SAFHR

the no-nonsense guide to minority rights in south asia

edited by rita manchanda

SAFHR

the no-nonsense guide to minority rights in south asia

edited by rita manchanda

The No Nonsense Guide to Minority Rights in South Asia

September 2006

A co-publication of:

The Other Media, New Delhi
Informal Sector Services Centre, Kathmandu
Human Rights Commission of Pakistan, Lahore
South Asia Forum for Human Rights, Hong Kong/Kathmandu
EURAC: European Academy, Bolzano

Supported by:

The European Commission

Cover design and layout:

Vani Subramanian

Printed by:

Impulsive Creations, New Delhi

contents

acknowledgements

This is to acknowledge the substantive work of the researchers Vijayanka Nair, Nidhi Makhija and Lucy Mathieson in the development of the text. In addition, I want to mention the commitment of the partners of the Europe-Asia Exchange Project on Minorities & Indigenous Peoples - European Academy (Bolzano), South Asia Forum for Human Rights, Informal Sector Service Centre (Nepal), Human Rights Commission of Pakistan, The Other Media (New Delhi) and in particular the contribution of the participants of the various workshops. This publication is a distillation of the many materials and insights that they brought to the process. A special thanks to Nighat Said Khan, Nimalka Fernando, Sanjana Hattatuwa, Afsan Chowdhury and Deep Ranjani Rai for their comments. Also, I want to mention the support extended by the SAFHR team, Shahid Fiaz the coordinator of the programme and Meher Ali. Finally, I wish to express gratitude to the European Commission for its support that has made the publication possible.

preface

Mahmud Mamdani in his book *Good Muslim, Bad Muslim* says culture has emerged as a life and death issue today. One may lose one's life for sporting a beard or wearing a skullcap in the 'wrong place'. In these days of Global War against Terrorism, with the theory of 'clash of civilizations' reinforcing the image of Islam as the source of intolerance and violence, and the followers of Islam as terrorists, racism and xenophobia have returned with vehemence in the West. Racial profiling of Muslim men- young and old- as terrorist has put followers of Islam at great risks at home and abroad, particularly in countries with mixed population. Inter community friction and communal violence has exacerbated, shrinking the social and political space for coexistence, multiculturalism and tolerance.

South Asia is home to the world's largest Muslim population. Islam is the state religion of three countries of the region - Bangladesh, Maldives and Pakistan. Nearly 80 percent of India's billion people are Hindus. There are about 120 million Muslims who live all over this vast country. While Hindu-Muslim relations in India did not represent the most ideal model of coexistence, the rising tide of rightwing Hindu nationalist forces in politics has taken a serious toll on this fragile communal harmony. We are also seeing the rise of extremist groups among India's Muslims. The inter community relationship continues to deteriorate as the 'hand of Pakistani agencies' and the participation of Muslims are 'seen' behind almost every act of 'terrorism' inside India. There is a powerful and an influential lobby in India that believes that Pakistan is a 'rogue' state, and is promoting 'terrorism'.

Xenophobia and racism are the twin expressions of the politics of intolerance. Right wing politics promotes the culture of intolerance everywhere. In Pakistan it has taken the form of sectarian violence between Sunnis and Shia, discrimination against Ahmadias and other non-Muslims communities; in Bangladesh it is discrimination against Hindus, Buddhists, Christians and the Indigenous peoples of the Chittagong Hill Tracts; in Sri Lanka the chauvinism of the Sinhala Buddhists continues to deny the wrongs done to the Tamils, effectively shutting out the possibility of a settlement through dialogue and in Nepal it takes the form of the denial of citizenship to a large number of people in the Terai and in the hills.

The 'Minority' like everywhere is a fluid identity in South Asia. Its markers are language, culture, religion and ethnicity. But the most important marker is the position of 'non-domination' or 'powerlessness'. The history of the last five decades state or nation making in South Asia proves the axiom - democracies create minorities. Nation and State are majoritarian concepts. These are also repositories of power. Access and control over these institutions of power and the distance from these sources of power or denial of access define the majority and the minority.

The No Nonsense Guide to Minority Rights in South Asia has laid out in vivid detail the reality of the 'minority' in South Asian countries. While it provides an overview of the rather weak constitutional and legal framework of protection of minorities it also maps the process of the creation of new minorities and the situation of minorities within the minorities. The guide exposes the willing surrender of the ruling elite of the South Asian States to so-called 'popular sentiments' and the weakness of their commitment to universal norms and standards of human rights and international legal mechanisms for the protection of minorities.

The *No Nonsense Guide to Minority Rights in South Asia* highlights the efforts for improving the situation of the minorities and indigenous peoples in the region, particularly through the strengthening of the provisions for 'autonomy' as well as the institutions of federalism in the polities of the region. It also shows us how these institutions, which have proved quite effective in the protection of minorities in Europe, remain undeveloped and unexplored areas from the perspective of the protection of minority rights in the region. In fact, there is a great resistance to the demand for federalization of the polities. It is also important to note that unlike in Europe, where the process of nation state formation created geographical conclaves of 'minorities' in South Asia, the religious minorities are not limited to specific conclaves. While the issue of protection of the Adivasis/Janjatis and linguistic minorities might be successfully addressed through autonomies and genuine devolution of power, this cannot be the model for the protection of religious minorities in South Asia. South Asia needs to develop its own models of coexistence and tolerance.

The only silver lining in this situation is the growing awareness among a section of the political parties and the civil society that federalization of the polities and greater devolution of powers to the minorities and indigenous peoples, is essential for peace and stability. Of late, we have observed the growing support and sympathy among sections of the 'mainstream' populations in Bangladesh, India, Nepal, Pakistan and Sri Lanka for the struggling groups of minorities. The voice of peace in Sri Lanka's south supports the demand for a federal polity in Sri Lanka. It upholds the right of self- governance of the Tamil people in the North and the East of Sri Lanka. In Nepal and Bangladesh there are voices that say that the Adivasis and Janjatis must get their due place in the affairs of the state and society. India's civil and political rights movement, the women's movement and the environment movement are lending strong support to the minorities, Adivasis and tribal peoples in their quest for justice and equity. The common people of India, by rejecting the rightwing political parties in the last general elections have emerged as the primary bulwark against religious communal violence.

We dedicate *the No Nonsense Guide to Minority Rights in South Asia* to the human rights defenders of this region and hope it will be of assistance to activists and students of human rights and politics.

Tapan Kumar Bose

Kathmandu, September 2006

1 politics of recognition

politics of recognition

DEFINING MINORITIES & MINORITY RIGHTS

Recognition of a minority group is a crucial precondition for protecting Minority Rights. International Conventions, Declarations and Institutional mechanisms provide frameworks identifying minority rights and entitlements. But there is no consensual international definition of who is or which group is the bearer of these rights. Different South Asian states have variously interpreted what constitutes a minority. Pakistan recognizes only religious minorities and not Sind, Baluch or Pushto nationalities, and has created a new religious minority- Ahmadis. Bangladesh, constitutionally, does not recognise that it has linguistic, religious or ethnic minorities. Sri Lanka's minority rights discourse has been so ethnically polarised, that till recently the third community, Muslims, had slipped through the interstices. Also, there is no recognition of social (depressed caste) minorities or indigenous groups. India does not list its Dalit population as a minority and state institutions tend to legitimize a homogenous Hindu identity excluding multiple religious sects from the religious minority category. Constitutionally, there is the construction of a religious and a linguistic minority as a cultural category, sidestepping the issue of power and political representation. Nepal denies its multi-religious character and institutionalizes exclusion of its linguistic and ethnic minorities. Bhutan seeks to homogenize a multi ethnic population into a 'one nation, one people' state. No country in South Asia formally recognizes the presence of indigenous peoples. Minorities and indigenous populations or peoples are separate concepts but interlinked by the shared context of discrimination and powerlessness. Recognition involves state obligations under international law and entitlement to rights and claims.

The UN has failed to agree upon a definition of what constitutes a minority. A precise statement runs the risk of denying recognition to various social historical groupings - peoples, nations and nationalities. In international law, these categroies are associated with different rights including self determination, which, is not available to a minority. The historical problem of conceptualizing a minority in a nation-state centric framework is compounded by legal anomalies that reflect the paradoxical situation of the liberal agenda of protecting minorities, uneasily coexisting with the political project of building a cohesive nation state with a homogenous cultural identity.

Historical Evolution of Minority Rights Protection

Population movements producing ethnic diversity are a continuing fact of the histories of the geographies of the world. However, with the emergence of the territorial state in the 17th century, and the principle that a political society should be the 'owner' of a particular space, and that this ownership confers sovereign right to determine legal rights and obligations of all persons therein - questions of belonging and control, have become crucial. With the 19th century and the age of liberalism, came the break up of old empires. Its ideology of nationalism and republicanism saw the consolidation of political structures around one nation, one people. But the nation state was not homogenous and its territory often included numerically smaller peoples with different national, ethnic, linguistic and religious identities, i.e.

minorities that did not wish to be assimilated, that had histories of 'homelands'. Furthermore, practices of procedural democracy produced and reinforced 'permanent' majorities and minorities.

Historically, the failure to protect the rights of minorities within states has resulted in major internal and international conflicts. It has prompted international concern and responsibility that collides against the principle of non-interference in the internal affairs of sovereign states. The post World War I political order and the balkanisation of central Europe produced a structure of Minorities Treaties involving the defeated territories, but not the setting of generalized international standards. The League of Nations was the guarantor of these treaties that collapsed with its demise.

The post World War II international system dominated by the cold war, was more concerned with the consolidation of states and the independence of colonial structures. The emphasis in UNO frameworks became the principles of universal protection in place of specific rights. The UN Charter does not speak of minorities and refers only to equality of rights. The Universal Declaration on Human Rights contains no reference to Minority Rights, though it does reiterate the principles of equality and non discrimination of peoples. Efforts by the UN and other regional inter-governmental agencies to discuss minority issues were blocked by the states on the ground that it was an internal affair. It is not till the *International Covenant on Civil and Political Rights (1979)* that you have a specific reference to the rights of minorities in Art 27, to enjoy in community with other group members, their culture, religion and their own language.

Till the 1990s, the UN Sub-commission on Minorities made little impact. However, the UN General Assembly's adoption of the *Declaration on Persons belonging to National or Ethnic, Linguistic and Religious Minorities* (1992) signaled growing concern over the return of Europe's old problem, following the eruption of violent ethnic conflicts. The Declaration, although not a legally binding document, represents one of the first international documents to promote protection of minority rights, and therefore carries very considerable moral authority. Also, it represents a marked shift from limited protection against discrimination that characterized the original efforts of the UN regarding minorities, towards a more active engagement of the state in facilitating the development of minority cultures and promoting a political role for minorities. The right of minorities to public participation is central to the new concern about 'ethnic' violence and the struggle of indigenous peoples.

Parallel to the development of international mechanisms, the violent break up of Yugoslavia and cascading ethnic conflicts obliged the European states to establish new regional standards of treatment of minorities as a conflict prevention measure. The Conference of Security and Cooperation in Europe, (renamed OSCE) and the Council of Europe took the lead in the devising of mechanisms for the protection of essentially 'national' minorities in Central and Eastern Europe e.g. *the Framework Convention for the Protection of National Minorities.* An Office of the High Commissioner for National Minorities was set up with a mandate for trans border intervention.

Some west European governments continued to oppose the application of these new measures to secure minority rights in their own states. At the heart of the matter is the tension between state concern for non interference and territorial integrity and the right to self determination. At the regional level, the Council of Europe and the OSCE tried to resolve this contradiction by positing autonomy and federal structures as a way of states dealing with the aspirations of the minorities. However, as the concept of autonomy is not legally defined, it has to be interpreted anew in every single case.

Our contemporary moment is hailed as the age of democracy, human rights and the rule of law. But increasingly, rights are being mauled by the so-called 'war on terror' that has reinforced xenophobia and racism and seriously undermined the rule of law. States have used the pretext of the 'war on terror' to deny and repress the political assertion of minorities. At the international level, it has produced aggressive and ambivalent international doctrines of humanitarian intervention. The moral ambiguity of the US led international system of intervention has put in question well intentioned initiatives like the recently adopted the *UN Declaration on the Responsibility to Protect populations against genocide, war crimes, ethnic cleansing and crimes against humanity* (2005). Important for Minority rights protection are developments such as the General Assembly decision to upgrade and create the *Human Rights Council* in place of the Human Rights Commission which was a subsidiary of ECOSOC and the setting up of two new UN posts - *Special Advisor to the Secretary General on the Prevention of Genocide and the Independent Expert on Minority Issues* appointed by the UN High Commissioner for Human Rights in 2005.

Working Definition of Minority

Probably, the most widely accepted theoretical definition of minority is the one by Francesco Capotorti, a Special Reporter of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. In accordance with Art 27 of the Covenant on Civil and Political Rights (ICCPR), Capotorti defined a minority group as,

> ***"a group which is numerically inferior to the rest of the population of a State and in a non-dominant position, whose members posses ethnic, religious or linguistic characteristics which differ from those of the rest of the population and who, if only implicitly, maintain a sense of solidarity, directed towards preserving their culture, traditions, religion or language."***

Capotorti establishes certain objective and subjective criteria for determination of a minority, the objective criteria indicates that not only should it be numerically inferior but in a non dominant position; the subjective criteria refers to the group showing a sense of solidarity towards preserving its culture, traditions, religion and language.

South Asians at a wide ranging Minority Rights Consultation in Kathmandu organised by SAFHR in 1998 found the above definition inadequate as it did not accommodate groups who did not wish to preserve the basis of their difference e.g. Dalits ('Untouchable', depressed castes in South Asia) whose identity had been imposed by dominant castes and was constituted as undesirable and debased. Some South Asian participants were more inclined towards his colleague Mr J Deschenes' definition which shifted the emphasis from preservation of identity to their collective will to survive and their desire to achieve equality with the majority in fact and in law.

> ***" A group of citizens of the state, constituting a numerical minority and in a non dominant position in that state, endowed with ethnic, religious or linguistic characteristic which differ from those of the majority of the population, having a sense of solidarity with one another, if only implicitly by a collective will to survive and whose aim it is to achieve equality with the majority in fact and in law."***
>
> ***(UN Subcommission's Resolution 1985/6 adopted at its 38th session)***

However, while Mr. Deschenes' argument about the desire to integrate or assimilate with the mainstream could apply to racial minorities constituted mainly by immigrants and to social minorities like the untouchable castes in India, it would not apply to nationalities or ethnic minorities. In fact, it is the desire of these groups to preserve their identities, that is looked upon with suspicion by the majority.

Minority as a numerical concept was also questioned as in some situations the majority group could be in a situation of non-dominance, deprivation and social disadvantage (*Lhotsampas* of southern Bhutan). Also, numerically smaller groups are not necessarily subordinate (*Drukpa* Ngalong in Bhutan) or backward or less likely to have access to opportunities (*Newaris* in Nepal; *Mohajirs* in the early phase of state formation in Pakistan). Sri Lanka's politics of ethnic relations defy the majority-minority dichotomy in a profoundly phenomenological sense - the Sinhala majority with a minority complex, and the Tamil minority with majority ambitions. In the case of Kashmir you have a Muslim majority province in a minority situation in the Indian Union. At the core of the constitution of majority - minority groups and majority- minority identities is the discourse of power. The problem of the redistribution of power lies at the vertex of the relation between state and national minorities, in particular.

A key criterion is self identification as a minority and the group's right to determine who is a member of the minority. Several groups, as for example the Tamil community of Sri Lanka or the Naga peoples of north east India and the indigenous peoples of the Chittagong Hill Tribes of Bangladesh have repudiated identity as a minority (subordinate) and claimed for themselves identity and status of 'nation'. None of these peoples see themselves as 'ethnic communities'. Each claims to be a nation. The history of the struggles of the Tamil, Naga and Chittagong Hill Tracts peoples, maps a narrative of how and when at a historical moment, a group refuses to accept the identity of a minority, and claims the status of a people, and a nation.

Can ethnic and other groups claim they are a 'people' and demand self determination?

What constitutes a people? International law is silent on the subject. In practice common characteristics of a group - historical, racial or ethnic, cultural or linguistic, religious or ideological and territorial - are used

as a means to prove that a group constitutes a 'people'. A large number of groups with such characteristics may still not constitute a people. The indispensable element in describing a people is not physical but rather ideological and historical. A 'people' begins to exist only when it becomes conscious of its own identity and asserts its will to exist. The fact of constituting a people is a political phenomenon. Peoples' right of self determination is founded on political considerations and the exercise of that act is political.

The rights of people and of minorities under international law are different. People are a 'nation' without sovereignty. The principle of the right to self-determination of people was invoked in the American President Woodrow Wilson's peace proposals post World War I, and subsequently in the UN Charter, and became prominent in the context of colonial subjugation. Minorities do not have the right to self-determination. There is further confusion when 'peoples' or 'groups of peoples' are erroneously termed minorities. This happens when they (the national minority) live in a territory where they constitute a numerical minority with regard to other groups of people. Similarly, ethnic groups may declare themselves 'peoples' rather than 'minorities'. In the Sri Lankan Tamil context, the subordinate status associated with minority identity is rejected in favour of the assertion of the Tamil people constituting a nation.

The rights of peoples belonging to minorities are individual rights even though in most cases they are enjoyed as a group. The rights of peoples are collective rights. Persons belonging to an ethnic or national group can lay claim to individual rights by virtue of being a minority and when acting as a group can lay claims based on peoples right to self determination.

Distinguishing Indigenous Peoples from Minorities

Indigenous people, variously referred to as 'indigenous populations' and 'indigenous nationality' are conceptually distinct from the category of an ethnic, religious, linguistic or national Minority but in practice they overlap because of the common experience of being disempowered, discriminated and marginalized. Minorities, under existing international instruments and standards, are entitled to individual rights. Indigenous rights are both individual and collective rights, the latter being of more relevance. The rights of minorities to traditional lands and the territories they inhabit are far weaker in international (and national) law than the rights of indigenous peoples to such lands.

There is no accepted international definition of the legal concept "indigenous". UN human rights bodies declare that indigenous peoples have the right to define themselves and their membership according to their own traditions and customs. The International Labour Organization (ILO) and the World Bank, for instance, state that self-definition as "indigenous" or "tribal" is a fundamental criterion in defining who is indigenous or tribal. The lack of a consensus on a definition should not obscure the fact that a range of non-governmental and inter-governmental organisations have institutionalised a concern with indigenous peoples, bringing the category within contemporary international human rights discourse and practice.

Constitutional Guarantees or a Matter of Trust

In the absence of a precise definition of the concept of minority at the international level, it is up to each state to recognize a certain group of their citizens as a minority and provide for their rights. Moreover, it should be noted that, it is not a national 'mother state' that bears responsibility of minority rights realization but a state that is ultimately shaped by the 'good will' of the majority and the recognition often instrumental, of the correlation between state protection of minority rights and political stability. In the case of India, it has resulted in a constitutional framework that is located in a discourse of **protecting** minorities rather than a **rights based** discourse, rooted in expanding democratic participation, justice and equality.

Indian constitutionalists, perceived the political as the domain of 'equal' individual citizens where there was no room for communities and special rights. This is evinced in the manner in which the Indian Constitutent Assembly clinched the argument for eventually scrapping political reservations for minorities. In exasperation, B R Ambedkar, the architect of India's Constitution and the founder of the modern movement for the uplift of the Dalits, said, "they (minorities) can find their protection only from people in whose midst they live…"

> ***"… the minorities in India have agreed to place their existence in the hands of the majority…The moment the majority loses the habit of discriminating against the minority, the minorities can have no grounds to exist . They will vanish."***
>
> ***(B R Ambedkar, Constituent Assembly, 1949)***

The Indian Constitution recognises religion and language based minorities as a cultural category and guarantees the cultural rights of minorities. The situation becomes especially problematic for minority groups, when the public sphere is capable of being taken over by a majority that seeks to impose its values on state institutions, as evinced in the hegemonic politics of the Hindu right in India or Sinhala chauvinists in Sri lanka. The paradox of democracy in multi-ethnic societies is that the mechanism of electoral representation compels communities to reify inter-group differences.

In a situation like Sri Lanka, the ethnic polarisation of the political imagination has made accommodating minority rights all the more intractable. Sri Lanka demonstrated the inefficacy of constitutional safeguards in protecting minority rights. The elected Legislature blatantly disregarded safeguards for minorities and introduced discriminatory laws and policies - *Official Language Law (1956), Citizenship Act (1948) and Franchise Legislation (1949)*. Since then, ethnic polarisation has made virtually inevitable, the defeat of federal project.

Executive orders for ensuring the rights of minorities are particularly vulnerable to the vagaries of electoral politics. The field of rights ends up becoming hostage to partisan politics. In India, the secularising thrust of the Congress government confronts the fundamentalist politics of the BJP. More, importantly, 'peace accords' for settlement of the rights of minorities and indigenous peoples which have no constitutional validity, but are based on an executive agreement, are particularly vulnerable. The 1997 CHT peace accord between the then Awami League Bangladesh government and the Jana Sanghati Samiti struggling for self-rule of the Chittagong Hill Tracts peoples, has no constitutional status. It has become hostage to Bangladesh's polarised electoral polity. The ruling Bangladesh National Party has virtually suspended its implementation claining it erodes Bangladesh's sovereignty.

Paradox of Minoritization

Two moments - the Indian Constitution's structuring of the minority rights discourse on the basis of citizenship: equal rights; and the state's strategy of 'secularism', also based on the principles of equal rights - have combined to produce a paradoxical situation. At one level, the discourse of secularism has encouraged a number of minorities to call themselves secular e.g. Christians. It has produced a trend of people hiding their identities, thus feeding into *majoritarianism* in India. At another level, it has produced the counter current of *minoritization*.

The failure of the democratic structures to deliver equality and instead to deal out discrimination, subordination and exclusion, has thrown emphasis on the significance of the state's prescriptive policy to provide succour to some disadvantaged groups. It has produced an unending series of demands for (group) classification on the basis of which discrimination will be made. Has this the capacity to strengthen equal rights? Political scientist, Gurpreet Mahajan argues that "when minority rights are used to protect and preserve cultural diversity rather than equality, those rights often result in the splintering of existing communities. More and more minorities desire special status or special consideration for each and not common benefits of citizenship. Minoritization becomes the norm as claims of redistribution get linked with recognition and perpetuate competitive and divisive identity politics. 'Constitutionalism', i.e the framework of fundamental freedoms and its articulation in the domain of law and public policy, for protecting minority rights, ends up producing more inequality, dispossession and the clamour for autonomy.

SOUTH ASIA & THE COLONIAL ENCOUNTER

South Asian ethno-geography has been shaped by histories of population movements producing a mosaic of multi - layered and dynamic multiple identities. The colonial encounter was to fix and institutionalise these fluid identities. British administrators sought to make the colony susceptible to a certain kind of governance on the basis of communal entities. It was articulated in the form of divide - rule strategies. The colonial power's administrative habits of governance centralised territorial control. Arbitrarily drawn administrative boundaries cut through national, ethnic, religious and linguistic communities, dividing peoples who had a collective sense of history, identity and territory and creating minorities. In addition, colonial plantation economies created new communities of indentured labour transported across the Empire.

The colonial government's decision to introduce religion, as the fundamental category of administrative and electoral classification, infused a particular political meaning into concepts like Hindu and Muslim. It

privileged religious aspects of identity at the expense of other aspects. These classifications and constructions were fruits of colonial projects of knowledge geared towards making the colony 'governable'. In the process identities were essentialized and posited in a mutually irreconcilable relationship of otherness. Separate electorates institutionalised these differences in sites of political representation. Post independence governments drew upon the colonial politics of group claims, e.g. recognising categories of religious minorities that had under colonialism claimed political rights. Indian Supreme Court ruled against minorities contesting submergence within a supposedly homogenous Hindu community - e.g. Dalits, Arya Samajis and Jains. *(Bal Patil vs Union of India and Anr 2005)*

In Sri Lanka, the colonial state, viewed the political communities that should be represented as communal entities but the sites of political representation was ethnic identity - Sinhalese, Tamil and Burghers, i.e belonging to a 'racial' group. The Sinhala numerical majority was disadvantaged and Tamils privileged by colonial administrators. Tamil minority consciousness was to evolve in the process of constitutional reform. As a consequence, the defining characteristic of the processes of post colonial state formation in Sri Lanka has been the ethnic bifurcation of the ruling class

Colonial administrations further reinforced the salience of communal entities by introducing as a structure of governance, legal pluralism, i.e. uniform colonial laws for the public sphere and religion based customary laws for the personal sphere. It afforded significant respect for customary legal regimes dealing with collective land rights and protection against predatory 'outsiders', especially for indigenous peoples. However, then and now, such dual regimes while they afford autonomy, they tend to reinforce discriminatory politics against not only 'outsiders' but also 'insiders', particularly disadvantaging vulnerable sections like women and depressed and backward castes.

Special Colonial Autonomies

British India's colonial governance structure experimented with various special kinds of autonomies e.g. the princely states and the tribal populations in the central India tribal belt, the north east hill areas and north west frontier tribes. Earlier efforts to integrate tribal areas into its administrative structures had resulted in tribal rebellions in the 18th and 19th centuries. Their lands were classified as scheduled areas to protect them from outside incursion and land alienation. In the north east hill areas, 'inner line' regulations marked the limits of the British administered areas into 'partially' or 'fully excluded areas', limiting interaction between the plains and tribal peoples. Post independence, saw the erosion of special status of these hill districts as for example with the abolition of Regulation 1900 in the Chittagong hill district and the erosion of its 'fully excluded' identity. It resulted in widespread land alienation and state assisted homesteading by Bengali settlers and conflict.

In the North West Frontier province area abutting Afghanistan and populated by the militantly independent minded Pushton tribes, the British created a Federally Administered Tribal Area (FATA) to serve as a buffer between British India and Afghanistan. It was granted maximum autonomy with tribal elders running their own affairs till recently when the chase for Osama bin laden led to Waziristan and the unwelcome intrusion of the Pakistani state and the attention of the International community. In 2004 the Pakistan army for the first time entered and deployed troops in FATA. These are also areas where customary regimes are particularly onerous for women.

Shadow of Partition

The political process of essentializing and positing mutually irreconcilable identities culminated in the 1947 Partition. Driven by elite led mobilization around the construction of the controversial two nation theory - Muslim nation: Hindu nation, Partition violently divided British India into two (and then three) states. In its wake came paranoia about ethnic politics and territorial division. It produced a definition of democracy with a strong majoritarian logic, manifest in the dominant elite's intolerance towards groups asserting different identities that were seen as competing and compromising national identity.

In India, the shadow of partition fell on the constituent assembly discussions diluting and reshaping its content of self-rule and shared rule. Post partition federalism came to be viewed as carrying the seeds of disintegration. The move to recognise the political rights of minorities was overturned. As the Indian leader Sardar Patel bluntly told the Constituent Assembly members, "we are laying the foundation of One

Nation and those who choose to divide again and sow the seeds of disruption, will have no place". The result was the relegation of the issue of the rights of the minority to the domain of protection, and not as integral to realising democratic nationhood. It made Indian rulers shy away from the nomenclature of federalism, re-nominating it as Union of Indian and Centre-State Relations, resisting the demand for ethno-territorial autonomies and the eventual re-organisation of the state along linguistic lines.

