

**Agenda Item No. 2: Draft Note for the Cabinet regarding setting up an Equal Opportunity Commission.**

The draft Note has been circulated for seeking comments on the proposal to set up an Equal Opportunity Commission to serve as a watch dog institution to evolve and evaluate measures for affirmative action.

It may be noted from the jurisdiction (para 4, page 4) and functions (para 6, page 5), outlined for the proposed Equal Opportunity Commission that there may be overlapping areas in role and functioning of the Commission with the other Commissions viz; NCSC, NCST etc. Since the NCST is a Constitutional body, such functional overlap is better avoided unless the same is clearly demarcated by legislative statute. The Commission may formulate their views taking into consideration this aspect.

*This may existing Commissions may become more dis-functional.*

No. 16016/1/2008-MER  
Government of India  
Ministry of Tribal Affairs

August, Kranti Bhawan,  
Bhikaji Cama Place, New Delhi-110066  
Dated: 21.7.2008

Subject: Draft Note for the Cabinet regarding setting up of an Equal Opportunity Commission.

*inced today  
The Commission  
is meeting on 29/7/08  
to consider  
amendment of  
the Act  
regarding  
the  
date*

The undersigned is directed to forward herewith the Draft Note for the Cabinet from Ministry of Minority Affairs regarding setting up of an Equal Opportunity Commission for your comments. Your views may reach us by 25<sup>th</sup> July, 2008 so that the Ministry of Minority Affairs can be given our inputs, in time.

*Santosh*  
(Santosh)  
Deputy Secretary

Encls: As above.

The Secretary,  
( Shri Raghuvendra Singh Sirohi )  
S.T.Commission, Lok Nayak Bhawan,  
6<sup>th</sup> Floor, Khan Market,  
New Delhi- 110003

25/7/08  
a  
23707  
(RO)

1/ Secy / 2008 /  
25/7/08

No.5(67)/2008-PP-1  
Government of India  
Ministry of Minority Affairs

-----  
Paryavaran Bhavan, 11<sup>th</sup> Floor, CGO Complex,  
Lodhi Road, New Delhi-110003

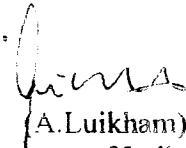
Dated 11<sup>th</sup> July, 2008

OFFICE MEMORANDUM

Subject: Draft Note for the Cabinet regarding setting up of an Equal Opportunity Commission.

The undersigned is directed to forward herewith a copy of the Draft Note for the Cabinet regarding setting up of an Equal Opportunity Commission, for comments/views.

2. It is requested that comments/views of the Ministry/Department may please be forwarded to this Ministry urgently.



(A. Luikham)

Joint Secretary to Government of India  
24364312

Encl: As stated above.

Ministry of Tribal Affairs  
(Shri G.B. Mukherjee, Secretary)  
Shastri Bhavan, New Delhi.

*on tour*

EA

*Tomh*

16.07.08

24/S/सचिव (ज. त.)/... 08  
दिनांक 16/7/08

JS (MER)

255/08 (MER) of  
17/7

Recd on  
16/7/08

**DRAFT NOTE FOR THE CABINET**

**Subject:-** Setting up of an Equal Opportunity Commission (EOC).

**Background:**

A High Level Committee, under the chairmanship of Justice (Retd) Rajindar Sachar, had recommended the setting up of an Equal Opportunity Commission (EOC) to address the grievances of deprived groups. The follow-up action on the recommendations of the Sachar Committee was approved by the Cabinet on 17<sup>th</sup> May, 2007 wherein it was decided that an expert group will be set up to examine and determine the structure and functions of an Equal Opportunity Commission and to advise on an appropriate legislative framework for it. In pursuance of this decision, an Expert Group was set up on 31<sup>st</sup> August, 2007. The Expert Group submitted its report on 13<sup>th</sup> March, 2008.

**Justification for having an Equal Opportunity Commission:**

2.1 While emphasising the need for setting up an Equal Opportunity Commission, the Expert Group has highlighted the ideal of equality enshrined in the Fundamental Rights and Directive Principles of State Policy in the Constitution, and the non-discrimination and equal treatment requirements of international instruments, to which India is a signatory. The need for an Equal Opportunity Commission has been aptly summarised in the report as under:-

*“Equality is a foundational value of our Republic. This is secured by the Constitution through Fundamental Rights and Directive Principles of State Policy and is widely shared in public life. Yet stark inequalities mark our social reality for the present generation and prospects of the future generations. Worse, these inequalities often coincide with boundaries of social groups and communities making inter-group inequalities more visible than before. Hence there is a need to address inequalities and supplement the existing policies of reservations by fine tuning the definition of the beneficiaries, expanding the range of*

F.No.5(67)/2008-PP  
Government of India  
Ministry of Minority Affairs

*modalities and evolving a forward looking and integral approach to affirmative action."*

2.2 The relevant provisions in the Constitution and the provisions regarding non-discrimination and equal treatment in international covenants to which India is a signatory, are at **Annexures I and II** respectively.

