used, is used sparingly, may be because things have improved. Some would argue that such things emerge from individuals but not institutions. Institutional insensitivity to cultural values of communities is a case in point. Such cultural insensitivity in public spaces is a matter of concern in India.

European concept of religious beliefs is fairly liberal. They are also manifest in religious identities. Cases in courts are not entirely typical of what happens within the communities. Therefore, there is need to establish a monitoring framework for a longer period of time for the society as a whole.



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