In Pakistan, the overhang of Partition determined the decision of the new rulers to not recognise the category of 'national' minorities' which would have complicated the state ideology of one Muslim nation. Subsequently, the Pakistan ruling elite's discriminatory and anti democratic politics of treating East Pakistan as an internal colony, the hegemony of the Urdu speaking and Punjabi elite and the denial of the Bengali cultural identity, fostered the struggle for realising territorial - cultural nationalism. It produced a second violent Partition - Bangladesh, and further fuelled secessionist paranoia against autonomy.

Historically, a nation has come to signify an association of people consciously bound together through their common history, territory, race, language ethnicity or religion. It is this commonality (which is in a sense constructed), which takes precedence over diversity and pluralism as many of our constitutions record. The fusing of state and 'nation' (instead of nation and state as in Europe) tends to privilege a religious, linguistic, ethnic majority over the minorities.

why minorities need special rights

Members of minority groups and members of majority groups living under the same regime of legal rights, are subject to very different conditions in the enjoyment of rights. The guiding principle that human rights are universal, inalienable and indivisible; the enshrining of these principles of equality and non-discrimination as law in constitutional structures and institutional practices , is not sufficient in enabling the enjoyment of equal rights by the Minorities. Even without specific policies that produce domination and oppression, persons belonging to minorities and majorities are differentially positioned to enjoy equal rights and fundamental freedoms. For example, the majority group's language is usually synonomous with the national language of the public sphere and consequently there is natural support for its development. This is not the case with the language of a minority, which would require special support. A purely formal equal treatment is not suitable for solving the discrimination dilemma through the functioning of democracy and human rights alone.

The Indian Constitution provides for preferential policies that derogate from the principle of equal rights. It has enabled affirmative action in favour of backward groups; and for the identified minority has created a separate domain or private sphere, which is reserved to the minority group members to maintain group identity. This is distinct from the 'common domain' or public sphere of common regulatory authority. However, this mix of a strategy of 'negative guarantees' and positive discrimination has been a weak instrument both in providing protection and in promoting equal rights and democratic participation. It has produced minoritization, i.e. clamour for identification of new minorities and backward caste groupings as well as a backlash of resentment and opposition by the majority to what is variously referred to as 'appeasement' of the religious based minorities, or accusations by the upper caste of perpetuating casteism. The every day discrimination, disadvantage and violence that the minorities, indigenous peoples and Dalits suffer is a reflection of the limits of constitutionalism to safeguard minority rights when it is not rooted in the ingrained values of tolerance and justice in society.

Collective identity of the disadvantaged

The guarantees of equality in law apply to individuals. However, the experience has been that every complaint of discrimination and claim of right to equality, almost invariably, points to groups and classes of people who are exposed to injustice from better organized, dominant and politically powerful groups. Why is it that the process of adjudicating complaints and claims of discrimination as well as "affirmative action", based on the framework of presumptive guarantee of equality, appears to reinforce collective identities of the disadvantaged? More often than not, it seems to perpetuate the stigma associated with the realities of subordination. This is dramatically played out in the strategy of reservations in the (uneven) field of education and employment in the government sector, and in the legal and public discourse.

MULTICULTURALISM & CULTURAL DIVERSITY: PANACEA FOR MINORITY RIGHTS

The political challenge of accommodating difference has produced various strategies from the politics of assimilation and integration (the melting pot and the salad bowl idiom) to multiculturalism and autonomies. Multiculturalism and autonomies have emerged as two important philosophical and prescriptive approaches to responding to the challenge of accommodating deep and defiant cultural diversity in post colonial multi-ethnic, multi-religious societies, and in societies with significant immigrant communities. The pragmatic logic under girding strategies of multiculturalism, is summed up by the *Carnegie Commission on the Prevention of Deadly Conflict* (1997) report: "Attempts at suppression [of ethnic cultural or religious differences] have too often led to bloodshed and in case after case the accommodation of diversity within appropriate constitutional forms has led to diversity."

While the term multicultural is descriptive of the presence of more than one or two cultures, multiculturalism refers to the value and prescriptive policy of cherishing cultural diversity as a public good and of making different community identities central to the self understanding of a nation state's identity. Integral to the multiculturist discourse is the understanding that ethnic minorities consist not of individuals but of organized communities entitled to make collective claims.

In the international discourse on multiculturalism, there is the tendency to equate multiculturalism with minorities, thus racializing it. As Bhikhu Parekh in *Rethinking Mulitculturalism* critically notes, in the dominant multiculturalist discourse, the majority culture is uncritically accepted and used to judge the claims and define the rights of minorities. He writes, "Multiculturalism is about the proper terms of relationship [between the two or more communities]. Norms governing these claims including the principles of justice cannot be derived only from one culture alone but through an open dialogue between them." Such a dialogue becomes extremely problematic, if not impossible when the international discourse demonises a particular culture - Islam, or posits paradigms like the Clash of Civilizations.

Critics of multiculturalism and its variants - cultural diversity and co-existence, have found it a problematic strategy for protecting Minority Rights as it remains based on the majority and does not interrogate the foundational basis of state structure and distribution of power. Moreover, reworking of the minority question on the basis of a politics of cultural identity, instead of locating minority rights as an agenda in democracy, may not be enough. Too often the evidence is that the politics of cultural identity have produced intolerance and xenophobia and become linked to neo nationalist and racist community based organisations.

Minority rights are justified on two grounds a) For ensuring equal treatment by overcoming structured patterns of discrimination and b) For safeguarding cultural autonomy and promoting cultural diversity. While multiculturalism addresses the latter, that is the protection of cultural identity, it has failed in promoting equality, non-discrimination and vital equity. The Indian Constitution provides a framework for minority rights configured as a cultural category. Its consequence in India, as Gurpreet Mahajan analyses, is that the concept of Minority Rights has become an instrument for enhancing cultural autonomy and diversity, but not equality and equity.

In South Asia, multi-culturalism as a philosophy of diversity and as a policy response, in the form of encouraging accommodation of minority communities on the basis of difference, has been a weak answer to a nationalizing state determined to pursue, overwhelmingly, a politics of repression, assimilation, denial, exclusion and marginality. The democracy deficit is at the heart of the minority rights question. The system of democracy needs to become something more than a contract, suffrage, elections, free press and a judiciary and reach towards a participatory dialogue involving notions of justice, equality, pluralism and collective rights.

AUTONOMIES: THE EMERGING STORY OF DEMOCRACY

Decentralization, devolution and redistribution of power are integral to accommodating the democratic aspirations of minorities, for protecting their distinct identity and leveraging equality of opportunity. In particular, there is increasing emphasis on the effective participation of minority groups in public life to

counter balance majoritarian neglect of the concerns of minorities in democratic systems. One of the most sought after, and also the most resisted, paths for accommodating peoples' aspiration for 'self rule' is autonomy. Autonomy is a device to allow minority groups to exercise direct control over affairs of special interest to them while allowing the larger entity those powers that govern common interests. There is no conceptual definition of autonomy and it takes a multiplicity of constitutional, legal and administrative forms and areas, such as cultural autonomy, religious autonomy, sub-territorial autonomy, regional autonomy.

Autonomy in its generic sense encompasses federalism, where usually all regions enjoy equal power. However, asymmetric federal arrangements accommodate special autonomies. Federal arrangements are particularly appropriate for a multi-ethnic state as they enable ethnic communities to exercise a significant degree of autonomy. It can accommodate diverse cultural and linguistic traditions; can provide for a parity among ethnic groups; and establish a pluralistic basis for their relationship with the centre. Federal arrangements have been found to diminish the disruptive significance of identity politics.

The dominant discourse of our times has come to be identity politics and ethnicity (displacing other fault lines of class and conflict over resources, etc). It has brought home the heterogeneity of the 'nation' state. Autonomy is being proffered as a panacea for accommodating much more than cultural diversity. Autonomy is seen as a device for resolving conflicts over peoples, struggle for justice and dignity, as enabling the re-configuration of power relations and pluralistic control over resources. Autonomy is seen as a path to internal self government, whereby the territorial integrity of states remain inviolate, while protecting the socio-cultural and political rights of minorities.

Political scientist, Yash Ghai argues that if, under the impetus of the human rights movement, individuals secured a status in international law hitherto denied them, under the autonomy movement, groups (group rights), have also obtained recognition, giving impetus to the principle of self determination. Indeed the question it poses is - Can the right of self determination provide the basis for autonomy of minority groups? Is autonomy a right or a grant of the state? Fundamental is the issue of striking a judicious balance between the common and the separate interests or domains? The working of autonomies posit the question - How does one ensure that the federal reconciliation of regional identity with autonomy deepens democracy and not the phenomenon of minoritization or secessionism? Can the juridical idea of a centralised source of law be appropriate for autonomous arrangements? Can legal pluralism be defended if it becomes accessory to the long term growth of intra group inequality?

European and American human rights and minority rights frameworks have been lauding the potential of autonomy as a path for internal self determination. However the grant and operation of autonomies is contingent on a host of circumstances, including the regional concentration of a minority group. As political scientist Rajni Kothari reminds us, the battle for federalism is fundamentally a battle for greater democracy, in which people come into their own through social identities, organizational forms and institutional framework with which they feel comfortable and through which they can fulfil their potential and find self-respect.

In South Asia, states have been extremely wary, if not hostile, to devolving power and most have evolved into unitary states with, at best, administrative decentralization. Even India which has been most bold with experiments in asymmetric federalism, has mauled its constitutional structure of special autonomies with over-centralization and authoritarianism, as reflected in violent conflicts in its border states - the north east, Punjab and Jammu and Kashmir. At the other end of the spectrum is Sri Lanka, where the extreme ethnic polarization of the political imaginations makes devices like 'autonomy', serving internal self determination, as inadequate.

LEGAL PLURALISM : COEXISTENCE OF SEVERAL LAW REGIMES

Legal Pluralism can be defined as the coexistence of two or more legal orders within or across the confines of a sovereign state. It is often viewed as an important condition of autonomy. Legal pluralism indicates autonomy of certain legal traditions, for instance, those belonging to indigenous communities. It also means dialogue between different legal imperatives, situations, requirements, traditions, and procedures. For example, in management of natural and common property resources that define the economy of indigenous peoples, it is advisable to give custom the place of law. Nowhere is the state a neutral umpire,

holding the balance between different groups. It is actively involved in ethnic competition and struggles. The patriarchal bias of the state has distorted women's customary land rights entitlements.

Customary forms of land ownership in many parts of Asia have recognized women as having equal rights to land as men, and in some areas matrilineal inheritance is common. However, many interventions in indigenous peoples' lives have not dealt with men and women even-handedly. Processes such as the introduction of individualized land holding in indigenous areas, forced resettlement, compensation, registration of heads of households for taxation or benefit-sharing purposes, and the provision of jobs in extractive industries, have all tended to select males over females. The result has been a marked erosion of indigenous women's rights, resulting in poverty and loss of status.

Many institutional mechanisms can give formal expression to the presence of plural legal orders. A federal system, for example, constitutionally vests lawmaking authority at two levels of government, each relatively autonomous within its sphere of legislative authority. A state can also devolve power to regional or local levels of government to enable the exercise of delegated lawmaking authority by a subsection of a state's population.

Collective minority rights also possess the capacity to promote legal pluralism, i.e. to the extent that they constitute a minority community vested with a measure of lawmaking authority, relatively shielded from the legislative power of the broader society in which it is located. In South Asia, there is the legacy of colonial frameworks of governance, structured around the division of the public sphere (of common law,) and the personal sphere (of specific community based legal regimes) of family laws and inheritance. It is a deeply gendered divide - the public sphere of men and the personal sphere that frames women's lives. Post independence the patriarchal nature of the state is evident in the primacy of the role of women in the construction of relations, between collectivities and the state and the state, and collectivities. Women from minority groups often have to fight the patriarchy within their communities along with patriarchy and racism of the larger community. Pakistan women's rights activist Rubina Saigol asserts that women live under two states.

According to the Human Rights Commission of Pakistan (HRCP), nearly 6000 women and children are in prison, and about 80% of the women have been charged with adultery under the Hudood ordinances (Islamic Punishments) under which rape cannot be differentiated from adultery, unless corroborated by four male witnesses. Alongside is the feudal jirga system notorious for judgements involving 'honor killings' and 'vanni' (giving a daughter as blood money). In Bangladesh, Family laws discriminate against Hindu women's rights in the non registration of marriages. In India, religious based personal laws and traditional 'caste panchayat' practices violate human rights. India has entered a declaration in its commitments under CEDAW as regards registration of marriages under personal law. Although the option of registration under the 'secular' Special Marriages Act exists, it is not compulsory.

At issue is the dynamics of striking a balance and reconciling the tension between what international minority rights expert Asbjorn Eide calls the 'common domain' and the 'separate domain'. The latter can entail violation of certain fundamental freedoms. These parallel legal systems can strengthen pluralism and theoretically democratic participation, but in practice, they have been tyrannical and unjust, especially towards vulnerable sections of society, the minorities within minorities - Dalits and women . This is most dramatically embodied in the misogynistic practices of 'honour killings' but also in the less sensational cultural variants that oppressively grind down the every day lives of women.

Judiciary: Negotiating the tension between public and personal law regimes

In **India**, legislation relating to personal matters can legally discriminate between individuals, provided it does not breach Article 14 of the Constitution and does not ***unfairly*** and ***unreasonably*** deny equal protection under the law. Largely, the Indian judiciary has sought to expand the field of rights and protection without encroaching upon the 'separate domain', though in some benchmark judgments - e.g. the Shah Bano case (1985) the Supreme Court Justices pejorative comments on 'Islamic culture', betrayed prejudice based on majoritarian norms that has distorted the possibility of a dialogic movement towards a 'uniform civil code' (Article 44).

A Matter of Honour: Customary Law Practices and Gender Oppression

Khap Panchayat (Haryana, India)

Rajo Devi's son, Sunil, born in a family of ironsmiths dared to violate not only the caste barrier but also the village's exogamous regulations whereby village girls and boys are considered siblings. Sunil a Dalit, fell in love with a Gosain (Brahmin) girl of the same village, Sasrauli in Jhajjar district (Haryana). The two ran away from the village.

The elders of the Gosains caste convened a 'khap panchayat' presided over by the elected sarpanch of Sasrauli. It decreed that Rajo Devi and her family had 72 hours to produce the couple or leave the village permanently. Anyone having social ties with the family was threatened with a fine of Rupees 1,100. The couple did not come back to face what was a certain lynching at the hands of their own intimate kith and kin. Rajo Devi with her family of 14, including seven grandchildren, left the village, leaving behind the family house and their means of livelihood. "They threatened us. If we returned to the village, they would kill us," she said. The local administration failed to provide any support or protection. Rajo Devi sought refuge in Rohtak town.

These caste panchayats or 'khap panchayats' form a parallel justice system common among the Jat populated areas in and around Delhi - rural Delhi, Haryana, western Uttar Pradesh and even the adjoining areas of Rajasthan. More recently, the khaps had begun to assume an anti-poor, anti-women and anti-Dalit character.

The lack of social reform movements in Haryana is often cited as a reason for the dominant role played by khaps. Swami Agnivesh, founder of the Bandhua Mukti Morcha and President of the Arya Pratinidhi Sabha, holds the Arya Samaj leadership responsible for such tyrannical practices. In Dulina, Jhajjar (2003), when five Dalits were lynched, a panchayat led by some leaders of the Arya Samaj honoured the alleged killers.

Adapted from TK Rajalakshmi Frontline Magazine 2004

Karo Kari (Pakistan)

Karo Kari is a tribal custom followed in rural areas of Punjab and Sindh in Pakistan of 'honor killing' of men and women who are accused of dishonoring their families. From 1997 to May 30, 2003, some 1,797 Karo-Kari cases were registered in Punjab and 910 in Sindh. A woman is declared a 'black woman', a 'kari', once she is accused of having sex outside marriage and is liable to be killed. 'Karo' is the male version.

The custom is rooted in tribalism. Under Pakistan's Hudood Ordinance, enacted by General Zia ul Haq, Pakistan's Islamist military ruler in the 1980s, proven killers could seek or buy pardon from the victim's family under the Islamic principles of compromise. Once such a pardon has been secured, the state has no further writ on the matter.

Human rights agencies in Pakistan have repeatedly warned that women falling prey to karo-kari were usually those wanting to marry of their own will and held properties that the male members of their families did not wish to lose if the women married outside the family. Government and independent researchers estimate that over 4,000 women have fallen victim to this practice in Pakistan over the last six years.

The government has drafted a bill the "Criminal Laws (Amendment) Bill (2006) for the purpose of revising Hudood Ordinances, blasphemy laws and honour killings (karo-kari) which, in line with the Qu'ran, allow the use of flogging and stoning, to punish acts and behaviour considered incompatible with Shar'ia Law such as adultery, gambling, drinking alcoholic beverages, and crimes against property. Of particular importance is the fact that the amendment would treat honour killing as murder.

Judiciary providing relief but not challenging unjust law

The Supreme Court in the case of Danial Latifi & Anor v Union of India 2001 upheld the constitutionality of Muslim Women (Protection of Rights on Divorce) Act 1986, which precludes divorced Muslim women from seeking the protection of S. 125 of the Criminal Procedure Code on maintenance from their ex husbands, if they are unable to support themselves after the expiry of the stipulated payment period. Instead the Act places the obligation on the woman's relatives in the first instance, and then the State Board, to provide support. However, the Court emphasized that "regardless of their religion, they (women in a society dominated by males both economically and socially) must have their basic Human Rights recognised and protected since everyone is entitled to social justice". The Court reinterpreted the entitlement to "reasonable and fair provision" under s 3(1) as not time-limited. "Hence it should be applied to hold the husband directly liable for making regular alimony payments to his ex-wife beyond the stipulated period for maintenance. In this respect, the Act incorporates S. 125."

Personal law regimes of Muslim, Christian, Hindu and Sikh communities have tended to be conservative, particularly when the community is a minority. The draft Christian Marriage Bill 2000 is a legislation Indian Christians had to wait 38 years for. The Bill, the first attempt to codify civil laws of a minority community since 1947, has raised the hackles of the Christian community. In the interim, a recent judgment of the Bombay High Court has made it possible for a Christian woman in Maharashtra to get a divorce on the ground that her husband was cruel to her. Earlier, she could not get a divorce unless she proved her husband had deserted her or committed adultery.

Mary Roy and the Succession Act: Judiciary takes a bold step

The Supreme Court in the Mary Roy case (1986) secured for Christian women an equal share in their father's property. Until then, inheritance was governed by the provisions of the Travancore-Cochin Christian Succession Act (1916) under which a daughter was eligible for a quarter of the son's share or Rs 5,000, whichever is less, when the father dies intestate. The wife is entitled only to maintenance.

It brought the Christians of Kerala under the more liberal Succession Act of 1921. The verdict not only provided for equal rights but it did so with retrospective effect. In the decade following the verdict, just two dozen cases demanding equal rights reached the courts. The community closed ranks. Government and church collaborated with the forces of Christian patriarchy to stymie the verdict. The bulk of Christian women stayed put in the quagmire of passivity.

Laws are only as strong as the institution or collectivity that stands behind them. The state, as represented by the Courts, is important, but in many cases it may not be as influential as the village or ethnic, or caste community. Despite state laws prohibiting discrimination based on caste or gender, low castes and women may be excluded due to local or religious laws.

In **Pakistan**, while the Courts have not dared to challenge the injustice of the Hudood ordinaces, there are instances where they have protected women's rights referring to equal rights under Islam and invoking international standards.

Pakistan Judiciary: A decision for women's rights

The High Court in the case of Ms. Humaira v Malik Moazzam Ghayas Khokhar & Ors (1999), quashed the criminal case of 'zina' registered against the petitioner, establishing the presumption of a valid marriage subsisting between the two accused, and that a subsequent marriage performed under coercion was not valid in law. The High Court stated, " In the exercise of its constitutional jurisdiction under Art 199 of the Constitution, the High Court may quash criminal proceedings initiated pursuant to a police investigation which is clearly mala fide or beyond the jurisdiction of the investigating agency."

Moreover, the coexistence of several laws in one domain does not mean that all laws are equal, or equally powerful. In the case of particular regimes for territory, recognised as inhabited by indigenous peoples, i.e. in the context of state and local community relationships, state law is usually more powerful and used by state officials (e.g., in declaring and enforcing forests as state property). Statutory law can be used by powerful outsiders to claim resources in ways that are not locally recognized as legitimate.

international universe of protecting minority rights

Fundamental to all human rights law is the principle of equality and integral to that, the concept of nondiscrimination. It ensures that no one is denied the protection of their human rights based on external factors like race, sex, language, colour, religion, national or social origin, birth, property and political opinions. Setting out the framework of human rights law are six legally binding international treaties-- Conventions, International Covenant on Civil and Political Rights(ICCPR 1966), International Covenant on Economic, Social and Cultural Rights (ICESCR 1966), International Convention on Elimination of All Forms of Racial Discrimination (CERD1965) International Convention on Elimination of All Forms of Discrimination Against Women (CEDAW 1979), International Convention on the Rights of the Child (CRC 1989) and the International Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) . Along with the Universal Declaration of Human Rights, they comprise the International Bill of Rights setting forth standards to be followed by states.

The global framework for Minority Rights protection stretches from Covenants to Working Groups and Special Rapporteurs. It was initially drawn from instruments of human rights law and is currently articulated in the **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992).** The Declaration was inspired by Article 27 of the International Covenant on Civil and Political Rights (ICCPR 1966), the only global treaty with a provision specifically referring to minority rights:

> ***"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."***

The Declaration expands the term Minorities to include 'national minorities' whose rights have different connotations, i.e. relating not only to preservation and development of their culture but also of their national identity. The rights are set out as rights of individuals and the duties of states are formulated as duties towards Minorities as groups.

MINORITY RIGHTS PROTECTED BY TREATY REGIMES

ICCPR in Article 1 sets out the right of 'all peoples' to self determination though there is a distinction between 'peoples' and 'minorities'. Article 18 protects freedom of thought, conscience and religion and Article 20 requires governments to prohibit by, law, any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence. Article 22 provides for freedom of association and protects the right to form and participate in minority educational, cultural, political and other organisations and Article 27 freedom of religion and use of langauage.

ICERD applies to more than racial discrimination i.e. formal legal schemes that discriminate on the basis of colour and extends to exclusion and restrictions on the basis of 'race, descent, or national or ethnic origin'. The Committee monitoring the treaty has consistently considered discrimination against

minorities in its examination of periodic reports submitted by states. In the World Conference Against Racism 2002, racial discrimination based on 'descent' was used to bring within its purview caste-based discrimination. It was strongly opposed by the Indian government.

CRC in focusing on the promotion and protection of child rights provides, in Article 20, that due regard should be paid to a child's, ethnic, religious, cultural and linguistic background when it is necessary to place the child in a home other than that of her/his family. Further Article 30 extends to children the provisions of Article 27 of ICCPR regarding the right to enjoy one's culture, practice one's religion and use one own language.

CEDAW, the international bill of rights of women while affirming equality before law, obliges states in Article 2 to eliminate all forms of discrimination and establish the principle of equality in national constitution as well as abolish law, custom and practices which discriminate against women. Further Article 5 obliges states to take all appropriate measures 'to modify the social and cultural patterns of men and women" in order to eliminate "prejudices and customary and other practices which are based on the idea of inferiority or the superiority of either of the sexes on stereotyped roles for men and women."

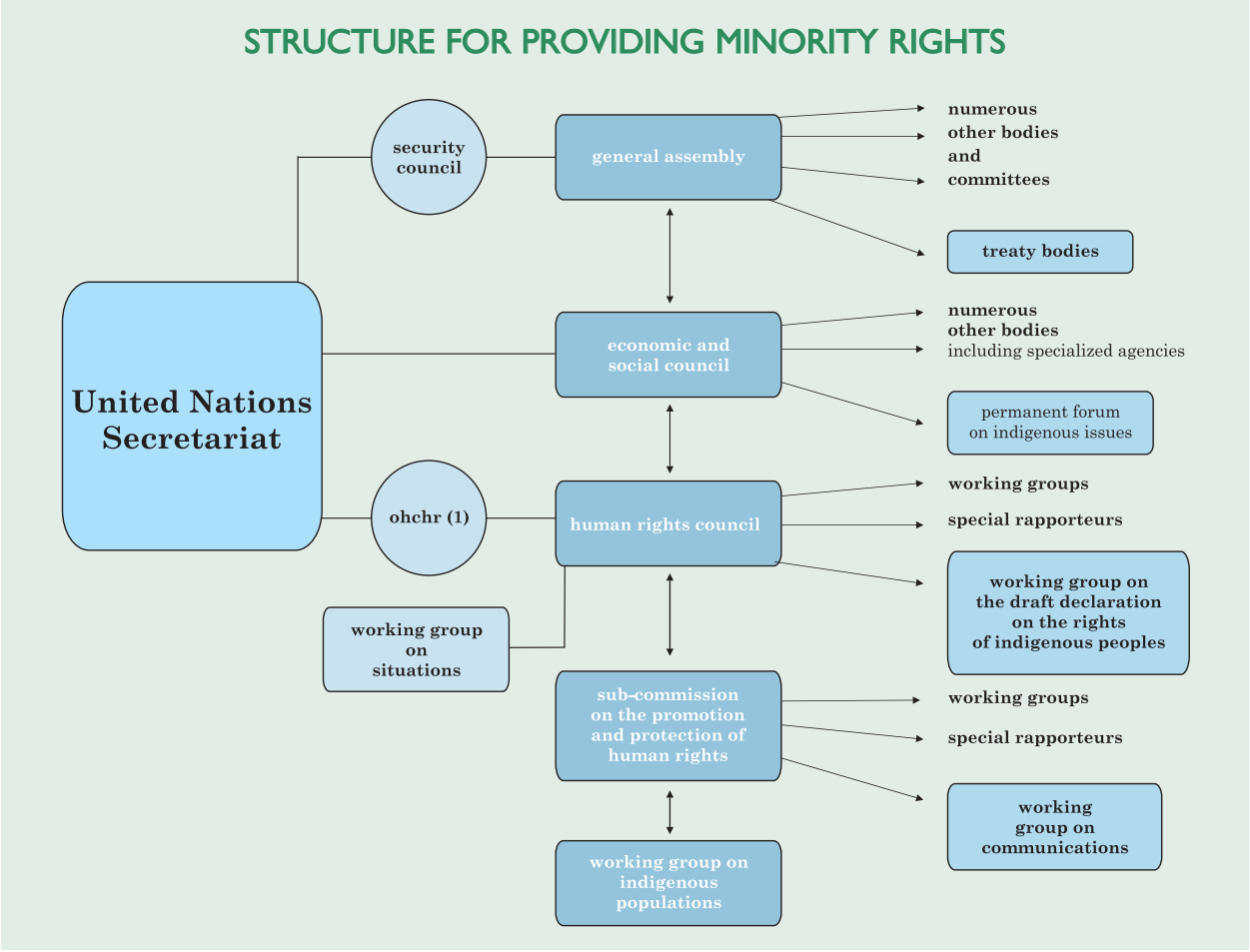
State signatories to the Conventions are obliged to introduce national laws to implement commitments under international law. For example the Indian Constitution Article 51 (c) enunciates the duty to foster respect for international humanitarian law and treaty obligations, and under Article 253, Parliament has the power to make any law to implement international conventions. According to Article 9 of Nepal Treaty Act (1990) the provisions of the international treaties become part of the Nepalese law upon ratification, and become directly applicable as part of the domestic law without the need for any municipal legislation.