2.3 Equality of opportunity may or may not lead to equality of outcomes; the concept suggests a level playing field and a fair race at the end of which some participants get rewards, some do not. Equality of opportunity is in principle compatible with inequality of outcomes – it offers an equal chance to be unequal.

2.4 Though government has been implementing a range of schemes and programmes targeting deprived sections, these efforts need to be evaluated to ascertain how they could be made more effective in delivering the intended benefits. This is necessary to reduce inequalities which persist covering the entire spectrum of material life and basic survival needs like food, water and shelter to higher order goods or benefits like technical education or representation amongst the privileged segments of society. NSSO 61<sup>st</sup> Round data confirms this. Today, the awareness of significant enclaves of unprecedented wealth and privilege heightens sensitivity to disproportionately distributed poverty and deprivation. Although the programmes of government are targeted at particular social groups and sectors seen as specially disadvantaged, these efforts need to be re-visited and expanded if they are to meet the challenges of the present.

2.5 Lessons from the functioning of Equal Opportunity Commissions and similar organisations in other countries demonstrate the utility of such an institution, if it is tailored to the specific socio-economic, judicial and institutional context of the country. The proposed equality commission needs to be autonomous of government and follow an evidence based approach. A summary of the structure, functions and powers of EOCs in various countries is at **Annexure III**.

F.No.5(67)/2008-PP  
Government of India  
Ministry of Minority Affairs

2.6 A National Data Bank has been set up in the Ministry of Programme Implementation & Statistics to collect data relating to government schemes and programmes for socio-religious communities. The data collected is to be analysed and assessed by the autonomous Assessment & Monitoring Authority in the Planning Commission. Both these critical inputs would be available to the proposed EOC, apart from data from Census, NSSO and other sources for formulating an evidence based approach.

2.7 Several national commissions already exist for specific disadvantaged groups like the Scheduled Castes, Scheduled Tribes, Backward Classes, minorities, Safai Karamcharis and disabled, besides the National Human Rights Commission. A comparative table, highlighting their jurisdiction, functions and powers, is at Annexure IV. It may be seen that, except for the National Commissions for Human Rights, National Commission for Women and the Commissioner for Disabilities, all other commissions address the need of a particular designated social group and one of their functions is to inquire into specific complaints relating to deprivation of the rights/safeguards provided to the group concerned. While there may be areas of overlap with other existing commissions, the Equal Opportunity Commission will focus specifically on deprived groups who find themselves disadvantaged or lacking in opportunities in the areas of education and employment.

**Proposal:**

3.1 It is proposed to set up an Equal Opportunity Commission as a statutory commission. The proposed EOC is expected to be a watch-dog institution that serves as a mechanism to evolve and evaluate measures for affirmative action, following an evidence based approach. The draft Equal Opportunity Commission Bill, 2008 is at Annexure-V. The statement of object and reasons appended at the end of the draft Bill encapsulates the proposal in a nut shell.

3.2 The main provisions of the draft bill are discussed below.

F.No.5(67)/2008-PP  
Government of India  
Ministry of Minority Affairs

**(i) Composition of EOC and regional commissions [Section 4 and 7]**

The Commission will comprise of seven members – a Chairperson, two full-time member and four part-time members to be appointed for a term of five years.

**(ii) Appointment committee for EOC and regional commission [Section 5 and 14]**

The chairperson and members of the EOC would be appointed by a Committee as follows:-

- (i) the Prime Minister — Chairperson
- (ii) the Minister in-charge of the Ministry of Minority Affairs in the Government of India — Member
- (iii) the Leader of the Opposition in the House of the People — Member

**(iii) Experience and age [Section 5 (i) and (ii)]**

- (i) The chairperson and members shall be eminent persons distinguished in public service, not involved in party politics and possessing good understanding of the secular and egalitarian values of the Constitution.
- (ii) The chairperson and members shall not have completed 65 years of age at the time of appointment to the Commission and shall be in good health.

**(iv) Regional commissions [Section 13]**

Regional Commissions may be established, as required.

**(v) Jurisdiction**

- (a) The jurisdiction of the proposed Equal Opportunity Commission extend to all “deprived groups”, who have been denied or who claim to have been denied equal opportunities by government, public and private bodies, and in particular with reference to education and employment. Other areas could be included by notification. [Section 22(i)]
- (b) The EOC shall have a supportive grievance redressal role whereby it can take up individual cases that manifest a group equality dimension. It

F.No.5(67)/2008-PP  
Government of India  
Ministry of Minority Affairs

would mean that individual grievances, if they are isolated incidents and do not constitute a systematic practice, leading to deprivation and discrimination, should not be taken up by the EOC [Section 22]. Group has been defined as, "an aggregate of people who are identifiable in terms of shared attributes and circumstances". [Section 2 (1) (n)]

- (c) Private and autonomous enterprises, which could not have carried on the activity concerned, excepting through delegation, licence or authorization by the State under the laws in force, shall be deemed to be 'State' for the purposes of anti-discrimination and equal opportunity laws and the Commission will have jurisdiction over them. [Section 3 (vi)]