While the states of South Asia have signed and ratified these Covenants, they have done so with declarations and reservations that in some cases, as with CEDAW, defeat its purpose. Bangladesh government does not consider as binding upon itself the provisions of Article 2 as "they conflict with Sharia law based on the Holy Quran and Sunna". Indian government with regard to Article 5 declares that "it shall abide by and ensure these provisions in conformity with its policy of non interference in the personal affairs of - any Community without its initiative and consent". Pakistan government declares that its accession is "subject to the constitution of the Islamic Republic of Pakistan". Both India and Pakistan have entered reservations with regards to the complaints procedures.

Each of these treaties sets up a Committee that monitors the way state parties fulfil human rights obligations. The Committees known as treaty bodies comprise human rights experts. They monitor compliance, considering complaints (communications) by individuals of rights violations. The Committees report to the ECOSOC which is a subsidiary body of the General Assembly, though with the setting up of the **Human Rights Council 2006**, this may change.

Working Group on Minority Rights (1982) is the only dedicated forum for Minority Rights in the UN. It comprises independent experts and meets annually in Geneva at the time of the Sub Commission for the Promotion and Protection of Human Rights. Within the overall UN structure, under the reformed structure adopted at the World Summit 2005, the main reporting body on human rights will be the Human Rights Council that reports directly to the General Assembly and directly elects its members. The Working Group on Minority Rights is very open to NGOs. Till 1999, the Sub-Commission on the Promotion and Protection of Human Rights was called the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

Convention on the Prevention and Punishment of the Crime of Genocide, (1948) also extends its protection to minority groups, defining genocide in the Article 2 as acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group and forcibly transferring children of the group to another group. Article 4 of the Convention makes it obligatory for signatory states to enact legislation to ensure that persons, whether they are constitutionally responsible rulers, public officials or private individuals, guilty of genocide are punished. The defining clause of 'intent to destroy' has been problematic in identifying genocide as for example in case of Gujarat and the 2002 pogrom against the Muslims.



International Criminal Court (2002) was set up 50 years after Article IV of the Genocide Convention declared that crimes "shall be tried by a competent tribunal of the State in the territory of which the act was committed or by such international penal tribunal as may have jurisdiction . . ." It has been called the missing link in the international legal system. The International Court of Justice at The Hague handles only cases between states, not individuals. Without an international criminal court for dealing with individual responsibility as an enforcement mechanism, acts of genocide and egregious violations of human rights often go unpunished. Noteworthy is the fact that the ICC now covers not only genocide, but crimes against humanity that include, aside from genocide, government murder, extermination campaigns, enslavement, deportation, torture, rape, sexual slavery, enforced disappearance, and apartheid. Bangladesh is the lone signatory in South Asia, though it has not ratified it.

Regional Frameworks

The European System of Legislative Protection has been far reaching in developing a framework of principles that recognize the 'special' needs of the national minorities for positive protection and an enforceable mechanism for protecting not only individual but also the collective rights of minorities. Organizationally, it involves the activities of the Council of Europe (CoE), Organization for Security and Cooperation in Europe (OSCE) and marginally, the European Union (EU).

Council of Europe

European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (1950) came into existence as a universal instrument of protection and with the exception of Article 14 does not directly touch upon the question of national minorities. With regard to the special requirement of national minorities, the ECHR is too vague or broadly worded, consequently the CoE in Vienna 1993 instructed the Committee of Ministers to begin drafting a Protocol guaranteeing in the 'cultural field' individual rights, in particular, for persons belonging to national minorities.

Protocol 12 to the ECHR on the Rights of Minorities (2000) for the first time provides a right to non-discrimination separate from the other substantive articles.

European Charter for Regional or Minority Languages (1992). Its monitoring system is weak and one major problem lies in its 'a la carte system' which means parties to the treaty may themselves select those 35 requirements.

European Court of Human Rights can not be directly used by members of minority groups invoking Article 14 of ECHR, however with the aid of obligations under another Convention, the Court has reviewed a great number of cases concerning minority rights in spite of the absence of the specific provisions for the protection of minorities in the Convention in its Protocols .

Framework Convention for the Protection of National Minorities (adopted in **1994** came in force in **1998**) is the first actual and comprehensive legally binding document concerning minority protection. Council of Europe's members stated in the Preamble:

> ***"Being resolved to protect within their respective territories the existence of national minorities, and considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in European continent."***

It has introduced the principle that minority cultures shall be encouraged, improved and prescribed legally binding minimum standards that must be met by States. It has also established values which States are obliged to implement through their national institutions such as the right to full and effective equality, education in minority languages and effective participation in public life. The FCNM is a separate instrument parallel to and not a Protocl to the European Convention for the Protection of Human Rights. While the latter is enforced by the European Court, the FCNM comes under an Advisory Committee of independent experts under the political control of the European Council of Ministers.

The European Commission for Democracy Through Law, an expert body of the CoE, was established in 1990, and its main activity is constitutional assistance. The Venice Commission had proposed in 1991, the European Convention for the Protection of Minorities. However, this insightful document has not been accepted by member States of the CoE.

Organization for Security and Co-operation in Europe (OSCE)

OSCE's goals include defending human and minority rights and building democratic institutions in member states. Basic was the recognition that respect for the rights of persons belonging to national minorities was a essential factor for peace, justice, stability and democracy. Moreover at the Copenhagen Conference (of CSCE) it was stated for the first time the "possibility that positive measures, intended to restore real and effective equality with the majority, may be taken with respect to minorities without these measures being considered as discrimination against the majority".

Lund Recommendations on Effective Participation of National Minorities in Public Life adopted in 1999, were structured around two cconceptual divisions - participation of national minorities in governance of the State as a whole, and self-governance over certain local or internal affairs.

High Commissioner on National Minorities. Responding to the surge in ethnic conflicts, Helsinki Conference in 1992 introduced the institution of the High Commissioner on National Minorities (HCNM). Her mandate has a twofold mission: first, to try to control and de-escalate tensions in potential ethnic conflicts and, second, to inform the OSCE whenever such tensions threaten to develop to a level at which she cannot contain them with the means at her disposal.

UN System Frameworks

In addition, various organs of the UN such as UNESCO and the ILO are part of the international framework of protection of minority rights. There is UNESCO's Declaration on Race and Racial Prejudice (Article 5) and the Convention against Discrimination in Education (Article 5). As regards the ILO, although the complaints procedure developed by it may be used directly by governments, trade unions or employers associations, many of the ILO's non discrimination norms and its promotional oversight and technical assistance activities may be of interest to minorities. There is no single minorities convention but ILO Conventions **No 107 & 169**, specifically address Indigenous & Tribal peoples and Migrant Workers.

RIGHTS OF INDIGENOUS PEOPLES

Conventions and declarations of the international community provide a broad framework, as well as specific statements regarding the protection of indigenous peoples, their interests, cultures, ways of life, cultural survival, and development:

International Labour Organisation Convention No 107 (1957) Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, addresses the right of indigenous peoples to pursue material well-being and spiritual development, and was the first international instrument in specific support of indigenous 'populations'. Largely because of its view that indigenous peoples should be integrated into the larger society, a view that subsequently came to be seen by many as inappropriate, Convention No. 107 was followed in 1989 by ILO Convention 169, Convention Concerning Indigenous and Tribal Peoples in Independent Countries.

Convention No. 169 is premised on the fundamental concept that the way of life of indigenous and tribal peoples should and will survive. It emphasises that indigenous and tribal peoples and their traditional organizations should be closely involved in the planning and implementation of development projects that affect them. The Convention 169 is the most comprehensive and most current international legal instrument to address issues vital to indigenous and tribal peoples. It includes articles that deal with consultation and participation, social security and health, human development, and the environment. This Convention is the only binding ILO Convention on indigenous rights.

Agenda 21 adopted by the United Nations Conference on Environment and Development ("UNCED") in 1992, recognizes the actual and potential contribution of indigenous and tribal peoples to sustainable development.

Convention on Biodiversity calls on contracting parties to respect traditional indigenous knowledge with regard to the preservation of biodiversity and its sustainable use.

Vienna Declaration and Programme of Action (1993) emerging from the World Conference on Human Rights recognizes the dignity and unique cultural contributions of indigenous peoples, and strongly reaffirms the commitment of the international community to their well-being and their enjoyment of the fruits of sustainable development.

United Nation's Draft Declaration on the Rights of Indigenous Peoples (1993) developed with the direct participation of indigenous peoples representatives and currently under consideration within the United Nations, addresses issues such as the right of indigenous peoples to direct their own development, to determine and develop priorities and strategies for the development or use of ancestral territories and resources, and the right to self-determination. The emerging concern for indigenous peoples prompted the United Nations to declare 1993 as the International Year of the World's Indigenous Peoples and the decade from December 1994 as the Indigenous Peoples Decade.

India in 1958, Bangladesh in 1972 and Pakistan in 1960, signed ILO Convention 107. No South Asian state has signed ILO Convention 169 which superseded 107.

The Working Group on Indigenous Populations was set up in 1982 by the ECOSOC under the guidance of its subsidiary body the Sub Commission on the Protection of Minorities. It meets annually in Geneva when the now renamed Sub Commission on the Promotion and Protection of Human Rights meets and there is a Voluntary Fund that has assisted many indigenous peoples to participate in Geneva. Its mandate includes attention to the evolution of international standards concerning indigenous rights.

Permanent Forum on Indigenous Peoples was set up in 2000. Its purpose is to serve as an advisory body to the Economic and Social Council, with a mandate to discuss indigenous issues relating to economic and social development, culture, the environment, education, health and human rights. In this capacity the Permanent Forum is enabled to provide expert advice and recommendations on indigenous issues to the Council; promote the integration and coordination of activities relating to indigenous issues within the UN system; and to disseminate information on indigenous issues. As with the Working Group, in the Permanent Forum, organizations of indigenous people may participate as observers in its work.

Note: The Government of India raised serious objections to the establishment of the Permanent Forum stating that there were adequate mechanisms within the UN human rights system and requesting a study

of the existing mechanisms. The UN Secretary General stated that there was need because of the growing interest and concern for indigenous issues among the different organisations and departments of the United Nations system.

DEVELOPMENT OF THE PRINCIPLE OF RIGHT TO SELF DETERMINATION

The right to self determination is premised on the principle that freedoms cannot be enjoyed under subjugation. It is normally traced to the slogan of the French Revolution that the source of all sovereignty resides essentially in the nation. A nation was assumed to consist of people who are the source of sovereignty of a nation. Sovereignty of the king was replaced by the sovereignty of the people as vested in the nation. The legal implication of the right to self determination was that a people either alone on jointly with other peoples have the right to constitute a sovereign nation.

The principle became prominent during World War I in 1918 when American President Woodrow Wilson included in the Peace proposals the principle, "that in determining questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of governments whose title is to be determined". It led to the independence of several states in central and easterm Europe.

In the post World War II global order, the principle of self determination has been enshrined in the UN Charter and in international human rights law. However, the international legal norm of self-determination of peoples was essentially interpreted as being applicable to peoples under colonial subjugation as evinced in the adoption of UN General Assembly Resolution 1514 (XV) on the Granting of Independence to Colonial Countries and Peoples. However, though the states that passed this resolution had the people under colonial domination in their mind yet, they did not make it an exclusive right of the colonial peoples. As developments show, despite the end of the process of de-colonization, the right to self-determination has not lost its importance and relevance.

The principle of the right to self determination draws attention to a basic contradiction between different norms of international law. Sovereignty, territorial integrity and independence of states form the bedrock of today's international legal system. Yet the "right to self-determination of peoples" has been enshrined in all the international declarations and covenants on human rights. Maintaining the integrity of states is a task of international law. However, the question arises if human rights are universal, interdependent and indivisible, then should the norms of national sovereignty and territorial integrity be allowed to stand in the path of a people realizing their right to self-determination?

Both norms are of great value and importance and they must not be allowed to work against each other. The task is to find a balance between the two. The United Nations has sought to find a balance between the right to self-determination and territorial integrity of states by recognizing the rights of the linguistic, ethnic and religious minorities and developing universal norms as well as covenants for the protection of these rights. At the regional level, groupings of states like the Council of Europe, the Nordic Council, Organization for Security and Co-operation in Europe (OSCE) have been trying to resolve this contradiction by emphasizing that the states deal with the aspirations of minorities through granting autonomy and creating federal polities.

SOUTH ASIAN FRAMEWORKS FOR PROTECTING MINORITY RIGHTS

In South Asia, many religious, language, ethnic and national minorities have 'kin states'. Tension and conflicts impact upon a circularity of inter-relationships, i.e. community and state and inter-community relations, as well as inter state relations. Insurgency in Kashmir, affects the dynamics of Hindu-Muslim relations within India and Pakistan (and Bangladesh) and state to state relations. The ethnic conflict in Sri Lanka, affects the dynamics of state and Tamil community relations, Sinhala-Tamil relations and has implications for the cross border kin state of Tamil Nadu (India), especially heightened by the mass presence of refugees.

South Asian Association for Regional Cooperation (SAARC) is the only available regional mechanism but its mandate steers clear of 'conflict' issues. Nonetheless, the SAARC process has spawned a host of quasi official and NGO initiatives that have addressed the condition of minorities in the region and the need for

a regional mechanism. Most recently, under government patronage, New Delhi was host to a regional 'Workshop on the Condition of Minorities in the SAARC Countries', in September 2005. The delegates comprising Parliamentarians, party leaders and jurists, recommended the creation of a **South Asia Council for Minorities (SACM)** to promote the protection of minority rights.

In addition there have been a host of regional non governmental initiatives for minority rights, for example - South Asia Forum for Human Rights (SAFHR), International Centre for Ethnic Studies, South Asians for Human Rights (SAHR) and most recently South Asian Policy Analysis Network (SAPANA). There have been repeated calls for SAARC to adopt a South Asian Charter of Human Rights and the setting up of a South Asian Human Rights Commission.

Bilateral Initiatives for Protecting Minority Rights

Jawaharlal Nehru - Liaqat Ali Pact (1950) was an effort to provide protection to minorities. It established the responsibilities of the two governments towards their minorities and recognised the legitimacy of cross border interest in the treatment of minorities. It suffered a set back with the assassination of Pakistan Prime Minister Liaquat Ali in 1951.

The question of Bengali Muslims who were in Assam prior to the emergence of Pakistan in 1947 became so entangled and so politicised that it had to be dealt with specifically under the Inter-Dominion Agreement, 1948 and the Liaquat-Nehru Agreement, 1950. The later agreement ensured greater security for Muslim settlers, and soon after the agreement many of those who had been turned previously into refugees, started going back their homes. But since the returnees were left out of the 1950 Indian Census, they are persistently described by the Assamese as Bengali infiltrators.

East Pakistan Liberation War (1971) India was involved in supporting the peoples of then East Pakistan armed struggle for self determination against the cultural and political hegemony of the (West) Pakistan state. At the core of the struggle was the assertion of Bengali nationalism. Nine million Bengali refugees who poured into India were posited as the justification for India being the mid-wife to the emergence of Bangladesh.

Indo-Sri Lanka Accord (1987) was an agreement aimed at managing the 'ethnic' conflict and restoring stability to the island state. India was the guarantor of the accord that provided for demilitarising the Tamil militant groups and a mechanism of devolving power to Provincial Councils. Sri Lankan social scientists argue that 'a foreign agency' was necessary to push the Sri Lankan power elite towards some measure of devolving power. The accord was rejected by ultra nationalist groups in the south, the JVP and by the LTTE that had emerged as the foremost militant group. It sucked India's Peace Keeping Force into war with the LTTE and alienated it from the southern ruling political forces who manoeuvred its unceremonious exit.

Chittagong Hill Tracts Agreement (1997) was signed between the Bangladesh government and the representatives of struggle for self rule of the indigenous peoples of the CHT. Indian diplomacy played a quiet role in enabling the accord which would facilitate the return of thousands of Chakmas who had sought refuge in India.

why minorities rebel

"Ethnicity, nationality and citizenship are all identities but the basis of them differ. Citizenship is an instrument of equality in democratic states, but ethnicity and nationality are often invoked by states to confer or deny equality".

T.K. Oommen, social scientist

Bangladesh, India, Pakistan and Sri Lanka as post colonial nation states inherited territories which are the homes of many nationalities, ethnic communities religious and caste communities, all of which were highly politicised under colonial administrations and the process of constitutional reforms on independence. The ethno-geographic mosaic of these states as well as the kindgdoms of Nepal and Bhutan should have predicated a politics of pluralism and inclusion, instead state consolidation has been towards majoritarianism and structures of governance that are centralizing, coercive and hegemonic. The status of most minorities in South Asia is abject - marked by low income, lack of assets, voiceless-ness and vulnerability. While these aspects are common to the poor in South Asia, they are felt more acutely and more systematically by persons belonging to a minority, as they are the direct result of the violations of their rights by virtue of being a minority.

No state of South Asia is free from internal strife. People belonging to different minorities, ethnic, religious, linguistic and indigenous tribes/communities are engaged in struggles against the states for the protection and preservation of their social, cultural and economic rights. Their demands vary from equality and integration to regional/territorial autonomy, self-rule, self-government and self-determination, including separation. In their attempt to preserve the status quo, the ruling elite of South Asia have ignored the democratic aspirations of the minorities and have resorted to what political scientist P. Sahadevan calls 'ethnic militarism'. Consequently the region is a mesh of multiple conflicts lines.

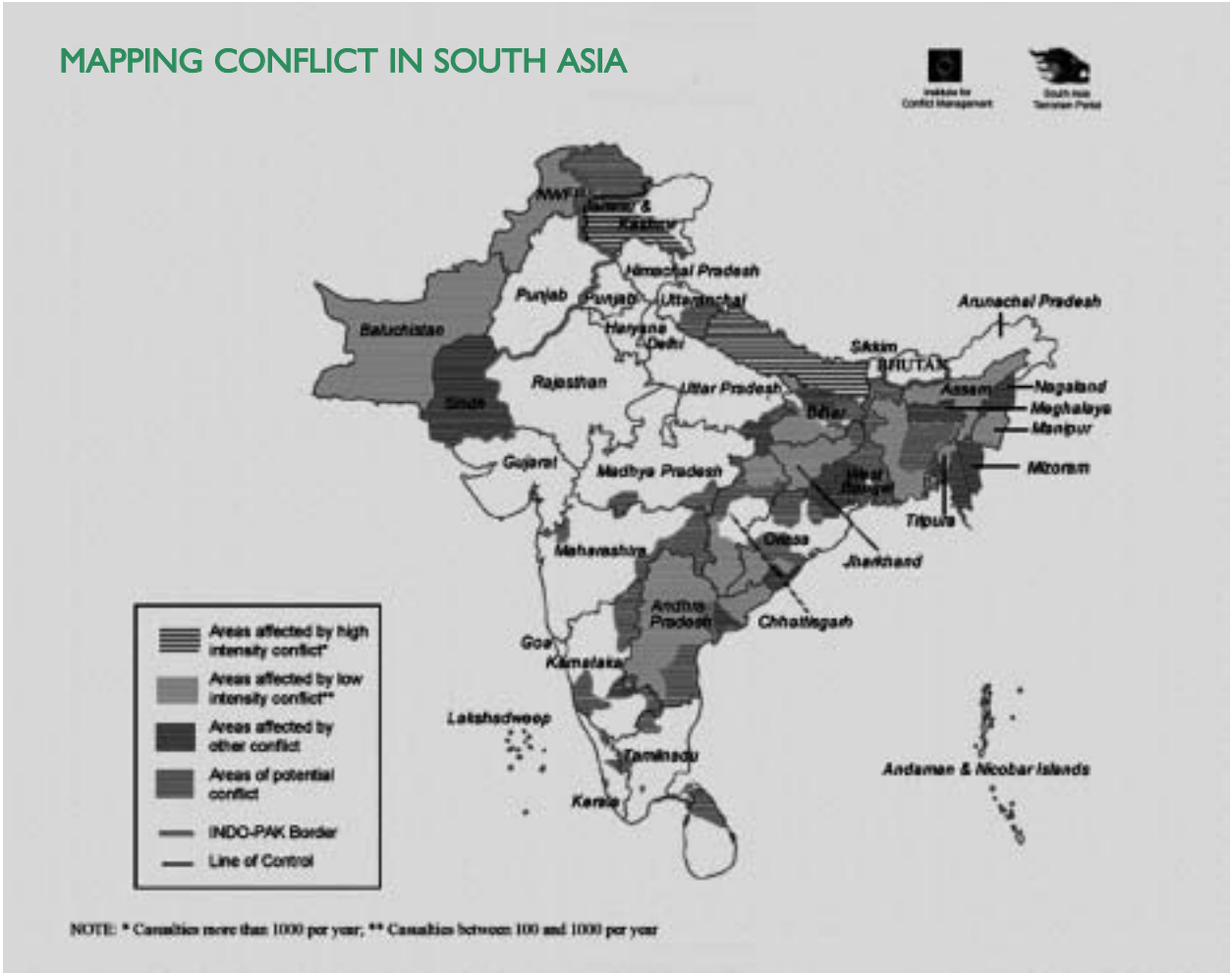
Converging conflict lines in Nepal

Nepal illustrates how inequalities and exclusions across different dimensions - regional, ethnic, urban:rural and class - can create the conditions for violent conflict. In 1996 when the insurgency began the poverty rate was 72% in mid and far western regions and 4% in Kathmandu. Overlying these regional disparities are disparities in human development status with HDI of the upper caste Nepalis 50% higher than that of hill ethnic, terai ethnic and occupational caste groups. And while indigenous people constituted 36% of the population and Dalits 15%, they hold 8.42 and 0.17% of the government posts, respectively. In the heartland of the Maoist insurgency poverty braids with inequality, regional and ethnic discrimination. *(UNDP HDR 2005)* Moreover this area has the lowest political voice. The 1990 pro democracy movement had mobilized the ethnic communities but the elite compromise it produced between the palace and the upper middle classes created a widening chasm between democratic expectations and democratic practice. *(DFID 2001)* The fault lines of poverty and inequality - urban: rural; indigenous- upper caste, metropolitan - periphery and inequitable gendered roles of men-women - all feed the conflict.

Cultural and ethnic diversity, itself is not a source of conflict. The ebb and flow of ethnicity, its assertiveness or decline are explicable by a variety of social and economic factors. Ethnicity is not primordial or inevitable. Social scientist Yash Ghai succinctly sums up ethnicity as a process, " when these (cultural, religious, linguistic) markers cease to be mere means of social distinction and become the basis of political identity and claims to a specific role in the political process or power, ethnic distinction are transformed into ethnicity."

Contemporary conflict theory conceptualizes multi-faceted civil conflicts largely as 'ethnic' conflicts, de-historicisng and essentializing them. In the focalization of histories of social injustice, political exclusion and socio economic grievances into ethno-nationalist conflicts, the questions that get sidestepped are - to what extent are ethno-national and cultural differences a creation of elite led politics? There is need to probelmatize ethno-nationalism and analyse the mobilization of collectivities by political entrepreneurs. To question whether ethnicization of conflicts displaces and distracts from other conflict fault lines rooted in the struggle for resources, political participation and a diffrentiated cultural identity.

In multi-ethnic and multi-cultural societies consisting of 'nations', indigenous peoples and communities, whether the relationship will be that of pain and tension, is critically determined by the design and effect of the orientation of the state. For example, after the Triumph of Peoples Power in 2006, Nepal is poised to draft a new Constitution, how will it address the challenge of transforming Nepal's institutionalization of exclusion? Will it provide for the power sharing of the *janjatis* (indigenous peoples) and Dalits? How many of the 60 odd languages spoken in Nepal and the many religions followed, will it recognise? Or in India, how should the rights of the indigenous peoples and the imperatives of the dominant development paradigm be reconciled? Should autonomies be sourced in the fundamental rights chapter of the Constitution or subject to legislative and executive will? In respecting state autonomy, what should be the role of central/federal institutions when a state turns rogue as in Gujarat 2002? In Sri Lanka, what kind of power sharing mechanisms - asymmetric federal devolution of power, autonomy, could mediate ethnic polarization and give political substance to peace negotiations? Should there be the right of judicial review of legislative enactments that are in violation of fundamental freedoms as available in India but not in Sri Lanka? How



do you counter the principle of equality producing 'discrimination' and leading to a loss of fundamental freedoms as for example in the context of freedom of religion and conversion? Can a state policy of secularism be built in the absence of ingrained societal values of tolerance, equity and justice? Should there be a lonely strategy of 'positive discrimination'? Should we aim for wider democratic participation?

How should peace accords be negotiated to prevent a collapse back to war? What is the value of a peace accords unless it is constitutionally guaranteed? Should human rights have a role in peace accords? Should there a sidestepping of the root causes of conflict in the desperate keenness to stop the violence? Should the realities of power, justice and human rights be ignored if a sustainable peace is to be built? Should these 'flawed' negotiated settlements/ peace accords (Chittagong Hill Tracts 1997) be privileged as more stable and effective than a military victory (East Pakistan 1971) or suppression of the conflict as in Baluchistan in Pakistan (1973-77) or Punjab in India (1980s).

Such choices will determine whether the region will be conflict prone, whether minorities and indigenous peoples will be at risk and whether political entrepreneurs will be able to use grievances to mobilize communities along ethnic lines. Culture and cultural values are not a source of conflict but, exclusion, suppression of socio-economic and cultural rights and denial of voice and dignity will lead to mobilization, which will be along cultural-ethnic lines. At the core of the Minority Rights question is the democracy deficit.

International human rights- minority rights discourses and the conceptual paradigms of the conflict industry and the development and aid agencies have reinforced the tendency to ethnicize struggles. The UNDP Human Development Report (2004) *Cultural Liberty in Today's Diverse World* draws attention to the challenge of collective or cultural identities rather than issues of economic and social justice which are increasingly left to the free play of the market. Ethnic movements may have at their core hardcore issues of social and economic justice, of political participation - but as in the case of the Tamil conflict in Sri Lanka it gets articulated in terms of ethnicity and identity.

South Asia: Shrinking space for minority rights

- Where the state's ideological foundation promotes and maintains the ethnic, linguistic or religious superiority of the majority group(s); unitary political structures and a form of majoritarian democracy, that effectively blocks the legitimate participation of the minorities in the decision making process.
- The 'communalisation' of politics and 'politicisation' of religions keeps minorities out of the mainstream. Repressive and discriminatory laws and practices against minorities of some states, reinforce exclusion.
- The lack of awareness about human rights and democracy among the people of South Asia. Without this awareness it is difficult for minorities to fight for their rights. The conflict of interests among the minority communities, which is created by the denial of equitable access to social, economic and natural resources, also stands in the path of the emergence of a united front of minorities.
- The so-called mainstream ideology of assimilation promotes hegemony at the political and societal level contributing to the alienation of the minorities from the larger society. This is further reinforced by the education system.

SAFHR Regional Consultation on Minority Rights, Kathmandu 1998

The editor of *Tehelka*, a South Asian weekly, Tarun Tejpal, seeking to reassure himself and others that the Indian Muslim narrative (of being one of 'us' and not 'them'- i.e. enemy/traitor) was secure, asserted, "The idea of India ('embracing and wise') is sacrosanct. If it goes we have much more to worry about than just majority and minority positions". Leaving aside the normative bias in Tejpal's conceptualisation of the idea of India, for indigenous communities in the north east or adivasis displaced by the Narmada dam; for Muslims in Gujarat or Rajasthan, is the presumption secure? In Sri Lanka, for the dominant section of the Tamil population, the idea of Sri Lanka is not secure. If it goes, there is no certainty that -"we would have more to worry about than just majority and minority positions". This has led Sri Lankan analysts to question the relevance of the Minority Rights Protection framework. We need to problematize and not just reinforce frameworks of minority rights protection.

2 state ideology & design

state ideology & design

South Asian states in the political organization of their plural societies have experimented with different models, from federalism with special autonomies to unitary state structures; from multi-party democracy to party-less authoritarian and military governments; from a secular to a theocratic orientation and from republic to monarchy. Whereas India has articulated an elaborate framework of constitutional guarantees for minority rights protection, in the case of Pakistan, the constitution is itself the source of discrimination and victimization. For the region's minority communities, it has been a common experience of majoritarianism and their discrimination and disempowerment resulting in most cases to submissive acquiescence, but in others to resistance and revolt. For the dominant (majority) groups, minority rights are seen as challenging the state. The national security imagination of these multi-ethnic states is articulated through a majoritarian bias as evident in the racial politics at the 'check point' in conflict affected areas to the minoritarian bias of the functioning of the law and justice mechanisms, and especially the emergency laws.

Moreover as the living mode of discrimination and exclusion of minorities demonstrates, the minority question in South Asia is a trans border concern. As a former Indian Foreign Secretary S K Singh said, "What happens in the states of UP and Bihar has implications in Nepal; of Tamil Nadu in Sri Lanka and similarly, developments in Punjab, Rajasthan, UP and Jammu and Kashmir reverberate in Pakistan and Bangladesh." Indeed, the network of co-ethnicities, languages and religion makes for a complex dynamics of action -reaction. This has implications for a cross-border frame of obligations and responsibility regarding the treatment of a group that is a (linguistic, religious or ethnic) minority in one country and a majority across the border. The Nehru-Liaqat Ali Pact (1951) specifically recognized this concern.

Routinely, cross border religious minorities have been targeted as a backlash of inter-state or inter-community tension. Soon after the 1965 Indo- Pakistan war, Pakistan promulgated *The Enemy Property (Custody and Registration)* Order by which industries, trading centres, landed properties belonging to the Hindu community (or belonging to Indian nationals residing in Pakistan - deemeds 'enemies') were listed as abandoned and nationalized. The destruction of the Babri Masjid unleashed 'mob' attacks on Hindus and their properties in Pakistan and Bangladesh. It was not incidental that in 1993, the Bangladesh Home Ministry asked commercial banks to block substantial cash withdrawals and to withhold disbursement of business loans to the Hindu community in the districts adjoining the India-Bangladesh border.

Fundamental Rights Chapter

All south Asian states (Bhutan has a draft constitution) have a fundamental rights chapter in the constitution that provides for fundamental human freedoms that apply to all citizens, irrespective of race, place of birth, religion, caste, creed, colour or sex; and subject to certain restrictions, are largely enforceable by the courts. Fundamental Rights primarily protect individuals from arbitrary state policies. Governments have braided on 'nation state' building processes international discourses on human rights and minority rights. However, historical circumstances, the contextual specificity of the ruling class ideology, and the overall exigencies of creating a coherent 'nation state' around a largely fictive ethnic core in highly plural societies, has produced a region rife with 'minorities at risk'.

pakistan

CONSTITUTION BASED DISCRIMINATION

Pakistan was envisaged as a homeland for Muslims. Pakistan's state ideology is anchored in the faith of the Muslim peoples as a nation, with consequences for non Muslims and other 'nationalities' in the territory (Baluch, Pahstun, Sindhi). The historic Lahore Resolution (1940) specifically alluded to 'adequate, effective and mandatory safeguards' for minorities in these units and regions for the protection of their 'religious cultural, economic, political, administrative and other rights and interests in consultation with them. Religion, caste and creed were to have nothing to do with the business of the state, Mohammad Ali Jinnah, the architect of Pakistan, declared. However in 1949, the Constituent Assembly adopted 'Objectives Resolution' over the serious objections raised by non-Muslims because of its Islamic character. No law repugnant to Islam could be adopted. It became the Preamble of Pakistan's 1956, 1962 and 1973 Constitutions and paved the way for all the Islamic provisions in the Constitution. Starting as a secular democracy, Pakistan has gradually moved closer to a theocratic state. Pakistan is an Islamic Republic and the state religion is Islam.

> ***The words "and the Injunctions of Islam as laid down in the Holy Quran and Sunnah shall be the supreme law and source of guidance for legislation to be administered through laws enacted by the Parliament and Provincial Assemblies, and for policy making by the Government" were added by the Constitution (Ninth Amendment) Act, 1985.***
>
> ***(Article 2A Constitution of Pakistan)***

Pakistan has had three Constitutions, but periodic bouts of martial law have suspended constitutional freedoms for protracted periods. For example, the 1973 Constitution remained suspended for 11 and half years out of 32 years in force. Pakistan's Westminster style politics is overlaid by an executive style Presidency. It has a three tier governance structure - a bicameral National Assembly and Senate, Provincial Assemblies and local bodies (non party). The National Assembly can be dissolved by the President.

Pakistan has the right of judicial review of legislation, however in cases of violation of the constitution, the Supreme Court has not emerged as a forum for defending minority rights and judges appear to reflect the prejudices of society at large. For example, in 1993 there was a spate of cases filed by members of the Ahmadi community that their religious freedoms, as guaranteed under Article 20, were being violated. The Supreme Court ruled that granting Ahmadis equal rights would be against public order as the majority (Sunnis and Shias) consider 'the movement ideologically offensive". Moreover after the establishment of the Federal Shariat Court, the hierarchy of jurisdiction became ambiguous. The judicial process regarding religious offences tends to be dilatory as judges feel threatened by the presence of *Islamists* in the courts and thus tend to adjourn hearings. A Judge who acquitted a young Christsian accused under the blasphemy law, was shot dead soon after.

Equality & Special Rights

In Pakistan's 1956 and successive constitutions, under the inspiration of international human rights discourses, fundamental freedoms of equality and non discrimination were assured, specifically for the

religious minorities. Christians, Hindus, Ahmadis, Sikhs and Parisis today make up 3.3% of the population. Freedom of religion and right to language were constitutionally assured. **Article 20** guaranteed (subject to law, public order and morality) the right to profess, practise and propagate his religion; and right to establish, maintain and manage its religious institutions. **Article 21** provides for exemption of payment of 'special (religious) tax' for those of other faiths. **Article 22** provides for freedom from receiving religious instruction or participating in worship other than one's own. **Article 25** reiterates equality before law of women and children, **Article 28** provides for preservation and promotion of linguistic groups. **Article 36** provides that the state shall safeguard the legitimate rights and interests of minorities, including their due representation in the federal and provincial services.

Amendments to the 1962 Constitution, incorporated again in 1973 Constitution, have provided for reservation of some seats for the religious minorities in the National and Provincial Assemblies (and subsequently local bodies). However these seats (10) are filled with candidates on political parties list. The political parties are all Muslim parties. The minority members of the National Assembly have recommendatory powers in the utilization of a Minorities Welfare Fund. At the local bodies level, in the Union Councils out of the 26 seats, two are reserved for the Minorities (a man and a woman).

Institutions:

Ministry of Minority Affairs: The 'Ministry of Religious Affairs' in its 2002 incarnation dropped the 'Minority Affairs Division'.

National Commission of Minorities, Federal Advisory Council of Minorities, Minorities Affairs Departments (Provinces) and the District Councils of Minorities.

National Commission on the Status of Women.

These bodies have not been effective as evinced in the response of the then Minister for Minority Affairs Faqir Hussain on the blasphemy law who said, "We examined the blasphemy law but we could not conclude (sic) because it was referred to the Council of Islamic Ideology."

RELIGION BASED EXCLUSIONS

- ***Separate Electorates****:* controversy has raged from the first constitutional regime with its mixed regime (West Pakistan: separate electorates; East Pakistan : joint electorates) to joint electorates in 1973 Constitution till President Zia ul Haq re-introduced the system of separate electorates. In 2002, joint electorates were reintroduced ending a structure of political apartheid that kept the minorities out of the political mainstream and led to their discrimination in socio-economic fields.

- ***Head of State, a Muslim****:* This is constitutionally stipulated and the wording of the mandatory oath ensured that the Prime Minister too must be a Muslim.

- ***Religion based taxes****:* Ministry of Religious Affairs, Zakat & Ushr was created in October, 1974. General Zia consolidated Islamic (Sunni) hegemony by introducing ushr, zakat and other religion based taxes. It is important to note that *Zakat* aided Hospitals cannot be used by non Muslims.

- ***Ahmadis declared non-Muslim****:* Second Amendment to the Constitution (1974) declared the Ahmadis (who believed themselves to be Muslims) as non Muslims. It was the first violation of fundamental rights of a minority community at the constitutional level. Ten years later, they were denied the right to publicly practice their faith. In the 1980s, under the 'offences relating to religion, amendments were made to the penal code that particularly victimize Ahmadis. 298 A B C proscribed anyone from 'directly or indirectly' posing as a Muslim or by 'visible representation or by in any manner whatsoever outrages the religious feelings of Muslims'. More than 2000 Ahmadis have been charged under the blasphemy law. Moreover in 2002 when joint electorates were introduced the status of Ahmadis remained unchanged - on the separate voters list. With the community declining to take the oath about the finality of prophethood, they remained virtually disenfranchised.

- ***Council for Islamic Ideology*** given a constitutional basis in Article 228.

- ***Hudood Offences Ordinance* (1979)** ousts the testimony of non Muslims against a Muslim accused for awarding a haad (Quranic penalty; and devalues the testimony of non Muslims and women, i.e. 2:1 Muslim male; the presiding officer of a court trying a case under the Hudood ordinances must be a Muslim unless the accused is a non Muslim. Hudood (Offence of Zina) Ordinance criminalizes all extra marital sex. For the minorities, by making adultery punishable, it creates serious problems in Christian divorces for which adultery is the only valid ground for divorce.

- ***Federal Sharia Court*** set up in 1980, a supra constitutional body with powers to examine and declare any law repugnant to the injunctions of Islam. Right of Appeal provided to the Supreme Court-Shariat Appelate Bench. Non Muslims could never be members nor can non Muslim layers appear before these courts unless the parties before the court are non Muslims.

- ***Blasphemy Laws***: In 1980s amendments were made to the penal code chapter on offences relating to religion that made certain acts criminal offences and introduced severe penalties, Ordinance XX (1984) introduced the death penalty. Article 295C, in particular has victimized the non Muslim minorities, its loose formulation has made it an easy tool in the hands of extremist elements to settle personal scores against religious minorities.

  "Use of derogatory remarks, etc; in respect of the Holy Prophet. Whoever by words, either spoken or written or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Mohammed (PBUH) shall be punished with death, or imprisonment for life, and shall also be liable to a fine."

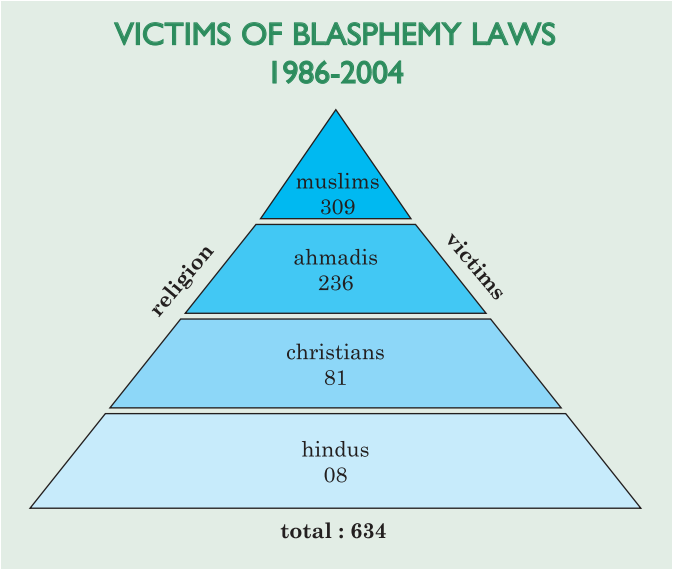
- ***Objective Resolution*** was made a substantive part of the Constitution (1985) through the insertion of Article 2A . Moreover, whereas the paragraph earlier had stated, "Wherein adequate provision shall be made for the minorities freely to profess and practise their religions and develop their cultures", in the reformulated Article 2A " freely", was dropped.

Blasphemy Laws

- The original Blasphemy Laws were designed by the British (1885) to outlaw the inflaming of religious hatred. Following communal riots in 1927, Section 295 was added to the IPC. It is this Section 295 that was taken over by the Pakistan Penal Code. General Zia added two new clauses- B (Ordinance 1982), and C through the Criminal Law (Amendment) Act 1986.
- These four specific blasphemy provisions in the PPC are grouped as "Offences Relating to Religion."
- 295 "Injuring or defiling a place of worship, with intent to insult the religion of any class"
- 295A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.
- 295B Defiling, etc. of a copy of the Holy Quran.
- 295C. Use of derogatory remarks, etc; in respect of the Holy Prophet. Whoever by words, either spoken or written or by visible representation, or by **any imputation, innuendo, or insinuation, directly or indirectly**, defiles the sacred name of the Holy Prophet Mohammed (PBUH) shall be punished with death, or imprisonment for life, and shall also be liable to fine.

The last, 295C has been abused to jail innocents for years who may have had some 'secular' dispute with a Muslim neighbor or other acquaintance. The phrase "any imputation, innuendo, or insinuation, directly or indirectly" makes it extremely wide reaching. 295C carries the death penalty. Many accused were killed, even before they were brought to trial. Those few who were acquitted by the Courts had to seek asylum in foreign countries for fear of being killed by Islamic extremists. Important to note, when initially adopted, Section 295C provided the punishment option of life in prison rather than death. The Federal Sharia Court in October 1990 ruled that the option of life in prison was repugnant to Islam and struck it from the Code Section.

Blasphemy Laws lie at the heart of the systemic and institutional religious discrimination in Pakistan. They are a tool in the hands of extremist elements to settle personal scores against religious minorities,



for it is virtually impossible to get a fair hearing in Pakistan for those charged under the Blasphemy Laws.

Musharraf's regime tried to regularize the registration of blasphemy cases by amending procedures in 2001. Each case was to be investigated and verified by the District Commissioner (DC) before being submitted to the court. Musharraf was obliged to withdraw the order, within a month due to protests.

Although not a single person has been sentenced since the enforcement of this law, thousands have been killed by citizens who have taken the (blasphemy) law into their own hands and dispensed vigilante 'justice'

Vigilante justice

Blasphemy accused Samuel Masih was murdered by his police guard while receiving treatment for tuberculosis at the Ghulab Devi hospital in Lahore. In May 2004, Samuel Masih became the seventh blasphemy accused to have been killed in cold blood, before the court could deliver a final verdict on the case. He was beaten over the head by police constable Faryad, who afterwards stated that he hoped to earn a place in heaven by killing him. Faryad was arrested and sent to jail. The blasphemy case against Masih, a sweeper, arose from allegations that he had littered along the walls of the Darul Islam Masjid. He was arrested under Section 295-C of the Penal Code. After his death, the clerics at the mosque who were the complainants, stated that they had never intended to charge him with blasphemy, because he had not committed it. They simply wanted him to throw the litter elsewhere.(HRCP Annual Report 2004)

The Constitution and Pakistan's Minorities

- The constitutional scheme treats Muslims as a privileged majority while religious minorities are promised only protection. Islamic based provisions place minorities at a disadvantage.
- Laws that practically deny freedom of belief (blasphemy law and penal code provisions which target only Ahmadis) need to be scrapped.
- Non Muslims are restricted to nominal quotas in educational institutions and are denied admission on merit.
- Girls belonging to the minority community are abducted and forcibly converted to Islam and the state machinery denies them justice.
- Properties belonging to minorities' shrines and trusts have been taken over under the pretext that the owners have migrated to India while only the managers may have gone away and the community owning the properties is still there.
- Minorities' lives and properties are threatened as a reaction to events abroad: Babri Masjid demolition and attack on Hindus; 9/11 attack on Christians HRCP Minority Rights Consultations, 2002

Legal Pluralism & Gender Discrimination:

Jirga system is a parallel extra judicial system of customary practices in Sind and NWFP. The Sind High Court had ruled *jirgas* as illegal, however elected representatives, politicians in power administrators and clerics continue to promote the *jirga* system. Integral to its functioning is practices and usages such as payment of blood money in cash or kind. It is a deeply gendered system and customary practices such as '*Vani*' or the giving in marriage of a girl, to settle a debt has been particularly violative of women's rights.

Feudal *Jirgas*

Feudal lords holding jirgas in Shikarpur and perpetuating the custom of Vani whereby girls are forcibly married off to resolve disputes between feuding families.

Despite the Sind High Court ruling against the holding of jirgas, on May 31, 2005 in Lucky Ghulam Shah tehsil, Muhammad Ramzan Sathar agreed before a jirga to give away his two daughters Heer (9) and Karima (1) as compensation for his failure to return 11 buffaloes to his cousin. In the presence of seven witnesses, Ramzan duly signed his name to the agreement drawn up on a Rs 50 stamp paper, and promised to deliver his daughters within three days. A complaint was lodged by the HRCP, and the Shikarpur district court blocked the marriage.

'Honor' killings have been declared a crime against the state. Pakistan National Assembly in 2004 adopted a bill criminalizing 'honour' killings, The Criminal Law (Amendment) Act 2004 creates a new category of offence in the name of or in pretext of 'honour killings' including *karo kari* and other customary practices such as marrying '*badal i sulh*'.

Official statistics estimate that every year 1000 people are murdered in the name of 'honour'. It was unclear if anyone accused of 'honour killings has been charged under the amended laws. Rights groups continue to demand changes in the law, pointing out that retention of the provision of 'compoundability' meant murderers could still escape. Efforts to enact more effective provisions, i.e. to get the state to assume the role of the 'wali' in cases of 'honour' killings, has been repeatedly deferred by the National Assembly.

Hasba Bill: In the Frontier, the government of religious parties' alliance (MMA) pushed through the provincial assembly in July 2005 Bill envisaged the creation of a parallel administration/ judiciary presided over by a *Mohtasib* (beyond court interference) with enormous power of moral policing. Such powers have proved detrimental to women's autonomy and to non Muslims. The President referred the Bill to the Supreme Court which declared several of its provisions unconstitutional.

Ministry of Interior is to confirm (and amend) rules of citizenship, thus entitling children of Pakistani women nationals married to a foreign citizens, to Pakistani citizenship, on equal footing with Pakistani men.

LINGUISTIC & NATIONALITY BASED EXCLUSIONS

Violation of a Federal Compact: The record of the Pakistan movement demonstrates that the founders of Pakistan envisaged a new state with a federal structure in which the provinces would be given autonomy. The 1940 Pakistan Resolution called for the establishment of independent states in the 'North Western (now Pakistan) and Eastern zones of India', the constituent parts of each of which were to be 'autonomous and sovereign'. In the various provinces that constituted Pakistan, the Muslim League leaders envisaged a federal system of government. Baluch nationalists argue that the country was created with the will of the federating units or people with the understanding that every thing will be under that social contract.

Exigencies of retaining power predicated that the founding elite would break that federal compact. The political center of the Pakistan movement - the Urdu speaking Muslim minority of central and north central India, by virtue of its control of leadership of the Muslim League claimed political leadership of the new multi ethnic, multi lingual territory and proceeded to construct an undifferentiated and unitary state. Denial of federalism became a cardinal principle of the Mohajir mediated 'official nationalism'; ethnic, cultural and linguistic diversity became a threat to territorial integrity. The anomaly of the geographically divided two units, further divided by difference in social structure, economy and culture - West and East Pakistan - predicated a centralizing and authoritarian structure. In the struggle between authoritarian centralism and representative federalism, the Mohajir dominated bureaucracy joined hands with the Punjabi dominated military to subvert the establishment of a representative federal parliamentary system. The historic division of northwestern India into provinces was overridden by a centralised administrative structure. Resistance by East Bengal, Baluchistan and NWFP was contained by a contraction of political rights and military repression.

"Who are you?" Wali Khan, son of Abdul Gafoor Khan and President of the National Awami Party replied: "I am a 6000 year old Pushtun, a 1000 year old Muslim and a 27 year old Pakistani". Politics determine whether these identities will be in mutually enriching dialogue or locked into exclusivist and confrontational discourses.

The federal compact came unstuck with the secession of East Bengal in 1971. The 1973 constitution restored the Provincial structure in West Pakistan, and a measure of provincial autonomy. The provincial chief executive, the Governor, is the nominee of the federal chief executive (President). In theory, both federal and provincial legislatures have power to legislate on designated subjects and, in the case of a conflict, federal legislation prevails. In effect power remained disproportionately vested in the center vis a vis the federating units regarding resources, distribution of revenues and the restructuring of the judicial order. Demand for equality between the provinces and autonomy within, has seen Pakistan's ethno-linguistic groups define themselves as a 'nationality'. Pakistan's constitution does not recognize the multi-national character of the state. The word nationality is anathema to the 'one nation (Islam) one people' ideology. Moreover, the double partition produced pathology about secessionist threats to national integrity. In 1975, the government passed a law prescribing a seven year imprisonment for individuals advocating the presence of more than one nationality. In 20 of the last 35 years since the 'new' Pakistan, there have been military operations between the security forces and Pakistan citizenry rooted in struggles for redistribution of power and control over resources.

COLONIALISM FROM WITHIN

Pakistan's constitution barely reflects the multilingual character of the country with six major and over fifty-nine small languages. Punjabi speakers are 44%, Pashtun 15%, Sindhi 14%, Seraiki 11%, Urdu 8%, and Baluch 4%. The only recognition of its multi lingual charater is **Article 251**,

"Without prejudice to the status of the National language, a Provincial Assembly may by law prescribe measures for the teaching, promotion and use of a provincial language in addition to the national language".

Attempts to impose a homogenous identity of a Muslim nation under the hegemony of the Urdu language, has met with resistance. At the time of independence, Urdu was the mother tongue of only 6 % of the population, but historical cicumstances placed it in the position of being officially designated as the national language of Pakistan. The political elites constructed Bangla, as a language of the Hindus. (English remains the language of upper class power.) The privileging of Urdu was associated with the cultural hegemony of the Mohajirs, deeply resented by national groups as a symbol of the central rule of the Punjabi ruling elite and opposed by the Bengali intelligentsia or, what the Pakistani sociologist Hamza Alavi, calls the 'salariat'-people who draw salaries from the state (or other employers) and who aspire for jobs. Arguably, the Bengali salariat would have been at a great disadvantage if Urdu, rather than Bengali, had been used in the lower domains of power (administration, judiciary, education, media, military etc. West Pakistan dominated the civil service cornering 80-84% of the jobs.

The nationality question has been articulated through the language controversy, whether in East Pakistan or in Sindh. In **East Pakistan**, spontaneous uprisings saw the acceptance of Bengali as the second national language. Bengali masses saw the repression and devaluing of Bengali culture as a weapon in West Pakistan's colonial domination. Militarization of the Pakistan polity was to widen the rift. East Pakistan's representation in the army was less than 10 % and budget expenditure on the army was 70%. The secession of East Pakistan brought the federal question to the fore but it was evident that the lessons

of Bangladesh were not learnt. The state continued to respond in a 'counter insurgency' mode to suppress ethnic, sectarian and class conflicts. Also 'Islamism' has been used to stifle and deny the claims of the nationality question, but the nationality question remains a flash point and intensifying.

The **Sindhis** have been resisting their reduction to a minority in their own province. In the new provincial assembly, they sought to reclaim Sindh from Mohajir domination. Sindhi was restored as the official language of the province. The Urdu speaking Mohajirs opposed these developments. There were language riots in 1972 that sowed the seed for violent intercommunity tension in 70s and 80s. The 'insurgency' in Sindh in 1983-89, drew upon an ethno-nationalist idiom but it is important to emphasise that it was integrated with the Movement for Restoration of Democracy (MRD) - the protest movement against General Zia's military dictatorship.

The **Mohajirs**, from being a 'model minority' enjoying disproportionate privilege, became marginalized and excluded. Sindhi nationalist reassertion coupled with the revision of the regional quota for the federal bureaucracy, nationalization of Mohajir owned industries, new rules of access to higher education and professional institutes - produced a sense of relative deprivation among the Mohajirs. Historian Tayyab Mahmud argues that, to stem the decline in their privileges, the Mohajirs reinvented themselves in the mid 1980s as an ethnic community with a distinct 'national' status, and consequently, entitled to commensurate opportunities and representation. The violence of the state during 1992-96 against the then *Mohajir Quami Movement* saw the consolidation of a Mohajir 'ethnicity'

In **Baluchistan**, there is the peoples, claim to a distinct history of being an 'independent' Khanate. This legacy has shaped the relations of the 'Sardars' that dominate Baluch society and polity, with Pakistan's civil-military (Punjab & NWFP) central elite, making it a problematic and violent one. Baluch perception of injustice is a recurrent theme in the politics of Baluchistan. In 1973 Bhutto's elected government dismissed the popularly elected provincial government in Baluchistan (and NWFP government resigned in protest). The political crisis exploded into an armed insurgency from 1973-77 (that drew strong support from the Left) and raised the demand for independence and the union of Greater Baluchistan. The ruthlessness with which the army was used to crush the struggle, radicalized influential sections of the Baluch. Resentment has boiled over again, as evinced in a spate of sporadic armed attacks in the province in the last few years on the state's development infrastructure, especially the gas pipeline and the Gwador port development project, including the killing of Chinese engineers.

The Baluch crisis is political and the underdeveloped and dependency status of Baluchistan is like that of a colony. British colonial governing structures had propped up as legitimate authority, tribal 'sardars'. Pakistani analysts argue that the Pakistan government uses the 'tribal structure of authority' to sidestep its responsibility towards making a significant investment in the development and governance of Baluchistan. The Baluch provincial authorities have been excluded from decision-making about the exploitation of their own resources, the development of Gwador port, the establishment of military garrisons and the explosion of nuclear weapons in Chagai hills of Baluchistan. The province produces 36% of the country's natural gas, consumes only 17% and receives only 12.4% of the revenues. Baluch-'nationalists' reject the division of oil revenues on the basis of population. Baluchistan's disadvantaged and discriminated status is epitomized by the people of Quetta having to wait twenty years, after Multan and Rawalpindi, to get gas. The recent burst of economic activity - extraction of mineral resources, construction of Gwador port - has met with misgivings and peoples, active resistance. It is not Baluch but 'outsiders' who dominate the new jobs in construction and industry. Pakistan officials claim that the unrest is the result of the cupidity of the Sardars who are opposed to development as it undermines their hold on the people or are jockeying for more 'rent'. (For example, the federal government, recognizing the 'rights' of Sardar Bugti over the land, pays him a rent for the Sui gas produced in the territory under his sway.)