**(vi) Functions [Section 23]**

- a) The Commission shall work towards ensuring the elimination of all forms of discrimination and denial of equal opportunities in all walks of life. [Section 23(b) (i)]
- b) The EOC shall have specific functions to investigate practices and complaints, evaluate attainment, conduct public hearings, audit practices, prepare annual and periodic performance reports and report to the government on measures to promote equal opportunity. [Section 23 (b) (ii), (iii), (vii), (viii) and (xvi)]
- c) It can mediate, conciliate and settle disputes, as well as initiate judicial proceedings. [Section 23 (b) (v) and (vi)]
- d) The EOC shall use available data for creation of indices to measure inequality or discrimination in different sectors of activity and in different sections of people. It shall have the power to collect, evaluate and disseminate hard data and intervene on behalf of deprived and discriminated groups. [Section 23(b) (ix)] Besides these, it can also use



F.No.5(67)/2008-PP  
Government of India  
Ministry of Minority Affairs

the data already collected, compiled, collated and analysed by the National Data Bank and the Assessment and Monitoring Authority,

- e) The proposed EOC shall study the reports of other commissions at the central and state level which are concerned with the promotion of equality of opportunity and strive towards an integrated approach in policy development and programme implementation. [Section 23 (b) (xiv)]

**(viii) Powers**

- a) While inquiring into complaints, the Commission shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908. [Section 24 (i)]
- b) Since grievance redressal is not the primary function of the EOC, it does not require strong penal powers. If required, the EOC can ask for criminal proceedings to be initiated. [Section 24 (iv)]
- c) The EOC would require powers to conduct investigations, call for information, institute detailed investigations, inspect premises and records, and seek explanations from any agency of the Government or public/private enterprises. [Section 25]

**(ix) Powers of enforcement**

- a) If the EOC finds that the party against whom a complaint has been filed has intentionally engaged in discrimination, it shall have the advisory powers of directing such party to refrain from engaging in such discriminatory practices or recommend to the government or authority to take suitable action such as initiation of prosecution or the imposition of civil sanctions/penalties against such erring party, or approach the Supreme Court or High Court for appropriate writs or orders. If the EOC finds that the party has unintentionally engaged in discriminatory practices, it can order such party to prepare an action plan which redresses discrimination within a specified time frame. [Section 36]

F.No.5(67)/2008-PP  
Government of India  
Ministry of Minority Affairs

- b) The Commission has been given advisory, consultative and policy intervention functions with government departments, private enterprises and autonomous institutions in respect of equal opportunity practices for which it will formulate Good Practice Codes in different sectors and regions to encourage voluntary compliance. [Section 38]
- c) The Central Government may notify an Equal Opportunity Practice Code proposed by the Equal Opportunity Commission for all enterprises and prescribe incentives and disincentives for compliance. After the period specified in the notification, the code will be made mandatory, and any infringement would attract issue of orders, within its power, such as compensation, denial of privileges, blacklisting, or civil, criminal or constitutional action in court. [Section 37, 39 and 40]

3.3 The Ministry of Finance will be approached to make appropriate fund provision for setting up of an EOC.

**Comments of the Ministries/Departments:**

4. The Note for the Cabinet was circulated to the Ministries of Home Affairs, Human Resource Development (Department of School Education & Literacy and Department of Higher Education), Social Justice & Empowerment, Tribal Affairs, Women & Child Development, Labour & Employment, Law & Justice, Statistics & Programme Implementation, Department of Personnel & Training, Ministry of Finance (Department of Expenditure) and the Planning Commission. Their comments and the response of the Ministry of Minority Affairs are at **Annexure VI**. *(To be incorporated when received)*

**Issues for decision:**

5.1 Approval of the Cabinet is solicited to the setting up of an Equal Opportunity Commission and introduction of the "Equal Opportunity Commission Bill, 2008", as proposed in para 3, subject to any minor drafting

F.No.5(67)/2008-PP  
Government of India  
Ministry of Minority Affairs

changes that might be required to be carried out in consultation with the Ministry of Law & Justice.

5.2 The statement of implementation schedule is at Appendix.

5.3 This note has been seen and approved by the Minister of Minority Affairs.

(A.Luikham)  
Joint Secretary to the Govt. of India

**STATEMENT OF IMPLEMENTATION SCHEDULE**

**Subject: Setting up of an Equal Opportunity Commission (EOC) as a statutory body**

Gist.of decision required	Project benefits/results	Time schedule and manner of implementation
Approval of the Cabinet is solicited to para 3 of the Note for the Cabinet detailing the proposed approval required for setting up of an Equal Opportunity Commission as a statutory body through a legislation of the Parliament to be called the Equal Opportunity Commission Bill, 2008.	To set up an Equal Opportunity Commission.	The directions of the Cabinet would be implemented in a time bound manner.

(A.Luikham)

Joint Secretary to the Govt. of India

New Delhi, dated the July, 2008