The **Pushtuns** are divided into three units concentrated in the NWFP, Balushistan and Tribal Areas. They have demanded the reorganization of the province along ethno-linguistic basis, but it largely has failed to garner majority support. The Pushtuns enjoy positions of strength and dominance in the armed forces and the bureaucracy.

Large areas of the territory of Pakistan are *de jure* under autonomous 'tribal' authorities e.g. Waristan, Kafiristan or Katchchi in Sind and Baluchistan. Pakistani analyst Khaled Ahmed calculates that nearly 60% of the territory of Pakistan is *de facto* outside the direct administration of Pakistan state institutions.

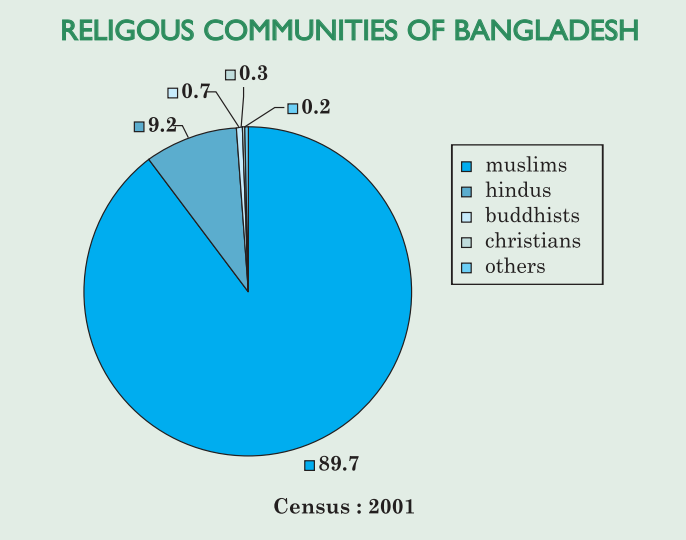
bangladesh

HEGEMONY OF ONE RELIGION, ONE LANGUAGE

Independence from colonial rule saw the people of the territory begin life as citizens of an Islamic Republic under the 1956 Constitution of Pakistan, and then through a fiercely 'nationalist' struggle based on Bengali language and culture, emerge as a 'secular' democracy in the 1972 Constitution of Bangladesh. Since then the tension between 'Bengali nationalism' based on language and culture and 'Bangladeshi nationalism' rooted in the primacy of religion, has resulted in a steady drift towards Islamic hegemony. An astute commentator on Bangladesh politics, Afsan Chowdhury attributes the shift less to reasons of ideology than to power consolidation in a polarized polity, i.e. if the Awami League has the supposed 10 million Hindu vote bank, the rival Bangaldesh National Party will turn to the supposed 10 million supportes of the *mullahs* and the murids, because on election day that matters. It is about power but it affects the minorities all the same - i.e. it has exclusionary consequences for Bangladesh's religious, linguistic and ethnic minorities.

> ***"Forget your identity, we are all Bengalis", Sheikh Mujibur Rahman, the first Prime Minister of independent Bangladesh, advised Manabendra Narayan Larma when he demanded autonomy for the indigenous Jumma peoples of the Chittagong Hill Tracts.***

The new state of Bangladesh emerged as a secular polity with a constitutional embargo on the use of religion in politics. The original 1972 constitution had four basic principles: Secularism, Nationalism, Democracy and Socialism. However, later amendments replaced 'Secularism' with "Absolute trust and faith in the Almighty Allah", and dropped **Article 12** of the first draft of the Constitution. It had stated that the principle of secularism should be realised by the elimination of communalism in all its forms, a) the granting by the state of political status in favour of any religion, b) the abuse of religion for political purposes c) any discrimination against, or persecution of persons practising a particular religion d) no persons shall have a right to form or be a member or otherwise take part in the activities of, any communal or other associations or unions which in the name of or on the basis of any religion, has for its object, or persons, a political purpose



The Bangladesh state declared itself as a unitary **(Article 1)** and culturally homogenous nation **(Article 6 and 9)** emphasizing the hegemony of the Bengali nation, thus excluding the non Bengali Chakmas, Marmars Tripuras and plains

tribal ethnic communities that make up a little over 1% of the population. **Article 9** defined Bengali nationalism as deriving its identity from Bengali language and culture. Subsequently, **Article 6** declared the citizens of Bangladesh were to be known as Bengalis, turning the non Bengali population into ethnic minorities. **Article 3** adopted Bengali as the state language turning the non Bengali speaking populations including the urdu speaking Biharis into linguistic minorities. **Article 2** made Islam the state religion excluding the Hindu, Buddhist, Christian and animist communities.

Following the assassination of Shiekh Mujib in 1975 and the military takeover, the change from Bengali to 'Bangladeshi' nationalism further marginalized the ethnic communities. The military regimes of Generals Zia and Ershad redefined 'Bangladeshi nationalism' as one based on elements of race, the war of independence, the Bengali language culture and above all religion. Sheikh Mujib had begun the shift towards Islmaization and the military governments that succeeded him, in their pursuit of legitimization, pushed the Islamization process further declaring Islam the state religion. Subsequently, popularly elected governments of the Awami League and the BNP have been unable to rescind discriminatory constitutional provisions. Social scientistst Amena Mohsin argues that the Constitutional provisions by implication became "instruments of hegemony and domination" in the hands of successive governments.

Bangladesh constitution establishes the fundamental rights of citizens of Bangladesh, guaranteeing equality and equality before law **(Article 27)** and non-discrimination **(Article 28)**. The rights of peoples of other religions are recognised under **Article 41** of the Constitution, which gives citizens the right to practice and promote their religious beliefs. Other provisions of Article 41, guarantee an individual's right to refuse to practice a religion, or be compelled to be educated about a religion other than one's own. However political realities have proved otherwise. In the face of communal tensions the state often assumes the neutral position of protecting all citizens and thereby dismisses the need to establish minorities as a category to be protected. It is because of this that minority and human rights groups feel the need to incorporate constitutional safeguards for the protection of minorities.

The Constitution does not recognize minorities as groups distinct from the Bengalis, all are Bangladeshis, one language, one religion, one ethnicity. Lingustically 98% of the people speak Bengali and 90% of the people are Muslims. Article 17 provides for a uniform system of education that promotes a Bangla Muslim 'high culture' that excludes the culture of the minorities. "Islamiyat" was introduced as compulsory from classes I to VIII with option for minority students to take similar religious courses of their own. There are no state aided, Christian, Buddhist or Hindu schools.

Bangladesh has a Ministry of Religious Affairs which includes three non Muslim Welfare Trusts with special attention to Hindu, Buddhist and Christian communities.

Protecting Adivasis

Bangladesh does not recognize that it has indigenous peoples who make up 1.13 % of the population - the hills people in the west and the plains tribals in the south east. The 1997 peace accord refers to CHT as 'tribal inhabited area'. Sheikh Hasina's government which signed the accord refused to concede even on the usage of the term adivasis, let alone acknowledge the presence of indigenous peoples. Raja Devashish Roy, a Barrister and Chief of Chakma Circle in CHT, argues that the adivasis of Bangladesh have been denied their identity in the Constitution.

> ***Article 28 is the only protective provision that could be said to refer to minorities "Nothing. shall prevent the state from making special provision in favour of women and children or for the advancement of any backward section of the citizens."***

However, it does not define who or what constitutes 'backward' section. Bangladesh is a signatory to the ILO Convention 107 but not 169 (1989) on Indigenous peoples which includes recognition of collective land rights and rights to natural resources and rights in connection with displacement. Bangladesh has not made any special provision for the customary rights of ethnic communities.

Constitutional status of the CHT region was regulated in accordance CHT (Regulation) Manual 1900 and the Government of India Act, 1935 which first enunciated the concept of backward tract. CHT was classified as a 'fully excluded area' providing for autonomy of administration by traditional chiefs with a distinct legal system and the exclusion of outsiders. The 1956 Constitution retained its excluded area

status but brought it under the direct rule of the Centre or rather Governor. The 1962 Constitution changed its status as a 'tribal area' and the 1963 amendment eroded its autonomy and lifted the restricted access of 'outsiders'. The result has been mass dispossession and displacement, especially following the building of the Kaptai dam and the inundation of more than 40 % of their lands. Rule 34 was dropped which prohibited sale of land and settlement of non CHT residents without the permission of the District Commissioner. The erosion of its excluded status led to further land alienation through a policy of state aided settlement of an estimated 400,000 Bengalis. Since 1964 the special administrative status of the CHT has been bereft of constitutional backing.

The negative implications of the absence of constitutional recognition of the CHT and its indigenous peoples, have been amply demonstrated in the case of *Mustafa Ansari vs. Deputy Commissioner, Chittagong Hill Tracts and Another (17 DLR, 1965:553)* The High Court of Dhaka struck down as unconstitutional rule 51 of the CHT Regulation of 1900, which empowered the deputy commissioner (district officer) to expel a non native from the concerned district or to prevent her/his entry into the district if her/his presence was considered as a threat to the peace and good administration of the district.

The refusal of the Bangladesh state to recognise the cultural identity and rights of the hill tribes culminated in 25 years of armed struggle. The 1997 peace accord recognises it as a tribal inhabited area but the accord itself has no constitutional status. Demands for the revival of the CHT's special status in the constitution continue to be made by the indigenous people of the region, including in the *Rangamati Declaration of 1998.*

Plains tribal are protected by the legal legacy of the colonial Chota Nagpur Tenancy Act 1908 which prohibited transfer of tribal lands to non tribals without the permission of Deputy Commissioner. The government recognizes special tenure status of lands falling within traditional domain of 'aborigines' (SAT 97) and is empowered to notify aboriginal castes or tribes for purposes of this section. But it does not define 'aborigines'. Moreover, ethnic communities are not aware of these protective devices. Santhals, Garos and Bhils have lost their lands have been marginalized by the state's promotion of commercial forestry and national parks. Laws like the Vested Property Act and collusion of Bengali land registry officials with land hungry Bengali settlers, has been used to dispossess the communities.

Political Representation: There is no reservation of seats for the ethnic communities, though three seats are reserved for the CHT for which the Bengali settler population is also eligible.

Institutions*:* Ministry for CHT Affairs has strengthened the control of the state over the proposed structures for decentralizing power and thus denied aspirations for autonomy.

DISCRIMINATORY PROVISIONS & LAWS

Religious Invocation: Order No. 1 1977 introduced Bismillah ar Rahman (In the name of Allah, the beneficent and merciful) before the Preamble. The principle of secularism as one of the state principles, was dropped; socialism was reduced to (economic and social justice).

Bangladeshi nationalism: Fifth amendment of the Constitution shifted the emphasis from Bengalee to Bangladeshi nationalism (Article 6)

Islam state religion: Eighth Amendment (1988) Islam was declared the state religion (Article 2)

Communal based parties: Article 12 which had banned communal based political parties was dropped.

National Language: Article 23 called upon the state to adopt measures to conserve culture and heritage of the people so as to foster and improve the national language… and enrich the national culture". Bangla Academy set up but no such state level institution for other cultures of ethnic communities.

Vested Property Act 1974 (withdrawn 2001) supplanted the dreaded Enemy Property Act (1965) of undivided Pakistan and continued to be applied unjustly against both Hindus and other ethnic communities. The law states that the properties of Indian nationals residing in Pakistan or Pakistan citizens residing in India will be identified as 'enemies of Pakistan'. In particular, it made Hindu held property insecure because

ownership has to be proven at various levels. It has been used extensively to appropriate industrial and rural property. Local officials and law enforcement agencies usually side with the majority community against the minorities in land cases. According to one estimate 30% of all Hindu property has been 'legally' swallowed up by virtue of this act. Sheikh Hasina's government withdrew it in 2001.

Vested Property Return Act was passed in April 2001 and lists of properties to be prepared and claims filed within 90 days. However, in 2002, an amendment to the Vested Property Return Act, allowed Government unlimited time to return the vested properties.

Anti Conversion-Social Resistance: The law neither permits citizens to proselytize nor prohibits proselytism; however, local authorities and communities often object to efforts to convert persons from Islam.

Legal Pluralism

Shari'a is not implemented formally. In 2001, the High Court ruled illegal all fatwas, or legal rulings based on Islamic law. Fatwas include decisions as to when holidays begin based upon the sightings of the moon, matters of marriage and divorce, the meting out of punishments for perceived moral transgressions, and other religious issues. Islamic tradition dictates that only those muftis (religious scholars) who have expertise in Islamic law are authorized to declare a fatwa.

Family laws concerning marriage, divorce, and adoption differ depending on the religion of the person involved. There are no legal restrictions on marriage between members of different faiths. However, family laws have been found to substantively disadvantage Hindu women in Bangladesh, for example over the practice of non registration of marriages.

Protecting Hindu Women's Rights

Minati Karmakar (24) desperate to escape from a marriage in which she is daily tortured for not bringing sufficient dowry, finds that she is outside the protective framework of Bangladesh's civil laws. Her marriage (nothwithstanding differences in caste based rituals) has been solemnized through a sacred ritual and there is no system of marriage registration among the Hindus of Bangladesh. The only law she as a Hindu woman can invoke to protect her rights is a 1946 law to regain conjugal rights. Also Minati Karmakar can file cases under Family Court Ordinance 1985, Dowry Act 1980 and Women and Children Repression Act 2003.

These laws are too inadequate to protect Hindu women's rights as evident from the minimal number of Hindu women who come forward in marriage cases. Out of a total of 926 marriage cases, received by Ain O Shalish Kendra from July to February 2004, only 17 cases related to Hindu women. Says lawyer Nina Goswami, "Hindu women do not complain much fearing the marriage will break and divorced Hindu women find it hard to get new husbands. There is no law allowing Hindu widows to remarry." Efforts to reform laws to protect Hindu women's rights in Bangladesh are thwarted from within the Hindu community by conservatives.

The Constitution in Article 19 (1) and 19 (2) obligates the state to ensure equal rights to all citizens and remove social and economic disparities. However, the state is content to not intrude into the personal domain of Hindu family practices and urge reform to secure Hindu women's equal rights.

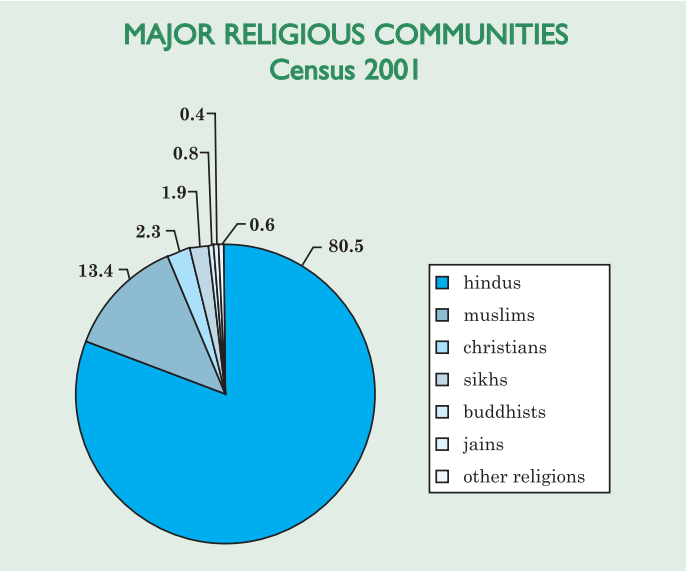
india

LIMITS OF CONSTITUTIONALISM

"Following the screening of the film Ram Ke Nam that takes a critical look at the rise of the Hindutva forces, as the discussion began, a woman spoke up in English, quick was the cry...'speak in Hindi'. It prompted the response...'we're Tamils, 'we don't understand Hindi'. Ever democratic, a vote was taken. Six non Hindi speaking hands went up. The majority would have its way. Hindi it was. But then a lone voice was heard. 'I am a Naga from Manipur (a Christian). I've come here to express my solidarity against Hindutva fundamentalism, although it doesn't directly affect us. If you're going to deal in majority-minority terms, then count me out because where I come from we're only a few million, a permanent minority in a billion plus India.

Narrated by Uma Chakravarti, historian

India's post independence ruling elite piloted a bold and elaborate pathway of constitutionalism for the protection of the equal rights and non-discrimination of the religious, linguistic and social minorities and indigenous peoples. India's constitutional framework recognized minorities 'based on religion and language', i.e as a cultural category. It dropped the draft constitution's safeguards for political and economic rights. It protected freedom of religion, enabled the eventual reorganization of states on the basis of language, promoted affirmative action to overturn histories of injustice and inequality of tribes and oppressed castes; devolved power through a structure of asymmetric federalism to meet regional and community aspirations for self rule and rooted it in a framework resting on secularism and democracy.



The challenge of India's plurality is enormous - eight major religions and myriad creeds, 800 languages of which 22 are 'official' languages, 8% of the population are indigenous peoples, a social mosaic of castes and sub castes and over 60 socio-cultural sub regions. The members of the constituent assembly of the new India had to deal with colonial legacies of politicized (religion based) identities; to pro-actively counter the two nation ideology and confront the blooded separation of the birth of two nations. The liberal commitment to pluralism and self rule was compromised by the pathological obsession with maintaining unity and integrity. India was to be 'homeland' of all these million minorities with guaranteed equal rights and non

discrimination. But with common citizenship as the fulcrum for accessing rights, it predicated that it would tilt in favour of the individual and therefore the majority in political rule.

The four pillars of the Indian Constitution of India describe the state as 'sovereign', 'socialist', 'secular' and 'democratic'. The secular (and socialist) orientation of the state was introduced by the 1976 amendment (under Emergency rule). The Supreme Court has ruled that all provisions of the Constitution, including Fundamental Rights can be amended, but Parliament cannot alter the basic structure of the Constitution which includes such features as secularism and democracy (Maneka Gandhi SC 1978) The discourse of secularism, translated as equal treatment of all religions (repudiating recognition of a single state religion), was constructed on the basis of equal rights, but inevitably got translated as based on the will of the majority. It lulled some minorities e.g. Christians, to turn their backs on minority status and call themselves secular.

Secularism has become a contentious site - constructed in the Hindu majority mindset as 'appeasement' and 'pseudo-secularism'. Without the philosophic underpinnings of the value of tolerance in a society, secularism has got reduced to an administrative strategy used by cynics, without providing minorities protection. Ranabir Samaddar succinctly captures the process of hollowing out the principle of secularism. He arg was, "...by not combining the principle of toleration with that of secularism, the constitution enables the state to use the administrative strategy of secularism to govern all communities in a cynic manner without providing adequate protection for the minorities and encouraging tolerance" .

The preamble speaks of justice to all and dignity of the individual. **Article 14** speaks of equality, **Article 15** prohibits discrimination, **Article 16**, guarantees equality of opportunity in public employment, **Article 19** declares enjoyable basic freedoms, **Article 21** protects life and liberty and **Article 25** freedom of conscience and the freedom to profess, practice and propagate his own religion. **Article 26** freedom to manage religious affairs, **Article 28** freedom of religious instruction in certain educational institutions, **Article 29** provides for language rights including state assistance to minority institutions for maintaining a distinct identity, **Article 30** explicates the right of minorities, 'whether based on religion or language', to establish and administer educational and institutions of their choice and **Article 347** speaks of language rights and **Article 350** directs the state to provide facilities for instruction in the mother tongue at the primary stage of education. In line with the welfare orientation of the state, **Article 15 (4), (5)** provides for discretionary reservation in educational institutions and **Article 16 (4)** in the public services and **Article 17** abolishes untouchability.

International jurists have pointed out that the Indian Constitution has gone further than most modern constitutions, including the American one, in inscribing the commitment to equality. The primacy to the value of equality was itself part of a historical process that grew with the movement for freedom from colonial bondage. The Directive Principles enshrined in Part IV in **Article 46** enunciate that the 'state shall promote with special care the educational and economic interest of the weaker sections of the peoples.' These Directive Principles are non-justiciable i.e. not enforceable by a court as are the fundamental rights. However, Article 15(4), (5) and Article 16(4), (4A) provide for positive discrimination - seats are reserved for scheduled castes and scheduled tribes in government jobs, educational institutions, Lok Sabha and Vidhan Sabha. They are in the form of negative guarantees whose implementation is left to the discretion of the executive.

Negative Guarantees: Left to Executive Discretion

Article 15 (4) Nothing in this article or in clause (2) of art 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 15 (5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30 (Added by the 93rd Amendment to the Constitution, 2005).

Article 16 (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

Article 16 (4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. (77th and 85th Amendments 1995 and 2001).

The 'backward classes' are a large and mixed category of persons with boundaries that are elastic comprising Scheduled Castes, Scheduled Tribes and Other Backward Classes. The STs and the SCs are well-defined categories, comprising roughly 8% and 16% of the population. The OBCs are a residual category, their position is ambiguous, and the Census of 2001 did not even collect information on the OBCs. The controversial Mandal Commission (1980) pegged their number at about 52% of the population. (The Mandal judgment of the Supreme Court 1992 held that caste is class in the sociological sense) The Mandal Commission recommended reservation of 27% only for OBCs. In 1990 V P Singh government accepted the Commission's report but limited reservations to government jobs. It would take some 15 more years for it to be extended, as envisaged to educational institutions by the 93rd amendment (Article 15(5). In April 2006 Minister for Human Resources, Arjun Singh declared reservations for OBCs would be implemented in educational institutions, including central elite professional institutes.

Note: **Article 15(5)** exempts minorities whether based on religion or language from its purview as they enjoy a special right under art 30(1) to establish and administer educational institutions of their choice.

The Constitution did not include a whole series of draft enunciations relating to lower castes and tribes aimed at defining them as minorities. Instead there is a separate **Part xvi** for Scheduled Castes and Scheduled Tribes. Iqbal Ansari, an advocate of Minority Rights, imputes a deliberate motive to the architects of the constitution - to divide and differentiate between religious and language based minorities and social and ethnic minorities. As regards the caste system, the Constitution took a dim view of it, but as Ranabir Samaddar, a critic of the limits of constitutionalism observed, while the Constitution sees itself as the fundamental instrument to ensure that 'these caste ascriptions, do not lead to hierarchy, inequality and invidious treatment in puiblic life'., it refrained from interfering with the functioning of caste autonomy, i.e. life cycle rituals, unless they threatened to spill over into public life.

Positive Guarantees: Reservations & Relaxations

The Constitution provides that 'seats shall be reserved' in proportion to their numbers to SCs and STs in the Lok Sabha **(Article 330)** and in the Vidhan Sabha **(Article 332)**, which is a mandatory positive guarantee. The quota system sets aside a proportion of all possible positions for members of a specific social group. Those not belonging to the designated communities can compete for the general positions, while members of the designated communities can compete for all positions (reserved and open). (Article 334 provides for cessation of reservations after 60 years.)

Article 335 notes that the Claims of Scheduled castes and Scheduled tribes to services and posts shall be taken into consideration in maintenance of efficiency of administration (82nd amendment 2000) and clarifies that nothing shall prevent the state in relaxing the in qualifying marks in any examination or promotion.)

Panchayati Raj structure of local self governing institutions at the village and district level, was mandated by the 73rd amendment (1992). It was a trail blazer in the region, providing for the first time reservations for women.

Article 243 D (1) a), b) provides for reservation of seats for scheduled castes and scheduled tribes in proportion to their population, and may be allotted by rotation to different constituencies in the panchayat

(2) not less than one third of the total number of seats reserved for SC and ST shall be reserved for women belonging to SC and ST.

(3) not less than a third (including number of seats reserved for women belonging to SC and ST) to be filled by direct election shall be reserved for women and may be allotted by rotation to different constituencies.

Minorities in Indian Legal Culture

The 1950 Constitution does not define the word 'Minority' and only refers to minorities and speaks of those "based on religion or language".

The constitutional safeguards for economic and political rights of minorities, provided in the Draft Constitution (1947-49) were dropped with the assurance that the majority would be fair and generous to the minorities.

The Preamble (as amended in 1976) declares the state to be "Secular" and declares all citizens of India to be secured "liberty of thought, expression, belief, faith and worship" and "equality of status and of opportunity." Part III of the Constitution of India, on Fundamental Rights contains the following principles relating to, or having a bearing on the rights of the Minorities:

- people's right to "equality before the law" and "equal protection of the laws";
- prohibition of discrimination against citizens on grounds of religion, race, caste, sex or place of birth;
- authority of State to make "any special provision for the advancement of any socially and educationally backward classes of citizens" (besides the Scheduled Castes and Scheduled Tribes);
- citizens' right to "equality of opportunity" in matters relating to employment or appointment to any office under the state - and prohibition in this regard of discrimination on grounds of religion, race, caste, sex or place of birth.
- authority of state to make any provision for the reservation of appointments or posts in favour of any backward class of citizens not adequately represented
- people's freedom of conscience and right to freely profess, practise and propagate religion - subject to public order, morality and other Fundamental Rights;
- authority of state to make law for "regulating or restricting any economic financial, political or other secular activity which may be associated with religious practice", and for "providing for social welfare and reform";
- authority of state to make laws for "throwing open" of Hindu, Sikh, Jain or Buddhist "religious institutions of a public character to "all classes and sections of the respective communities";
- Sikh community's right of "wearing and carrying of kirpans" ;
- right of every religious denomination or any section thereof - "subject to public order, morality and health" - to establish and maintain institutions for religious and charitable proposes, "manage its own affairs of religion", and own and acquire movable immovable property and administer it "in accordance with law";
- people's "freedom as to payment of taxes for promotion of any particular religion";
- people's "freedom as to attendance at religious instruction or religious worship in educational institutions" wholly maintained, recognized, or aided by the State;
- right of "any section of the citizens" to conserve its "distinct language, script or culture"
- restriction on denial of admission to any citizen, to any educational institution maintained or aided by the State, "on grounds only of religion, race, caste, language or any of them";
- right of all Religious and linguistic minorities to establish and administer educational institutions of their choice; and
- freedom of minority-managed educational institutions from discrimination in the matter of receiving aid from the State.

Legal pluralism: Balancing the "common domain" and the "separate domain"

The constitution provides for legal pluralism for the religious minorities in relation to the personal sphere and also in certain areas of the public sphere - management of minority educational institutes and trusts. For example Muslims are subject to Muslim Personal Law (Shariat) Application Act (1937).

> ***Notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardiaship, gifts, trusts and trust properties, and wakfs (other than chartities and charitable institutions and charitable and religious endowments) the rule of decision in case where the parties are Muslims shall be the Muslim Personal Law (Shariat).***

The Constitution in **Article 44,** urges the state to work towards establishing a Uniform Civil Code. Significantly, it is listed in the 'directive principles' i.e. non justiciable section. Increasingly in the political dynamics of majority-minority politics, the UCC has become a euphemism for a hegemonic Hindu, and that too an upper caste Hindu code. This unresolved tension between the 'common domain' that ensures equality and the 'separate domain' designed to respect diversity and maintain group identity, has produced majority accusations of Muslim appeasement without protecting minorities. The common domain of Article 14, 19, 21 sometimes militates against the domain of minority protection and minority rights. In particular, the 'separate domain' of personal law regimes has been particularly oppressive to vulnerable groups within the community e.g. women, Dalits etc.

Gupreet Mahajan, an Indian academic on identity politics, argues that the Indian judiciary, has been more severe in demanding accountability from the majority religious institutions than minority institutions. This is evinced in the takeover by the state of the management of several Hindu religious shrines and institutions. Is it that state intervention is accepted by the majority because the state is trusted to safeguard its religious interests? By implication, it is not so by the minorities. Consequently, there is criticism of the judiciary's reluctance to intervene, despite the record of mismanagement of some minority religious institutions, thus reinforcing the appeasement discourse.

Where the Supreme Court has intervened in matter of family laws, i.e. the historic Shah Bano judgment on maintenance for divorced/separated women, it revealed the stark prejudices of a section of the senior judiciary belonging to the majority community towards the culture of the minority community. Also, it provoked the conservative backlash of a minority community under siege. The result was the passing of the regressive Muslim Women Rights Act (1986), by a cynical Congress government with its eye on the supposed Muslim vote bank. That these identity battles are fought on the backs of women, manifests the gendered nature of the state sanctioned public- personal sphere divide, the latter being the sphere of women. Rights of individuals get entangled in the rights of community, especially the rights of women, who are constructed as bearers of community identity.

Convergence of State and Community Norms

The majority-minority relationship becomes particularly problematic, when you have a public sphere that is accessible to being taken over by a group (majority) determined to impose its values in large or total measure on state institutions, thereby equalizing the public and group interest. This is dramatically demonstrated in the rise and hegemony of the homogenizing *Hindutva* discourse. A complex of socio-historical processes have made for the rise of the Hindu right and its corollary, the defensiveness of the 'secular' elite who eashis dominated the public sphere. Our concern is with the implications of the increasing convergence of state and community norms. The division between the public sphere of common law and the personal sphere of family laws - inheritance, marriage, divorce, adoption, had always been porous. However, now there is an aggressive encroachment of the community's (patriarchal) notions into the 'secular' rights based sphere of the public law. This is evinced in a spate of highly aggressive and regressive socio-legal discourses that emerged around the 1987 Deorala Sati case (the site for asserting Rajput community identity) and the gang rape of the *saathin* (a state-employed community worker) Bhanwari Devi, in retaliation against the enforcment of state restrictive on child marriage in the village where she was working in Rajasthan.

The convergence of state and majority community is most dramatically demonstrated in the anti Muslim violence in Gujarat, and the tacit and active collusion of state institutions in abetting the carnage. The result is a virtual apartheid situation in Ahmedabad with the river Sabramati communally dividing the city and making a mockery of common citizenship. Rowena Robinson drawing upon the narratives of survivors of riot after riot, maps the reconfiguration of their perceptions of time, space and identity. After Mumbai's communal violence 1992-93, Muslims huddled together in certain areas of central Mumbai, Jogeshwari in the western suburbs, and others. In Ahmedabad, the old walled city and Juhapura, a new settlement on the city's borders is the only space for Muslims. These are the most policed areas. 'Combing operations' and illegal arrests are a regular occurrence.

Language Rights

Hindi is the Official language of the Indian Union and English is the associate language. The states of the Indian Union are constituted on a linguistic basis, though other factors (economic, political and social) were also kept in consideration. States are free to adopt their own language of administration and educational instruction from the 22 languages officially recognised by the state though it does not stipulate how the objective is to be achieved.

The Official Languages Act (1963) declared Hindi as the sole official national language from 1965, and English to continue as an "associate additional official language," leaving ambiguous whether Hindi would be imposed on non Hindi speaking states. It provoked massive rioting and self-immolations in Tamil Nadu in 1964-1965. The Congress government at the Centre assured the non-Hindi-speaking states, Hindi would not be imposed as the sole language of communication between the centre and the states as long as even one state objected. In addition any of the 22 scheduled languages could be used in taking examinations for entry into the central government service.

Article 343 declares Hindi in Devnagri script as the official language.

Article 344 for the setting up of a Commission and Committee of Parliament on official languages.

Article 345 provides for the use of regional languages recognized by the constitution. The legislature of the state may by law adopt any one or more language in use in the state or Hindi as the language or languages for official purposes.

Article 347 makes for special provision relating to a language spoken by a section of the population of the state. The President may direct that such a language also be recognized. Urdu speakers in Hyderabad are lobbying for recognition of Urdu as an official language in the state.

Article 348 stipulates that the language of Supreme Court and High Courts and for Acts and Bills will be English.

Article 350 provides that the language to be used in representations for redress of grievances to any officer or authority in the union or state may be in any of the languages in the Union or state.

Article 350A enunciates that it 'shall be the endeavour of every state and of every local authority within state to provide adequate facilities for instruction in mother tongue at the primary stage of education to children belonging to minority groups, and the President may issue such directives to any state.

Article 350B provides for the appointment of a Special Officer for Linguistic Minorities.

Protecting Minority Rights:

General Institutions:

National Human Rights Commission. The Human Rights Act (1993) provided for the constitution of a National Human Rights Commission, and State Human Rights Commission, and Human Rights Courts. The president appoints a former Chief Justice to head the Commission.

State Human Rights Commissions have been set up in Assam, Himachal Pradesh, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal, Chhattisgarh

Minority Rights activists are disappointed with the functioning of the NHRC and argue that the NHRC has not assigned any priority to the right to equality and non-discrimination becoming a reality. Symptomatic of the NHRC's lack of focus on Minority issues is the absence of any minority presence among its members. However it should be pointed out that the NHRC's Chairperson Justice Verma took suo moto cognizance of the anti Muslim violence in Gujarat 2002, and drew the attention of the Supreme Court.

National Commission of Women (1992). At the initiative of a Member (Muslim) of the Commission, the NCW intensively engaged with issues of rights of Muslim women, campaigning for change in practices like Triple Talaq, developing a model Nikah contract to investigating violations and redress of specific grievances.

Specific Institutional Mandate:

Ministry for Minority Affairs created in January 2006 is largely seen as a political move on the part of the Congress to regain the confidence of the minority communities in north India. The ministry is yet to make an impact in matters of minority right protection.

National Commission for Minorities (1992). The National Commission for Minorities is a statutory body set up on Act of Parliament in response to the increasing attacks on minorities as well as mouting complaints against police atrocities. . Its Chair and members are nominated by the President. It has no magisterial powers and is limited to making recommendations to the centre and state governments. Critics like Iqbal Ansari, are dismissive of the Commission, claiming that "It is a powerless body". It is treated cynically by the State and Union Governments, and its reports and recommendations are not laid on the table of the Parliament with action taken report, for years together. The current Chair, Mr Hamid Ansari, recently brought to the attention of the Lok Sabha Speaker that there is a gap of 10 years for its Reports to be taken up by Parliament. The Chairman and Members of the NCM being appointees of the govt. of India.

State Commissions for Minorities. Andhra Pradesh, Assam, Bihar, Gujarat, Haryana, Karnataka, Madhya Pradesh, Rajasthan, Tamil Nadu, Uttar Pradesh, Maharashtra, West Bengal, Chhattisgarh, Delhi

The National Commission for Minority Educational Institution Act, 2004. The National Commission for Minority Educational Institution was set up by an Act of Parliament in 2004. It provides for the right of minority educational institutions to seek affiliation to any university of their choice; it seeks to overcome problems faced by minorities in seeking no objection certificates for establishing educational institutions and resolves disputes relating to the minority status of educational institutions.

Commissioner of Linguistic Minorities (1957). The Office of the Special Officer for Linguistic Minorities (commonly known as the Commissioner for Linguistic Minorities) was created in July 1957, in pursuance of the provision of Article 350-B of the Constitution. The CLM takes cognisance of grievances arising out of the non-implementation of the constitutional safeguards provided to linguistic minorities and recommends remedial actions. The Commissioner is required to submit Annual Reports, which are sent to the concerned Ministries/Departments of the Central Government and the Governments of various States/UTs for follow up action, after placing them in Parliament. It has submitted 38 Annual Reports.

National Minorities Development and Finance Corporation. National Integration Council (1961) constituted as an 'an antidote to communalism, casteism, regionalism and linguism' as Justice Srivastava described it, has proved not effective. 12 meetings had been held, till 1992 November, the cast relating particularly to the Babri Masjid. In February 2005 the Congress led government reconstituted the Council, headed by the Prime Minister with 141 Members. It has yet to function as an effective forum.

National Commission for Scheduled Castes & National Commission for Scheduled Tribes. By an amendment of the constitution 2006, the National Commission for Scheduled Castes and Scheduled Tribes (under Article 338) was split into two bodies- National Commission for Scheduled Castes(338) and National Commission for Scheduled Tribes(338 A)

Dalit Muslims and Christians: Denied Scheduled Caste Status

Caste based discrimination has penetrated, Christian and Muslim societies in India, however Dalit Christians and Muslims are denied the status or scheduled castes. Article 341 and 342 permits the President of India to specify the castes, sub-castes, tribes, etc. to be included in the list of Scheduled Castes and Scheduled Tribes respectively. 'The Constitution (SC) Order 1950' stated that 'no person who professes a religion different from Hinduism shall be deemed to be a member of the Schedule Castes'. Under pressure from Ambedkarite and Sikh organizations, the order was amended to include Dalit converts to Buddhism and Sikhism (as essentially belonging to the Hindu fold), but not to Dalit converts to Christianity and Islam.

Official recognition of SC status has not only to do with reservations in government jobs and representation in state legislatures and Parliament, it would make Dalit Muslims and Christians eligible for special development programmes, scholarships and hostels for students, reserved seats in educational institutions and the protection of special laws against atrocities on Dalits.

A Dalit woman, Rima Singh, was elected as Sarpanch on a reserved seat in a village in Uttar Pradesh. Her husband, Mukesh Kumar, had converted to Islam, taking name Muhammad Sadiq. She too wanted to follow her husband and become a Muslim. But that would mean she would have to resign from her post, because, as the law stands, Dalit Muslims and Christians, are not considered Scheduled Castes (SCs) by the state.

Many Dalit activists see the religious bar to SC status, as a means of discouraging Dalits from converting to other religions in search of emancipation from caste Hindu hegemony and from gaining self-respect base on their cultural identity.

National Commission for Scheduled Castes. The term Scheduled castes/Scheduled tribes (SC/ST) is used in the Indian legal system to refer to this group along with non-caste tribes. The government's official criteria for listing a community as Scheduled caste is - extreme social, education and economic backwardness arising out of the traditional practice of untouchability. Under Article 17, "Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with the law".

Ministry of Tribal Affairs North East Region. The Ministry of Tribal Affairs is the nodal Ministry for overall policy, planning and coordination of programmes of development for Scheduled Tribes.

National Commission for Scheduled Tribes (see indigenous peoples)

Special Schemes & Laws

Prime Minister's 15 Point Programme for Minorities (1983); Revised 2006. It was formulated by Prime Minister Indira Gandhi to ensure rapid socio-economic development of minority communities and provided for a structure of reporting back to the nodal Ministry of Social Welfare. Prime Minister Manmohan Sigh has recast it beginning with a cabinet decision to allocate 15% of social welfare spending on schemes for improving educational facilities, equitable share in employment, improving living conditions and access to rural housing schemes. The alarming disparity between Hindus and Muslims in socio-economic indicators, is a testimony to the ineffectiveness of earlier such schemes.

The Protection of Civil Rights Act (1955) and the SCs and STs Prevention of Atrocities Act 1989 The Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act lists offenses against disadvantaged persons and provides for stiff penalties for offenders. However, this Act has had only a modest effect in curbing abuse. The conviction rate under the PCR and the PA Acts are very low. e.g. 1998 PCR 22.6% and PA 32.2%

Devolving Power - Asymmetric Federalism

In South Asia, India has been the most far reaching in devolving power, articulated through an asymmetric federal polity with a complex structure of special autonomies, India's varied experiments with asymmetry have been described by political scientist Balveer Arora as 'an extended discovery of the minimum degree of uniformity necessary for maintaining a coherent union'. Its federal framework has been proposed as a model for accommodating democratic aspirations for self rule that threaten to split apart countries like Sri Lanka with a unitary structure. However, the dynamics of India's lived experience of federal power

sharing continue to reflect the overriding concerns 'for unity and integrity' of a culturally diverse nation. It is the same concern that preoccupied the Constituent Assembly as it laid down the foundations of rule and governance. The Constituent assembly discussions had envisaged a wide ranging structure of self rule and shared rule, but the shadow of partition fell and diluted its federalizing impulse. The historical experience of disruption and disintegrative tendencies led Dr Ambedkar to make explicit, "though India was to be a federation, the federation was not the result of an agreement by the states to join in a federation. Not being the result of an agreement, no state has the right to secede from it. Though the country and the people may be divided into different states for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source..."

Post partition federalism came to be viewed as carrying the seeds of secession and disintegration, with the ruling elite resisting the linguistic reorganization of states and reinforcing central control. Violent language agitations were to oblige Prime Minister Jawaharlal Nehru to concede the linguistic reorganization of states. However, three dominant, centralising and authoritarian impulses have resulted in repeated assaults on the actuality of sharing of power and the country's special autonomies. One, a growing national security state pathology, two, the vision of centralized planning for development that gave pride of place to the Planning Commission, an extra constitutional body. And three, the domination, practically nation wide, for nearly four decades after independence, of one political formation, the Congress party. It reinforced centralization and a cynical attitude towards 'special autonomies'.

Even the use of the nomenclature -centre: state relations, reflects the uneasiness in actualizing a federal polity. Moreover, the Constitution has a unitary bias, e.g. after distributing legislative powers in three lists, not only are residual subjects left with the Union, its will prevails on subjects in the concurrent list. Also, the Indian parliament retains the right to change the boundaries of the states.

> ***Article 1 states "India that is Bharat, shall be Union of States" and Article 3 empowers the parliament that it "may by law form a new state by separation of territory from any state or by uniting two or more states or part of the states or by uniting any territory to a part of any state ...."***
>
> ***(Article 1, Constitution of India)***

This is in contrast to the federal structure of the USA where, the territorial integrity of the federating units is sacrosanct, and it is more an aggregate of federating units constituting a state rather than devolution of power. Parliament has used the Article 3 to carve out new states and the pressures for its use continue unabated.

Linguistic reorganisation of states

In response to the demand for redrawing state boundaries on a linguistic basis, the Constituent Assembly appointed the Dar Commission (1948) which recommended against the creation of linguistic states for fear that it would lead to disintegration of the country. However continuing language agitations obliged Nehru to appoint the States Reorganization Commissions (1953) which paved the way for the creation of states on linguistic lines. The Telegu speaking peoples of the Madras state took the lead and the state of Andhra Pradesh was created in October 1953. Since that time the Union of India comprises 28 states and 7 UTs.

With the formation of the linguistic states, there has been a tremendous upsurge of regional languages and cultures. Linguistic standardization has contributed to ethnic and regional differentiation in so far as language has become a cultural marker. The dynamics of linguistic-cultural dominance of the state has marginalized non-regional language speakers. In a multi-lingual city like Hyderabad, the state government's zeal to promote the language and culture of Telegu, has not only disadvantaged Urdu language speakers, but carries an ominous communal (anti Muslim) connotation. In U.P and Bihar, Muslims are demanding that Urdu be given the status of second official language in their states. In Assam, the state's Official Language Bill (1960) discarded both Hindi and English and declared that Assamese would be the official language of the state, prompting Bodo tribals in turn to demand the Autonomous Bodo Territorial Council, in which Bodo written in Devanagri script is the official language.

Challenges of a functioning federal polity

Paradox of competing territorial nationalism

The consolidation of territorial - state structures and hegemonic regional identities has marginalized minorities within and produced persistent demands for statehood by sub-regional groups. Moreover, the arbitrary drawing of internal and inter state boundaries has left divided, peoples like the Nagas. For over fifty years the Nagas have been in conflict with the Indian state for their right to self rule. The current ceasefire-peace process (1997) is threatened by differences over the Naga demand for unification of the Naga inhabited areas. This would mean slicing away the Naga Hills out of Manipur state. The Metei majority in Manipur state is bitterly opposed to it, fearing that the valley their homeland would get isolated and be at the mercy of the Nagas. The Centre has buckled, under the agitational politics of Metei dominated Manipur polity and not been able to extend the ceasefire to all the Naga inhabited areas. At issue is a federal dilemma, the competing interests of Manipur state and the right of the struggling Naga peoples to self rule.

The capacity of the Centre to mediate the federal paradox is compromised by the lack of any conceptual clarity in guiding the devolution of power. For instance what is the basis for the formation of three new states in 2000. In Chattisgarh, language was the cultural element, in Jharkhand, tribal identity and in Uttaranchal, regional culture. To posit that India's federal reconciliation of regional identity with autonomy has a democratic aspect, you would have to demonstrate that the political demand for statehood, or sub-statehood has identifiable popular support born of mass mobilization. Arguably, Jharkhand had a long history of agitation for self rule by adivasis but the eventual dynamics of its creation had less to do with democratic aspirations and more to do with political parties jockeying for dominance at state and central (coalition governments) level. As regards the processes of state formation of Uttaranchal or Chattisgarh, there is no consistent pattern of mass agitational politics. In some cases as with the creation of the state of Nagaland in 1960, it was not in response to people's agitation for a separate state but as gift/bribe to co-opt a faction of the Naga militants. As for sub state autonomies - the proliferating demand for Autonomous District Councils manifests the cynical logic of minoritization. As a development activist in the Autonomous Tribal Bodo Council observed, "its achieved decentralization alrights, decentralization of corruption". The politics of the north east is trapped in a cynical cycle in which the claims of redistribution get linked with recognition and perpetuate competitive and divisive identity politics.

Centre practices hegemony

The historical experience of the first few decades has been that of a Centre riding roughshod over the autonomy conferred upon the states by the Constitution. The Constituent Assembly had been persuaded to sacrifice democratic freedoms and include Article 356, as an emergency provision to deal with highly exceptional cases to preserve national unity and territorial integrity. Instead, the Centre, used it over 100 times beginning with the democratic outrage of removing the Communist government in Kerala in 1959. Finally, the ***S. R. Bommai vs. Union of India*** Supreme Court judgement (1994) marked out the paradigm and limitations within which Article 356 was to function, and castigated its misuse to erode the autonomy conferred upon the states in the Constitution. Official Commissions set up to examine the workings of centre - state relations had repeatedly recommended the need for greater state autonomy.

The continuing struggle of the Naga peoples for self rule in the north east; the erosion of constitutionally sanctioned special autonomy of Jammu and Kashmir and the Punjab insurgency are only the most dramatic testimonies to the failure of the Indian ruling elite to respect and accommodate the democratic aspirations of people to autonomy and power sharing.

However, from the late 1980s and 1990s we have seen the democratic transformation of the structure of power in India and the actualization of a real federal polity. The collapse of the Congress system and the emergence of powerful new soico-political forces in the various regions has produced a regionalization of the political party system and the democratic assertion of erstwhile marginalized 'backward classes'. The phenomenon of coalition governments at the centre, which depend upon support of regional parties, has effectively shifted the balance in centre state relations. Also, the policies of economic liberalization have enabled states to act with greater autonomy. The dominant consensus that the centralized apparatus has not been able to deliver goods and services, is reflected in the demand for decentralization of power and resources, not just to the state level, but to the levels below. The result has been a federal polity more in operation than by design.

Federal Autonomies & Protecting Minorities

While the movement towards actualizing a multi-centric polity is to be welcomed, it has implications that are not necessarily positive for the protection of minorities within states. Human rights groups speak of increasing attacks on religious and social minorities in the states. There is the dangerous phenomenon of convergence of state and majority community interests which has resulted in an infringement of fundamental freedoms and the threat to life and property of peoples belonging to minority groups. The most flagrant was the Gujarat communal carnage (2002). It exposed the clash between the federal principles that protect the autonomy of the states and the central government's responsibility to protect fundamental rights, which belong to all citizens.

When the government of a federating unit of the Indian Union systematically flouts constitutionally guaranteed rights of a section of citizens, who should protect fundamental rights? In Gujarat the fundamental rights guaranteed by Articles 14, 15, 21 and 25 were denied to a section of Indian citizens because of their religious identity. The Bharatiya Janata Party led state government did little to protect Muslim citizens who were being killed, raped and tortured by mobs that were led by people belonging to the ruling political party and other members of the Sangh Parivar. The central government failed to intervene in Gujarat on the grounds that the state government was legally constituted and was empowered to deal with the situation.

Four years later, in 2006 when Gujarat threatened to explode again into communal violence abetted by the BJP dominated state institutions, the Centre, by happenstance, with a Congress government, did intervene and stopped the violence from escalating.

However, this ad-hocism is no substitute for constitutional clarity or a bi-partisan mechanism to deal with situation where a federating unit turns rogue. Moreover, the growing capacity of a community to take over the public space and equalize community interest with state interest has been particularly blatant in states ruled by pro Hindutva forces. It has resulted in state legislatures introducing laws that infringe fundamental freedoms, and undermine constitutionally sanctioned rights of minorities of freedom of religion (Article 25). The most controversial are the anti-conversion bills that have been passed by the state legislatures of Orissa (1967), Madhya Pradesh (1968), Tamil Nadu (2002, now nullified by the DMK government), Gujrat(2003), Chattisgargh (2005) and most recently Rajasthan (2006 which has been rejected by the governor). The Rajasthan Dharma Swatantrik Vidhayak Bill illustrates the anti-minority bias of the state legislature, and its loose formulation makes the minorities all the more vulnerable. Under the Act, 'No person shall attempt to convert either directly or otherwise any person from one religion to the other by use of force or by allurement or by any other fraudulent means....' The state's communal agenda is exposed in the provision allowing 'vapasi' (re-conversion).

Supreme Court Conversions: Rev. Stanislaus vs. Madhya Pradesh Case

The Madhya Pradesh Dharam Swatantrata Adhiniyam Act was challenged by Rev. Stanislaus in the Supreme Court in 1977.The appellant argued that in addition to the freedom to profess and practice religion, the Constitution also provided the right to freely prpagate one's religion. It was argued that this entailed the freedom to convert individuals to one's religion; and conversions are part of Christian religion. On these counts, then, the state had no authority to restrict the freedom to convert people. However, the Supreme Court did not accept this argument saying the term propagate implies to transmit or spread from one person to another or from one place to another. Since what is freedom for one is freedom for the other in equal measure , there can be no such thing as the fundamental right to convert any person to one's own religion. Concern for 'public order' necessitated the need to minimize forcible conversion.

The worsening plight of minorities at risk in these and other states has brought to the fore several questions. 1) Whether the Fundamental Rights of the Indian Constitution provide adequate protection to minorities? 2) What should be the role of a central government when it becomes apparent that fundamental rights of a section of Indian citizens belonging to a particular religion, ethnicity or caste are being systematically violated in a state? And, particularly when the legally constituted government of that state fails to protect these vulnerable sections of the citizens? 3) What should be the constitutional mechanism to deal with a situation where the central government and government of the state, where violations are taking place, belong to the same political party and the central government refuses to

intervene? Balveer Arora, a student of Indian federalism, posits that assertions about the failure of federalism are being used as an alibi for inaction. Federal principles were never intended to curtail the exercise of central powers to protect fundamental rights. Ironically, at a "Workshop on Federalism and Protection of Minorities in India", constitutional expert, A. G. Noorani, placed his faith on civil society initiatives for the protection of minorities. (SAFHR & Academy of Third World Studies, Jamia Millia University, July 2004).

In response to the demand for the Centre to come out with a comprehensive law to deal with communal violence to reassure the minorities, the Congress led United Progressive Alliance (UPA) in 2004 introduced the Communal Violence (Suppression) Bill. It refers to Article 355 of the Constitution, which imposes a duty on the Centre to protect States against external aggression and internal disturbance. Once the Centre or the State has declared an area "communally disturbed", the Central government can nominate government officials not below the rank of an Additional Secretary to coordinate steps to deal with the situation and to constitute judicial zones. The maximum jail term and penalty for any offence committed in a "communally disturbed" area has been doubled (except for life imprisonment and death penalty).

While the bill seeks to vault the firebreak between centre and state responsibility for law and order, it has prompted more criticism than support. The Bill has been criticised for arming the government with extraordinary powers, reminiscent of POTA and the AFSPA. As observed by bureaucrat turned activist Harsh Mander, it strengthens the powers of the state (especially the police) without making it more accountable.

The Congress government, has been more successful in setting up new institutions like the Ministry of Minority Affairs and Prime Minister Manmohan Singh has overhauled the Prime Minister's 15point programme for the welfare of minorities However, it is an ominous trend when institutions for protecting minority rights become a function of partisan politics. Not unexpectedly it deepens the growing cynicism towards 'secularism' as a core value by reducing it to an administrative strategy.

Experiments in Autonomies

The Constitution's provisions (and subsequent amendments) articulated a complex structure of special autonomies providing for self rule, and differentiative legal and administrated structures for specifically identified areas, in response to particular historical circumstances, levels of socio-economic development and protection of customary (tribal) way of life.

The ***Fifth and Sixth Schedules*** of the Constitution (Article 244) provide for the administration and control of the scheduled areas and tribes. Schedule V applies to the broad swath of adivasi inhabited areas of central India, i.e tribal areas specifically designated under this schedule. Schedule VI applies to the administration of tribal hill areas in the north east states of Assam, Meghlaya, Tripura and Mizoram.

Under the ***Fifth Schedule*** the governors of the concerned states have been given extensive powers to repeal or amend any law enacted by parliament or the state assembly that could harm Adivasi interests. A Tribal Advisory Council is to be instituted in each state which has on identified scheduled area. The Governor is to consult the TAC before making regulations concerning laws applicable to the scheduled areas. Three fourths of the TAC should comprise representatives of the scheduled tribes in the legislative assembly. Eight states with Scheduled areas, plus Tamil Nadu and West Bengal, have established TACs.

These constitutional structures of welfare and protection have failed to protect the interests of the adivasis who have found their lands taken over, their mineral, forest and water resources exploited while they have been impoverished and disempowered and their cultures destroyed as they are forced to join the army of the displaced. Governors have singularly failed to block or appropriately modify legislation that has been detrimental to tribal interests, i.e. Indian Forest Act, the Penal Code, the Criminal Procedure Code and other mining and land acquisition laws. Instead, all laws have been routinely extended to the scheduled areas. Governors have ignored the obligation to submit reports to the President regarding their administration of the scheduled areas. The last report submitted by the Governors of Bihar, Gujarat, Himachal Pradesh, Maharastra, Orissa and Rajasthan was in 1992, Andhra Pradesh 1986 and 'in Madhya Pradesh, (highest ST population) in 1990.

Sixth Schedule: (Article 245-275) governed the administration of the tribal areas of the north east states and provided for the creation of autonomous districts and autonomous regions. Colonial administrations had relegated these areas as 'excluded' and 'partially excluded areas', allowing for tribal autonomy in the management of local affairs.

To shore up regional autonomy and the upliftment of the tribal populations, Schedule VI (Article 244 (2) provides that these areas be administered as autonomous districts and stipulates the setting up of a District Council and Regional Council for each area constituted as autonomous region. Although these autonomous districts shall not be outside the executive authority of the state concerned, the DC and RC have been empowered to exercise certain legislative, judicial and financial functions.

Presently, North-East India has, fifteen District Councils - two in Assam, three in Meghalaya, three in Mizoram, one in Tripura and six in Manipur. (Nagaland is outside the purview of the Sixth Schedule). The Schedule has succeeded to an extent in preserving the distinct identity and autonomy of tribal populations, however, in the assessment of Prof. B.K. Roy Burman an authority on the area, "the Sixth Schedule in its present form has reached a road block in the harmonious functioning of the State Government and the Autonomous District Councils". Moreover the Sixth Schedule has been criticized as reproducing ethnic polarization and sub-nationalism. In many District Council areas, ethnic minorities, find hardly any representation either by election or by nomination process. Moreover, the Schedule has brought out the clash of interests between the non-tribal valley dwellers and tribal hill dwellers. A critical overview of the working of the Schedule is provided in the report, "Experiences on Autonomy in East and North East: A Report on the Third Civil Society Dialogue on Human Rights and Peace" by Sanjoy Borbara , MCRG, Kolkata- 2003.

Article 370 and 371: Experiments in asymmetric federalism

Part XXI of the Constitution stipulates the creation of special autonomies, subsequently qualified as 'temporary, transitional and special provisions' (13th amendment 1963). Article 370 and 371 are the flag bearers of India's bold experiments with asymmetric federalism. Article 370 with respect to the state of Jammu and Kashmir is mired in controversy. While the BJP wants it abrogated for dangerously indulging the 'special status' of Jammu and Kashmir, senior jurist A G Noorani criticizes the systematic constitutional abuse of its provisions of autonomy which have reduced it to a husk.

Article 370. Autonomy as guaranteed under Article 370 of the India's Constitution symbolized a 'special status' and also formed the basis of the federal 'contract' that the state of Jammu & Kashmir had with the Indian State. The ruler of J & K acceded to India by an Instrument of Accession signed on 26 Oct 1947, in respect of only three subjects. Consequently Article 370 embodied six special provisions for Jammu and Kashmir:

- it exempted the state from the provisions of the constitution providing for the governance of states. J & K was allowed to have its own Constitution within the India Union.
- Parliament's legislative power was restricted to three subjects - defence external affairs and communications. The president could extend to it other provisions of the Constitution so as to provide a constitutional framework if they related to matters specified in the Instrument of Accession.
- If other 'Constitutional' provisions or Union powers were to be extended the prior concurrence of the state government was required.
- The concurrence was provisional and had to be ratified by the state's Constituent Assembly.
- The State government's authority to give concurrence lasts only till the Constituent Assembly is convened. It is an interim power. Once the Constituent Assembly met, the state government could not give its own concurrence, still less after it met and dispersed. With its dispersal, the President's extending power was to come to end.
- The President is empowered to make an Order abrogating it, but for this also the recommendation of the state's constituent assembly will be necessary before the President issues such a notification.

Article 370 cannot be abrogated or amended by recourse to the amending provisions of the Constitution Article 368 which applies to all the other States. Article 368 enunciates that no constitutional amendment

"shall have effect in relation to the state of Jammu & Kashmir" unless applied by Order of the President under article 370. That requires the concurrence of the state's government and ratification by its Constituent Assembly. The Constituent Assembly was convened in 1951 and dispersed in 1956.

Constitutional abuse of Article 370

Article 370 was abused by collusive state and central governments to override the state's constitution and make a mockery of the guarantees enshrined under art 370 of the Indian constitution. As it could not be abrogated, it was reduced to an empty husk. Political skullduggery and the pliant stance of the Supreme Court made for a moral wrong. From 1953 to 1975 the Chief Ministers of the State have been nominees of Delhi. Moreover, the ruling of the Supreme Court in relation to Article 370 that 'Orders' can still be made there despite the fact that the state's Constituent Assembly had ceased to exist, have in effect given a carte blanche to the government of India to extend to Kashmir such provisions of the Constitution of India as it pleased. In the case of Kashmir executive orders have sufficed since 1953 to make amendments to the constitution.

- The Nehru-Abdullah agreement in July 1952 confirmed that 'residuary powers of legislation' (on matters not mentioned in the State list or the Concurrent list) which Article 248 confers on the Union will not apply to Kashmir. (Sheikh Abdullah was dismissed from office and arrested in 1953). On May 14, 1954, a presidential Order under Article 370, (although purported to have been made with the concurrence of the State government it drew validity from a resolution of the Constituent assembly which approved extension to the State of the Delhi agreement. It paved the way for more such Orders - all with the concurrence of 'state governments', each elected in a rigged poll. 94 of the 97 entries in the Union List and 26 of the 47 in the concurrent list were extended to Kashmir as were 260 of the 395 articles of the Constitution.
- The State's Constitutions was overridden by the Centre's Orders. Its basic structure was altered The head of state Sadar I Riyasat elected by the State legislature was replaced by the Governor nominated by the Centre.
- Article 370 was used not only to amend the Constitution of India but also that of the state On July 1975 an Order was made debarring the State legislature from amending the State Constitution on matters in respect of the governor, the election commission and even the 'composition' of the Upper House and legislative Council.
- To extend the President's rule in Punjab in 1987, the Parliament had to amend the Constitution four times . For the State of Jammu and Kashmir the same result was accomplished, from 1990-1996, by mere executive orders under Article 370.
- In 1986, the President made an Order under Article 370, extending to Kashmir Article 249 of the Constitution in order to empower Parliament to legislate even on a matter in the State List on the strength of a Rajya Sabha resolution. "Concurrence" to this was given by the Centre's own appointee, Governor Jagmohan. The manipulation was done in a single day in the absence of the Council of Ministers.
- The Executive Order so amended Article 249 in its application to Kashmir as in effect to apply Article 248 instead - "any matter specified in the resolution, being a matter which is not enumerated in the Union List or in the Concurrent List".
- The Union thus has acquired the power to legislate not only on all matters in the State list, but also residuary powers. In relation to other States, an amendment to the constitution would require a two-thirds vote by both Houses of Parliament plus ratification by the States (Article 368). For Kashmir, executive orders have sufficed since 1953 and can continue till Doomsday. Nowhere else, is there any provision authorizing the executive government to make amendments the Constitution.

Adapted from AG Noorani 'Article 370: Law and Politics' Frontline Sept 16, 2000

Article 371

The article enumerates 'temporary, transitional and special provisions' that do not apply to the rest of India and are basically meant for facilitating and supervising their 'transition' to a more general mode of administration prescribed by the Constitution. These provisions address a whole host of issues ranging from the institution of separate development boards, administrative tribunals, central universities, and

committees of the legislative Assemblies consisting of MLAs elected from some particularly backward areas to ensuring 'equitable opportunities and facilities' and 'protection of rights and interests of different sections of population'.

Article 371A & G provides that for Nagaland (1962, 13th amendment) and Mizoram (53rd amendment, 1986), no act of parliament in respect of 'social practices', customary law and procedure, administration of civil and criminal justice and ownership and transfer of land and its resources' shall apply to these states unless the legislative assemblies of these states by resolution so decide.

The governor is entrusted with special responsibility for law and order and his opinion on the determination of 'internal disturbances' is overriding. The governor may also establish a Regional Council for a backward area - i.e. Tuensang district with overriding powers of control.

The main thrust of the Article is to keep these provisions beyond the jurisdiction of legislative bodies including of course, Parliament presumably on the ground that being under-represented and backward, some form of executive control under the discretion, or as in some cases, 'individual judgment' of the President of India or the Governor of the respective state. The executive discretion or 'individual judgement' specified by this article is also kept beyond the purview of judicial review. *(see indigenous peoples)*

'Citizens turned into (religious) subjects to be protected'

Summing up the juridical-political thinking in India in relation to the minorities, Ranabir Samaddar, identified as at the core, the constitutional approach of "turning them (minorities) from citizens into religious subjects to be protected. The implications were "immense from a critical politics of democracy as distinct from a critical politics of identity". He enunciates five implications that have produced a crisis of Minority Rights in India:

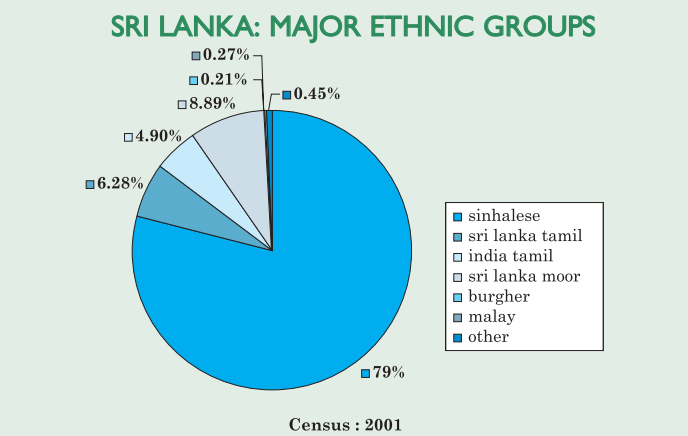
- Minorities arise as a function of democracy
- As the problem becomes acute, the received politics of democracy tries to grapple with it with notions of multiculturalism constitutionalism toleration, civility and republicanism, alternately or concurrently.
- Resisting all such solutions, the minority problem transforms into a question of ethnicity, and this transformation indicates the interface of globalization , ethnicity and the nation state , where democracy is losing out.
- In the context of this transformation the protective mechanisms become more and more ineffective.
- The final implication of all these is that the resolution of the minority problem calls for the reworking of the democratic theory and politics that goes beyond rights and calls for an enrichment of autonomy , self determination and representation that lies at the heart of the politics of justice.

(Ranabir Samaddar, social scientist)

sri lanka

CONSTITUTIONAL PARADIGM: MAJORITARIAN AND CENTRIST

"What is their problem?" A spokesperson of Sinhala nationalism can be heard saying in sincere puzzlement at the talk of racial discrimination against the Tamils. More surprisingly, a liberal newspaper "Daily Mirror" in an editorial seriously asks, 'what grievances, perhaps once, yes, but not now?'



Sri Lanka's 'ethnic conflict' pits the state of Sri Lanka against the Tamil community in a two decades long civil war that has created an internal border and produced a de-factor and (quasi) de jure autonomy. The current ceasefire (2002-2006) is threatening to become another interregnum in a ceaseless war. In encapsulating the dynamics of the majority-minority relations in the island within the constitutional, legal and policy framework of the minority rights discourse, we are confronted with the every day reality of war and its transformations - of the minority question into a secessionist insurgency and its humanitarian consequences for the minorities (Tamil, Muslim and Sinhala). It is a narrative of bi-polarization of the political imagination of a multi-ethnic society; minoritization through displacement and of minorities within minorities

Sri Lanka is a multi-ethnic, multi lingual plural society with four main ethnic groups, two dominant linguistic streams, four major religious communities and regional divisions. The Tamil political demand for unification of the north eastern province rested upon the claim that in the north eastern province 69% of the population is Tamil, while 17.7% is Muslim and 13.3% Sinhala. In the Eastern Province, the consequences of Sinhala state policies of resettlement and the 'defection' of the Karuna faction from the LTTE, has altered the demographic reality - a Tamil, Muslim and Sinhalese population that is equally divided. More than 27% of the Tamil population lives outside the North and Eastern Provinces. Nearly six percent of the Sri Lankan population is displaced.

Sri Lanka most strikingly embodies the phenomenological paradox of a majority with a minority complex (Sinhala 79%) and a minority (Tamils 11%) with a majority complex. As in many post colonial societies, the colonial encounter shaped the political and ideological basis of Sinhala majoritarianism and Tamil minority politics. It has produced a self understanding among ethnic and religious majorities of privileged minorities and disinherited minorities. Post independence and via the democratic process, it has resulted in the constitutional, institutional and policy entrenchment of majoritarian political ideology and

political control over assertive minorities through violence. For the minorities, the dynamics of constitutionalism and prejudicial policies has produced a self understanding of the withdrawal of their rights and the imposition of disabilities leading to the demand for secession, enforced by violence.

Social scientist Jayadeva Uyangoda argues that in deeply divided societies, like Sri Lanka, majority-minority politics is often constructed in terms of "competing victim claims". This has made it difficult to theorize minority rights exclusively as 'rights of persons belonging to minorities'. The limits to the usefulness of the language of minority rights is evident, in Tamil society's collective self understanding of the community, not as a minority, but as constituting a nation, with an inalienable political entitlement to independence.

> ***"The question of minority rights in Sri Lanka, cannot be treated as a legal or a constitutional issue alone. It is not a question of grievances or discrimination either. At a very fundamental level it involves the question of state power, how it is distributed and how it is shared among ethnic communities -Sinhala, Tamil and Muslim."***
>
> ***Jayadeva Uyangoda***

The Sri Lankan crisis posits the paradox of conceptualising group rights in a multi-ethnic society where the political imagination has been ethnically polarized. Federal and quasi federal solutions have been central to the constitutional debate on the resolution of conflict in the north and east but have been vociferously opposed or subtly undermined by the failure to realize a southern (Sinhala) consensus on the need to devolve power. Fundamentally, there is no legitimacy of minority (Tamil) rights in the democratic discourse. The result is two competing and contradictory nationalisms. Radhika Coomaraswamy summed up the process of the transformation of the Tamil political imagination, "the vision of a Tamil minority operating in a pluralistic society was gradually transformed into a vision of a separate historical polity, with a territorial base and distinctive manifestations of race religion and language".

Nature of the Sri Lanka State

The structure of Sri Lanka's three Constitutions evolved to firmly entrench a nationalist (Sinhala) majoritarian political ideology. It was articulated in a centralized idiom. Sovereignty was equated with unitarism with no territorial or political decentralization; and privileged the majoritarian religion and language with exclusionary implications for the minorities. The state ideology drew its legitimacy from three sources. One, the colonial constitutional discourse had conceptualised the state as centralized in political and administrative space. Two, the Sinhala ideological construction of the state was linked to the idea that the island belonged to the Sinhalese and had certain cosmic characteristics. It was the land where Therawada Buddhism had been preserved in its purity, it was therefore Dhamma Deepa. Three, the modern official historical discourse (as articulated in the educational system and the media) was that of an island territory peopled by an ethnic community, the Sinhalas, who were the natural inheritors of the modern state. Everyone else lived there on the tolerance and magnanimity of that majority.

The state, therefore must 'naturally' reflect that majority identity, especially as it was numerically overwhelmed by the 'other' beyond the island's shores (Tamils in India). The siege mentality was heightened by the demands of the other ethnic community to dilute the ethnic centric identity of the state. As cultural studies scholar, Lakshman Gunasekera notes, secessionist demands were viewed as a 'decapitation' of the body politic, as reflected in the Sinhala word 'dekada'.

State ideology as articulated in Sri Lanka's three Constitutions, the 1946 British formulated, and the two Republican Constitutions in 1972 and 1978, enunciates as its basic principles, 'democratic', 'sovereign', 'unitary' and 'socialist' Sri Lanka. The Soulbury Constitution had rejected 'communal representation', but devised a constitutional mechanism to 'safeguard' minority rights. Restrictions were placed on the legislative power of Sri Lankan Parliament to prevent parliament from enacting "discriminatory legislation". Section 29 (2) of the Constitution provided that "no law enacted by the Ceylon parliament shall restrict freedom of religion, or impose disabilities or privileges on the basis of any community or religion.

These constitutional safeguards proved ineffective in preventing the elected Parliament from passing three major discriminatory pieces of legislation - the Citizenship Act (1948) the Franchise Legislation (1949), Official Language Law (1956). Judicial challenges to these three legislative enactments failed.

The Republican Constitutions (1972 & 1978) were to shift the state just short of declaring Buddhism the state religion. Significantly, the 1978 Constitution introduced a Fundamental Rights chapter, guaranteeing non-discrimination and making justicible **Article 12** ensuring equality before law and equal protection of the law for all citizens. However, the secular orientation of the state was dropped. **Article 9** calls upon the state to give "Buddhism the foremost place", "to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by **Articles 10 and 14(1)(e)". Article 10** guarantees "freedom of thought, conscience and religion", **Article 14** the right "to manifest his religion or belief in worship, observance, practice and teaching".

In response to the severe backlash over Sinhala as the 'only' official language, and the agency of the Indo-Sri lanka accord, the 13th amendment **(Article 18)** recognized 'Tamil shall also be an official language'. Following the 16th amendment (1988) Sinhala and Tamil became the languages of administration throughout Sri Lanka, and Sinhala would be the language of administration of all the provinces in Sri Lanka other than the Northern and the Eastern provinces where Tamil would be used, etc. All laws and subordinate legislation would be enacted or made and published in Sinhala and Tamil together with a translation thereof in English. Sinhala would be used as the language of the courts situated in all the areas of Sri Lanka except those in any areas where Tamil is the language of administration.

Article 2 guarantees the state's unitary status. August 1983, the Sixth Amendment affirmed unitary status and excluded separation. However, the Thirteenth amendment (1987), midwifed by India devolved legislative and executive authority to eight provincial councils elected on the basis of proportional representation. It took foreign (Indian) pressure to enact even this administrative decentralization of powers. The 13th amendment was challenged as in violation of the unitary principle of the Constitution. However, the Supreme Court took the view that 'no exclusive or independent power is vested in the provincial councils, Parliament and the President retain ultimate control'. Successive attempts to federalize the polity have met with fierce resistance, as evinced in the Sinhala nationalist opposition to P-TOMs (Post-Tsunami Operational Management System 2005) a structure that would confer de-facto legitimacy to the LTTE's control over territory in the north eastern province. The Supreme Court held that some of its provisions went against the Constitution.

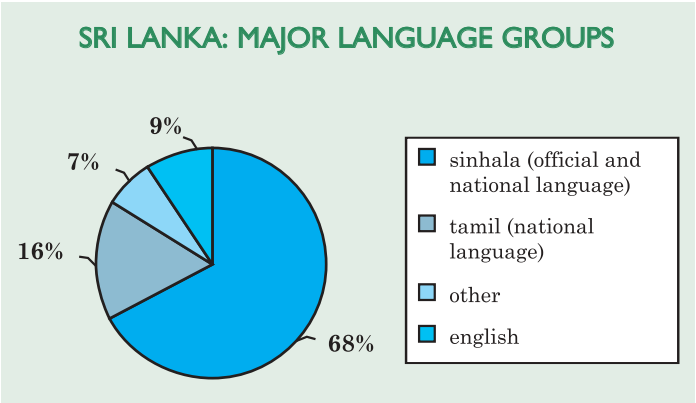
Decline in Equal Opportunities

Discriminatory laws and regulations

Citizenship: Ceylon Citizenship Act (1948) bestowed citizenship based on descent and registration, and effectively discriminated against women and hill (Indian origin) Tamils.

Sri Lankan women who married foreign nationals, were discriminated against in securing resident visas let alone citizenship for their spouses in comparison with Sri lankan males with foreign spouses. Citizenship was through male descent and children of a marriage with a foreign father were also considered to be foreigners. To obtain citizenship through the mother, the child has to have a continuous ten-year period of residence and reach the age of 21 years.

Estate Tamils were disenfranchised and overnight rendered stateless. Prime Minister D.Senanayake was motivated by the concern to undermine the electoral challenge of the Marxist parties by disenfranchising their potentail constituency. Also, the Act's ethnic effect was that by 1952, in a Constitution that had envisaged that Tamils would hold 29 of the 95 Parliamentary seats, Tamils held only 12 seats. The hill Tamils, once outside electoral politics, were ignored, neglected, and excluded from the impact of progressive social legislation.



"Grant of Citizenship to Persons of Indian Origin Act" (2003) has finally enabled all stateless persons of Indian origin

who had lived in Sri Lanka since October 30, 1964, and their descendents, to gain Sri Lankan citizenship if they wish.

Official Language Act (1956) declared Sinhala to be the sole official language overturning the policy of using Sinhala and Tamil as official languages. It directly struck at the educational and employment prospects of the Tamil community. In 1956, Tamils made up 30% of the top bureaucracy, 60% technical and professional grade and 50% of the clerical grade." Since then their numbers has slumped to less than 12%.

Tamil Language (Special Provisions) Act (1958) provided for the use of Tamil in correspondence with the public for prescribed administrative work in the Northern and Eastern provinces. Tamil resistance resulted in Tamil once again being accorded the status of an official language in the Northern and Eastern provinces without prejudice to the operation of Sinhala as the official language in those provinces. The legal distortions brought in by the Sinhala Only Act was corrected by the 13th Amendment (1987) which made Tamil the second official language of the country and the 16th Amendment (1988) made Sinhala and Tamil the languages of administration throughout Sri Lanka.

'Official Languages Commission' (1991) was set up by an Act of Parliament to oversee and monitor the use of Tamil across the island. A comprehensive study of the Commission (2005) revealed that "Successive governments have failed to implement the constitutional provision in regard to the use of Tamil as the second official language", said Chairperson Raja Collure. In June 2006, D E W Gunasekara, Minister for Constitutional Affairs and National Integration said that the dual language policy would be made compulsory for new recruits to the public service at all levels.

Policy of Standardization (1970) introduced a preferential admissions system in educational institutions which effectively discriminated against the Tamils who given their generally higher educational standards, had disproportionately dominated university enrollment. Following the policy of standardization, only 30% of the seats were to be allotted on the basis of merit and quotas were established for 70% of the seats. It was based upon a geographic criterion but because the two ethnic communities tended to be regionally segregated, the policy gave a boost to Sinhalese enrollments. 15% of all openings were reserved for educationally underprivileged districts, which were predominantly Sinhalese.

Jobs under Patronage System: Political parties - SLFP and UNP instituted systems of 'job banks'. Under Srimavo Bandaranaike there was the chit system, (a memo written by a legislator to inform personnel authorities of the preferred candidate); The Jayewardene government gave to each legislator "job banks" of lower level positions to be distributed to their followers. The expanding structure of patronage in public service discriminated against Tamils, sacrificing better qualified candidates, especially as the Tamils had no capacity to negotiate the jobs under patronage system because after the 1977 general election, their political representatives had very limited influence.

Electoral Oaths: Sixth Amendment outlawed the advocacy of secessionism, and obliged Parliamentarians to swear an oath affirming the unitary state of Sri Lanka. Consequently from 1983-1988 north and east was effectively deprived of Tamil political representation in Parliament, District council or Local bodies for few would take the oath abjuring secession.

Resettlement: Government-sponsored settlement of Sinhalese peasants in the northern and eastern parts of the island, traditionally considered to be Tamil controlled regions, has been a major source of grievance and inter-community violence. The Jayawardene government in the 1980s launched a scheme to re-settle 300,000 Sinhalese in the dry zone of Northern Province, giving each settler land and funds to build a house and each community armed protection in the form of rifles and machine guns. Tamil spokesmen accused the government of promoting a new form of "colonialism". The Jayewardene government asserted that no part of the island could legitimately be considered an ethnic homeland and thus closed to settlement from outside. Eventually, it pushed Tamil nationalists to claim recognition of Tamil homeland and territorial sovereignty.

The land colonization was made particularly provocative by self conscious Sinhala Buddhist nationalist claims that the colonization was the return to and resurrection of ancient Sinhala agricultural civilization of the Anuradhapura period when the great Sinhala kings waged war against Tamils.

Social Minorities

Caste discrimination has been relegated to non recognition in public policy. This is despite the fact that caste discrimination, caste preferences and caste oppression exists in both Sinhala and Tamil social formations. At every Delimitation Commission process, minority and marginalized caste delegations have sought redress of caste grievances in the form of representation in legislative bodies. However only one specific statute has been enacted by Parliament -Prevention of Social Disabilities Act (1957) seeking to remove inequalities based on the caste system. It focuses mainly on caste discrimination in Tamil society.

Caste in Sinhala society remains an underresearched phenomenon and there appears to be no available caste mapping of electoral representation. However as a lived electoral reality it is inescapable. In Sri Lanka candidates are nominated to a particular areas based on their caste. The caste vote, as it were, is an act of defiance in some constituencies against what they feel is the Govigama (the Senanayaka's and Bandaranaiyake's) hegemony over land and politics. There are textures of social interactions and tales of marginalisation based on caste that require mention for further expoloration.

Institutions of Minority Concern

- Ministry of Religious Affairs
- Department of Buddhist Affairs
- Department of Christian Religious Affairs
- Department of Hindu Religious and Cultural Affairs
- Department of Muslim Religious and Cultural Affairs
- Department of Public Trustee
- Ministry of National Integration & Constitutional Affairs
- National Human Rights Commission
- Official Languages Commission
- Department of Official Languages
- National Commission of Women (non statutory)

(By virtue of the 17th Amendment a Constitutional Council was instituted to facilitate the appointment of highly qualified persons to the Commissions and their independent working. However, Executive authority, can undermine this constitutional provision by not instituting a Council when the old Council's term lapsed. Civil and democratic rights bodies have criticized the ad hoc process of the President nominating members of Commissions, including the Election Commission.

Minority Safeguards and the Judiciary

The Sri Lanka judicial system has been slow in establishing itself into a institution for constitutionally defining the public policy framework for pluralism and multiculturalism. Eminent constitutionalist, Neelam Thirchelvan has described the higher judiciary's reluctance to evolve judicial concepts and techniques of analysis which would protect the interests and rights of minorities, as 'complex' and 'ambivalent'. In recent years, however, the courts seem to be making more of an effort to uphold provincial autonomy, principles of democracy, and minority rights.

Three landmark cases decided upon by the higher judiciary revealed the inherent limitations of the Sri Lakan judiciary's role in widening the ethnic as well as democratic bases of the polity. In particular the judiciary failed to protect the special rights guaranteed to minorities under section 29 of the Constitution (1946).

Franchise Rights

Mudanayake vs. Sivagnasunderam and Kodikam Pillai vs. Mudanayake, originated in response to two major legislative measures passed by the Sri Lankan parliament in 1948 and 1949. One, the Citizenship

Act (1948) which deprived a large number of Tamil plantation workers of Indian origin of Sri Lankan citizenship.Two, the government introduced two legislations defining franchise rights. The vast majority of persons who lost their franchise rights were Tamil plantation workers of Indian descent. These Acts of Parliament were challenged as unconstitutional, because they violated the minority safeguards as laid down in article 29(2) of the Constitution. In deciding these two cases on the Citizenship and Franchise Acts, the Sri Lankan Supreme Court adopted an approach, which has been described as "narrow and technical" by legal analyst Rohan Edrisinha. The view of the higher judiciary was that the motive and effect of the legislation were irrelevant in deciding the constitutionality of the legislation.

Language Rights

Kodeswaran vs Attorney General involved a Tamil public servant who challenged the Official Languages Act, the Supreme Court evaded the constitutional issues and disposed of the case on the ground that a public servant did not have a legally enforceable contract. These judgments reduced section 29 to a 'pathetically inefficient sentinel of ethnic crisis'.

Inter Group Equity

Standarization policy: Under the Constitution (1978) the Supreme Court is expressly vested with constitutional jurisdiction and is constituted 'protector and guarantor of fundamental rights'. A case relating to inter-group equity involved admission to universities according to a formula which provided that only 30% of admissions were to be based exclusively on merit. It was weighted in favour of educationally backward areas and effectively reduced the intake of Tamil students from the north into universities. The formula was upheld by the Supreme Court invoking the principle of state policy relating to the removal of regional disparities. While the constitution envisaged that incursions into the principles of equality should only be permissible under legislation, the Supreme Court appears to have permitted such incursions even through executive action to implement the principles of state policy.

Devolution of Power

The Thirteenth Amendment case: Five of the Supreme Court judges upheld the constitutionality of the devolution scheme, while four were of the view that it violated the unitary character of the state. There was also a sharp difference in the judicial approach to constitutional adjudication. The majority judgment was based on a self-conception of the judiciary as a body with a liberal outlook and the capacity to approach highly emotive issues with objective detachment. The approach of the dissenting judges seems to embody explicitly the historical and political sensitivities of a popular discourse on ethnicity. The judgments combined a very positivist conception of a sovereign state as one inextricably linked to Sinhala-Buddhist ideology.

Supreme Court upholds the rights of Displaced Minorities

The Supreme Court order on resettlement in the High Security Zones (HSZs) in the Jaffna peninsula demonstrates the positive role the judiciary can play in dealing with the sensitive issue of HSZs, land ownership and security issues The petitioners filed a fundamental rights case requesting the court to allow them to resettle in their houses and lands located in the Jaffna-Palaly HSZ. Petitioners had been displaced, and their houses and lands taken over in 1990. The Supreme Court ordered the District Secretary, Jaffna, to explore the possibility of resettling 7000 families displaced from the Palaly High Security Zone (HSZ). The order by the Supreme Court is a bold step by the highest court in Sri Lanka, recognizing the plight of the displaced communities, many of whom are the minority Tamils and Muslims, and encouraging the key actors in the process, the Government and the military to continue the dialogue on possible ways of addressing the HSZ issue. Land is a key issue in the two-decade ethnic conflict. Minorities have experienced much hardship during the conflict, fleeing their homes and land, losing family and livelihood and being relocated to distant areas. Several thousands of displaced persons have been unable to return because their land is located in HSZ. The order recognizes that while national security is an important issue, consideration need to be given to people's rights, their right to their land and livelihoods. In a country where there is apprehension about government structures protecting the rights of the minorities, the order is an important confidence building measure. However, it is interim order and uncertainty looms on what the final order would be and whether it would be implemented.

(Bhavani Fonseca, legal rights activist)

These sharply contrasting approaches to the resolution of conflicts in power-sharing arrangements have led constitutional lawyers like Radhika Coomaraswamy to argue that, in the context of Sri Lanka's plural society, "the judiciary is not the ideal forum for the resolution of ethnic conflict, particularly those relating to fundamental structural questions".

Legal Pluralism

Sri Lanka's legal system is based on a complex mixture of English common law and Roman-Dutch, Sinhalese, Muslim and Tamil customary laws. While some of the customary regimes have been more empowering for women in terms of property rights in the case of Thesawalamai law, or the customary practice among the Muslim community of eastern Sri Lanka, of giving as dowry a house/land to Muslim women on marriage.

Post Tsunami, presented the challenge of safeguarding women's existing claims on land titles especially in the east. Studies by NGOs like Centre for Policy Alternatives on "Women's Access to Ownership and Property in Batticaloa, Jaffna and the Vanni" (Apri 2005) and the Suriya survey of women's land ownership in 17 villages in Batticaloa district have provided documentary evidence to substantiate the need for post Tsunami state policies that factor in women's access, ownership and control of land and property. Under the general law of the land, the state does not entitle women to apply under the Land Alienation Act. As a consequence of lobbying by women's groups, there was some official sensitivity to the need to institute joint land title deeds.

Thesawalamai, Kandyan and Muslim are the three main customary laws currently in operation in Sri Lanka. All three customary laws operate strictly within limited parameters, while the general laws of the land apply in all other matters. Thesawalamai has always recognized that the criminal law (wherein matters such as capital punishment and rape are dealt with) was the same as is elsewhere in Sri Lanka.

'Thesawalamai', in Tamil, literally mean the customs of the land and has prevailed in northern part of the island for centuries. The Dutch codified it in 1706 and the British gave it legal validity by the Tesawala Regulation No 18 of 1806. The Matrimonial Rights and Inheritance Ordinance of 1911 (as amended by the Ordinance No 58 of 1947) and the Jaffna Matrimonial Rights and Inheritance Ordinance No 1 of 1911 are the sources and basis of the Matrimonial Rights of Tamil Spouses.

Thesawalamai is both territorial and personal in character. It is applicable to all lands situated in the Northern Province, whether such land is owned by a Sinhalese, Tamil, Muslim or Burgher; and (ii) it does not attach itself by reason of descent and religion to the whole Tamil population. It is the law of an agricultural society and requires a woman to obtain written permission of her husband before disposing of any immovable property. In areas under the writ of the LTTE's juridical system there have been efforts to reform Thesawalamai law, especially the requirement for women to obtain male husband/kin approval. Dowry, also customary, has been banned.

Muslim family law was codified by the Dutch colonial administrators. Post-independence the Muslim Marriage and Divorce Act (1951) constitutes the main body of legislation relating to the application of Muslim family law, and also regulates the functions, qualifications and powers of the Quazi Courts applying that law. Whereas the statutory age of marriage in Sri Lanka is 18 years, amongst the Muslim community, age of marriage may be 12 years.

Devolution Experience: Consequences of Failure

Sri Lanka's is a narrative of the limits of the federal frameworks for power sharing when the political imagination is ethnically polarised.

Bandaranaike-Chelvanayakam Pact (1957) between the leader of the (Tamil) Federal Party and the then Prime Minister and leader of a polyglot governing coalition of Sinhala nationalists and left-of-centre parties. It proposed the establishment of Regional Councils with a limited range of de-centralized competencies. The pact was unilaterally abrogated by Prime Minister, Mr. Bandaranaike.

Senanayake-Chelvanayakam Pact (1965) between the leader of the Federal party and this time the southern right of center post electoral alliance. It contained modest proposals for decentralization and

some concessions on language policy. Prime Minister, Mr. Senanayake, was unable to fulfill commitments made under the agreement due to pressure from within his own political party.

Constitutional Reform Exercise (1970-2). A broad left wing coalition had assumed power promising the country's first republican constitution. The Federal Party's attempts at influencing the deliberations of the Constituent Assembly towards devolution and mechanisms for power sharing came to naught, whereupon it staged a walkout. A bi-partisan southern political consensus approved a highly centralised, authoritarian and unitary republican constitution.

- abolished special protections accorded to minorities under Section 29 of 1946 Constitution.
- expressly entrenched the unitary nature of republic.
- impinged upon the secular principle by giving constitutional recognition to Buddhism as having a 'foremost' status in the state, entitling it to the state's protection.
- whittled down the principle of horizontal separation of powers at the centre and strengthened majoritarianism.

Tamil United Liberation Front (TULF) (1976). The Federal Party reconstitutes itself as the TULF and formally adopts the Vaddukoddai Resolution, which called for a separate state of Tamil Eelam in the North-eastern part of the island that was claimed as the territory contiguous to the traditional Tamil homeland.

Constitution (1978) radically altered the institutional form of the Sri Lankan state by creating a powerful executive presidency, elected independent of Parliament by the entire country as a single electorate. The Constitution of 1978 introduced a significant counter-majoritarian principle in the form of proportional representation. Its fundamental rights chapter enshrined the equality principle, of civil and political rights that was directly enforceable against the state and its instrumentalities. However, it retained the unitary principle and the foremost place of Buddhism.

Thimpu Talks (1985). Third party (India) mediated talks between the government of Sri Lanka and representatives of Tamil militant groups in Thimpu, Bhutan The talks collapsed but served as a forum for Tamil nationalists to articulate their basic stand founded on the recognition of Tamils as a distinct nationality, of a Tamil homeland and its territorial integrity, and the right of self-determination of the Tamil nation.

Indo-Sri Lanka Accord (1987) was an experiment in a foreign agency evolving or imposing a power sharing compromise that was opposed by ultra nationalists on both sides. It affirmed the unity, sovereignty and territorial integrity of Sri Lanka, but obliged the state to nurture the distinct cultural and linguistic identity of each ethnic group. Most importantly, it recognized the Northern and Eastern Provinces as areas of historical habitation of Sri Lankan Tamil speaking peoples.

> ***"Thus it was only in 1987 when India intervened in the ethnic conflict in Sri Lanka that the country was for the first time officially defined as multi-ethnic and multi-lingual plural society'. The accord brokered by the Indians named four groups consisting primarily of ethnic populations - the Sinhalese, Tamils, Muslims and Burghers - in an attempt to provide a conceptual framework for a solution to the armed conflict between the Sri Lankan government and the LTTE."***
>
> ***(Darini Rajasingham-Senanayake)***

Thirteenth Amendment (1988). It established a scheme of devolution through Provincial Councils as envisaged by the accord. Devolution through Provincial Councils was dismissed out of hand as too little too late by the LTTE, who were emerging as the dominant militant group. India the guarantor of the Accord was soon to be plunged into war with the LTTE. In the South, the Janatha Vimukthi Peramuna (JVP), an ultra nationalist organisation with a base among rural educated and unemployed southern Sinhala youth, vehemently opposed any concessions to Tamils.

Legislative and executive power was devolved to eight Provincial Councils, elected on proportional representation. The structure was however weighed in favour of the Centre. Executive powers were vested

in the Governor, appointed by the President, although he was obliged to exercise those powers in accordance with the advice of the elected Chief Minister, except in certain specific circumstances. Provincial financial powers are also vested in the Governor. The question of competence and subject allocation was also heavily weighted in favour of the Center in the three lists of subjects. The Reserve List empowers the centre to severely undermine devolution by the provision enabling it to formulate 'national policy' on all subjects including those devolved.

Constitutional Drafts (1994-2001). The People's Alliance administration produced various constitutional drafts aimed at conflict resolution and meeting Tamil aspirations in 1995, 1996, 1997 and 2001. While the content of these proposals were relatively progressive compared to the past, the LTTE, who by then had emerged as the de facto and sole representatives of the Tamil people by killing most moderate Tamil opinion-formers, was not interested. Moreover in the foreground was a high intensity militarist state policy of waging war for peace.

Ceasefire & Memo of Understanding (2002) was signed between the Sri Lankan government and the LTTE. For the first time, the LTTE in Oslo declared in December 2002, that they were willing to consider federal solution. It was eventually submitted in the form of an Interim Self Governing Authority (ISGA), i.e. a form of 'internal self determination.' Critics described it as "an undiluted maximalist ethno-nationalist framework". Its reception in the south was stormy. Sinhala nationalist groups, including the JVP were outraged and sections of the opposition 'Peoples Alliance' and the President Chandrika Kumaratunga objected.

The peace process was further limited by the failure to adequately appreciate that the dynamics of the 'ethnic conflict' had produced a political configuration of three communities and any resolution would have to involve power sharing arrangements with not only Sinhala and Tamil communities but also the Muslims.

Post-Tsunami Operational Management System (2005). The failure of the P-Toms proposal to establish an administrative mechanism for delivering assistance to the Tusnami affected areas under de-facto LTTE control was a testimony to the lack of a bi-partisan southern consensus on any kind of federal structure. Also, it was yet another demonstration of the tendency to use an administrative strategy to deal with the political issue of power sharing. Eventually, the Supreme Court declared that certain provisions of the P-toms were in violation of the Constitution.

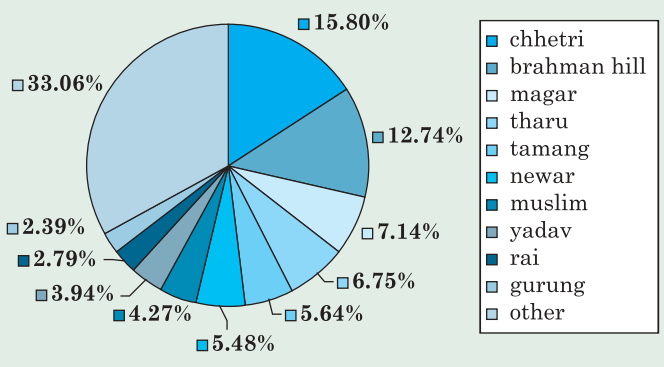
nepal

INSTITUTIONALIZATION OF EXCLUSION

After the radicalisation of the political imagination in the course of ten years of the Maoist challenge, and the triumph of peoples' power in overturning an authoritarian monarchy, Nepal is poised to create a constituent assembly that will reformulate the state and the framework of governance. As reflected in the June 2006 eight points agreement between the Maoists and seven political party alliance, 'a progressive restructuring of the state' makes it imperative to critically factor in the issues of class, caste, indigenous nationalities, ethnicity, language, and region. The first democratic experiment of 1990, had failed to overcome the political exclusion and socio-economic marginalization of traditionally excluded groups of Nepal, the 'minorities' who make up the vast majority of the Nepali population. The Maoists were to tap the potential for political mobilization of these constituencies, the janjatis (indigenous nationalities), the Dalits and the women. They were to oversee the creation of autonomous regions based on indigenous nationalities, e.g. Magrat Autonomous region and the Limbuwan Autonomous region.

Nepal's state structure, asserts political scientist Mahendra Lawoti, is an 'institutionalization of exclusion'. That is, the particular form that democratic institutions took in Nepal facilitated and indeed reinforced exclusion, even in comparison with the authoritarian Panchayat period. For the Dalits the near exclusion was constant but for the indigenous nationalities (janjati), political exclusion increased in parliament, the cabinet, the judiciary and above all the administration after 1990. Together they constituted more than 50% of the population. But their languages and cultures were discriminated against and their regional autonomy denied, by a unitary constitutional structure. Lawoti argued that a minority 'Caste Hindu Hill Elite Male' (CHHEM) that comprised just 16 % of the population dominated political, economic and socio-cultural life while 85% of the population including women, were marginalized and excluded. It was clearly an unstable situation and is now set to change.

NEPAL ETHNIC GROUPS



Census : 2001

Analysing the dynamics of minority exclusion in Nepal, Lawoti states, "The discriminatory constitutional articles, unitary structure of the state and the first past the post or plurality of the electoral system are some of the institutions that are facilitating the political exclusion of various socio-cultural groups. Majoritarian institutions do not protect group rights of the minorities. The principle of universal individualism becomes a basis for not providing group rights. The equality guaranteed by the Constitution is based on individual rights and hence does not ensure rights among individual members of different socio-cultural groups."

The challenge of Nepal's pluralism is that it is multi-ethnic, multi lingual, multi religious and culturally and regionally very diverse. Nepal has three different geographic regions, mountains, hills and plains (terai) and peoples of different castes and ethnicities are spatially dispersed all over as well as specifically concentrated in regions. There are more than a 100 caste, ethnic and linguistic groups. The state statistical machinery recorded more than 21 caste groups, 59 indigenous nationalities and classified 93 spoken languages (2001) belonging to four language families, namely, Tibeto-Buman, Indo-Aryan, Dari and Munda. Nepalese people have faith in Hinduism, Buddhism, Islam, Kirant, Bon, Animism, Christianity and others.

Fundamental Rights

The Constitution (1991) of the Kingdom of Nepal enshrines fundamental freedoms and state obligations - Article 11 of equality and non discrimination; Article 12 freedom of speech, assembly and association; Article 18 every ***community*** shall have the right to preserve and promote its language script and culture, and operate schools upto primary level in mother tongue; Article 19 guarantees every person freedom to profess and practice his own religion but no person shall be entitled to convert another from one religion to another; Article 26 obliges the state, while maintaining cultural diversity to pursue a policy of strengthening national unity by promoting healthy relations amongst various castes, tribes, communities and linguistic groups and by helping to promote their languages and cultures.

Derogation by the State

The Constitution, in Article 4 (1) states, Nepal is a multiethnic, multilingual, democratic, independent, indivisible, sovereign, Hindu and a Constitutional Monarchical Kingdom. Significantly, it does not recognize the state's multi-religious character, effectively discriminating against its religious minorities.

Nepal state structure is unitary and highly centralized. There is minimal devolution of power. For administrative purposes, there are five development regions and 75 districts. Local self governing tier had the potential to democratize power but failed to do so. Power remains highly centralized in Kathmandu.

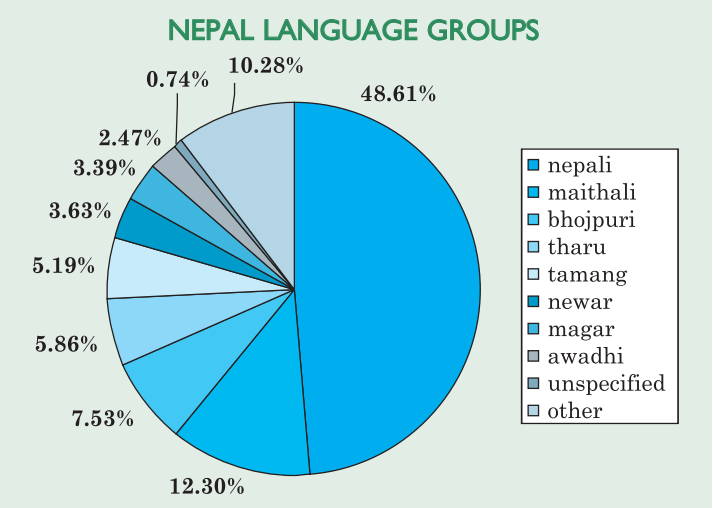
Language Policy

The Constitution recognises the multi-lingual character of Nepal but makes a distinction between "official language" and "national language". Article 6 (1) of the Constitution states, "the Nepali Language in the Devanagri script is the language of the nation of Nepal. The Nepali language shall be the official language." Article 6 (2) of the Constitution states, "All the languages spoken as the mother tongue in various parts of Nepal are the national language." Census has classified 93 'national' languages. Some 53% of the population are native Khas Nepali speakers.

This concession was the major achievement of the Language movement spearheaded by the Newars and supported by the indigenous nationalities. It was intensified during the pro democracy movement in 1989-90. The Constitution rejected the 1956 'predatory' Language Policy which stated,

> ***"Nepali should be the medium of instruction, exclusively from the third grade on, and as much as possible in the first two grades. No other languages should be taught, even optionally, in the primary school because: few children will have need for them, they would hinder the teaching of Nepali"***

The policy was pursued vigorously under the direct rule of King during the Panchayat years from 1960 to 1990. Subsequent to the changes in language policy brought in by the 1990 Constitution, the insistence on the use of the official language to the exclusion of the national language in administrative affairs often acts against the interests of linguistic minorities. Nepal judiciary, in this context, has not supported the defence of minority language rights, and its corollary, democratization and expansion of minority participation in public life. A single Bench of the Supreme Court in 1999 issued a stay order to the Kathmandu Metropolitan City and the Dhanusha District Development Committee not to use Newari ("Nepali Bhasa") and Maithali respectively as another official language at the local level. The overall effect has been to privilege Khas Nepali language speakers, the native language of Bahun Chettri as well as the discriminated Hill Dalits.



Also Article 18 (1 & 2) provides for cultural and educational rights for every community to enable it to preserve and promote its language, script and culture, and to operate schools up to the primary level in its own mother tongue for imparting education to its children. But the government has neither offered any help or support to any primary school in the mater of teaching in the various mother tongues, nor has it developed curricula and text books in these different vernacular languages. The mother tongue has not been made the medium of instruction in literacy and girl child education programmes either. There is a high drop out rate among 'mother tongue' Nepali speakers, who also are disadvantaged from getting scholarships and passing civil service exams.

Article 26(2) authorizes the state to maintain cultural diversity and promote cordial relations among various groups, and 'promote their languages, literature, scripts, arts and cultures'. However, says Krishna Bhattachan, anthropological surveys and writings on Nepal confirm that the State has (mis)used cultural weapons such as Hinduization, Sanskritisation and Bahunbad (Brahmanism) against the minority and /or indigenous ethnic groups in order to forcibly integrate them under a homogenizing and hegemonic authority that operates against religious and ethnic pluralism and cultural diversity. The government has also imposed a compulsory course on Sanskrit in school education, financial support to Sanskrit university and colleges.

Mounting pressure from equal language rights groups, moved the state to partially implement the recommendation of the National Languages Commission and broadcast a five minute news bulletin in selected Nepali languages.

Citizenship Act 1964

Article 8, 9 and 10 set out the framework for citizenship based on the Nepal Citizenship Act (1964) which provides for a single citizenship for the entire country. It has several provisions that are discriminatory.

- **Based on Gender:** Acquisition from mother's lineage is not allowed and foreign spouses of Nepali women are not eligible for acquiring Nepali citizenship.
- **Based on Language:** Only foreigners who learn Khas -Nepali language are eligible (article 9.4 a); foreigners who learn other native languages are not extended the same privilege.
- **Based on Community Identity (Application of Article 8a):** More than 3 million adult Nepalis are without citizenship certificates.
- **Limitation Clause:** Article 8 limits birthright citizenship to (1962). Consequently those who were born before that period and had not applied for citizenship, are excluded. A high level Citizenship Committee, the Dhanpati Upadhaya Committee (2052) estimated that lakhs of Nepalis are without certification. Landless and nomadic indigenous peoples are particularly affected by this provision because they or their ancestors did not obtain citizenship certificates.

Political Participation

Article 113 (3) states "The Election Commission shall not register any political organization or party if any Nepali citizen is discriminated against…" Since the judgment whether such a 'political organisation' or a 'party' is based on religion, caste, etc. or whether it 'tends to fragment the country, 'is made by the dominant groups, this provision, which is based on principles of non discrimination and to counter communalization of politics, has ended up being discriminatory. The Election Commission of Nepal has refused to register a few political parties which were organized on issues concerning ethnic and/or minority groups.

Legal Pluralism

The Constitution does not recognize any religious based minorities. There is a single Hindu code (Muluki Ain) that governs issues of marriage, divorce, inheritance and criminal laws for all communities. There are no personal or customary laws of minority religious communities like the Muslims, Buddhists and indigenous nationalities. Increasingly upper caste Hindu values are internalized. However the geographic and economic isolation of hill communities has made acculturation to the Hindu value and belief system minimal and customary practices continue. Part IV, section 7 of the New National Code of Nepal (Muluki Ain) of 1963 prohibits killings of cows because it is a Hindu deity, and those who violate it may be imprisoned for 12 years, equivalent to life imprisonment.

Competing identities: Women's rights & indigenous rights

In Nepal, the government has announced 33% reservations for women. However, indigenous woman activist, Dr Chunda Bajracharya asserted that neither the indigenous women nor the Jana Andolan-II had demanded 33% reservation for women. Speaking at an interaction organised by the All-Nepal Indigenous Journalists, she said that the announcement was made in response to the demands of feminists who are mostly from the so-called high castes. The right to self-determination, language, promotion of indigenous language, promotion of indigenous skills and technology, not 33% reservation, were the major concerns of the indigenous women. "The issues facing the indigenous women are different from that of other women," she said, adding, "For instance, property rights was never our issue as a Newar woman inherits property of her mother while the son inherits the property of his father," she said. "All government decisions are made on the basis of Hindu norms," she said, adding, "We want modifications in the national policies towards indigenous people. We want their inclusion in policy-making bodies."

The Himalayan Times August 16, 2006

The Hindu value based code has been particularly oppressive to women, especially of the dominant community. Hindu women face religiously sanctioned structures of exclusion from the household to the state level that cover the political, economic and cultural domain. (Women belonging to indigenous nationalities are less ritually constricted.) Although Nepal is a signatory (without reservations) to CEDAW, Sapana Malla Pradhan, Chairperson of the Forum for Women, Law and Development recorded in 2005 that there were 173 provisions in 83 laws that discriminated against women.

However with the overall radicalization of the socio-political agenda there have been some important legal changes affecting the status of women. Property laws that discriminated against a daughter inheriting have been changed. And in May 2006, Parliament reserved for women 33% of all posts in all organs of the state and amended the "patriarchal" citizenship law.

Special Disadvantaged Groups

Madhesi, is a distinct regional community group of Nepal's tropical forest belt and is discriminated against because of region. They comprise caste Hindus, Dalits, indigenous nationalities and Muslims of the Terai region and collectively account for 32% of Nepal's population. Madhesis face linguistic, religious and cultural domination and exclusion from accessing state controlled resources.

- Madhesi presence in the army, civil service and judiciary is negligible.
- It is estimated that more than 300,000 Madhesi do not have citizenship certificates effectively hindering them from enjoying their rights as citizens. The hill community perceives them as immigrants from India and questions their loyality towards the Nepali nation-state.
- Among the different social justice movements, that of the Madhesi is the least recognized by the state or Kathmandu based civil society groups.
- Madhesi have been organisationally raising their voice against 'internal colonization' by hill peoples and demanding regional federalism and linguistic rights (declaration of Hindi as a national language and removal of the mandatory wearing of the *daura suruwal* ('Nepali dress').

The 1990 Constitution And Exclusion

- Declaration of State as Hindu (Article 4).
  - Promotion of Hindu religion; unequal treatment of other religions by the state.
  - Excessive propaganda of Hindu religion by Royal Nepal Academy, Radio Nepal and other state agencies while neglecting other religions.
- Inequality between Native Languages
  - Nepali or Khas-Nepali declared 'the language of the nation' and official language; other native languages have been called 'national languages' (Article 6).
  - Constitutional provision for teaching non-Khas Nepali native languages up to the primary level only, but not beyond it (Article 18.2).
  - Compulsory imposition of Sanskrit in schools till 2003.
  - Large and disproportionate state subsidy for the promotion of Khas- Nepali and Sanskrit.
  - Unequal treatment between Khas-Nepali and other native language literatures and between Devanagri and other native scripts.
- Discrimination in citizenship distribution.
  - Based on Gender: acquisition from mother's lineage is not allowed and foreign spouses of Nepali women are not eligible for acquiring Nepali Citizenship.
  - Based on Language: only foreigners who learn Khas-Nepali language are eligible (article 9.4 a); foreigners who learn other native languages are not extended the same privilege.
  - Based on Community identity (application of Article 8a); more than 3 million adult nepalis are without citizenship certificates.
- Restriction on registering political parties on the basis of religion, community, caste, tribe or region (Article 112.3).
- Restriction on freedom of opinion and expression; laws can be made to impose restrictions on acts that may disturb relations between 'castes, tribes and communities' (Article 12.2.1)
- Restriction on freedom to form unions and associations: laws can made to made to impose restrictions on acts that may disturb relations between 'castes, tribes and communities' (Article 12.2.3).
- Minority symbols and heroes not included as national heroes and symbols.
- Overwhelmingly, public holidays are declared on the dominant-community festivals. Some groups do not have public holidays on their festivals.
- Annexation of native place, river, mountain names and other titles by the dominant names.
- Laws based on 'Parbat' (hill) Hindu male ideology
  - Laws based on patriarchy.
  - Divorce, marriage and inheritance laws are based on Hindu norms.
  - Criminal laws based on Hindu values, for example, 12 years imprisonment for killing cows.
- Discrimination in accessing education based on caste, community and religion.
  - State subsidized free residential education (upto PhD) in Sanskrit schools and universities. Accessed mostly by male Brahmins.
  - The lack of state support to native language educational institutions.
  - The lack of recognition of education provided by Madrasas and Buddhist monasteries.
- Discrimination in preserving different cultures.
- Manufacturing and tampering of the census date.
- Excessive stereotyping based on caste, region, gender, ethnicity and religion.
  - Derogative sayings, morals, proverbs and songs that denigrate women and minorities.
  - Prevalence of untouchability and restriction on accessing public spaces to dalits.
- Restrictions on conversion (Article 19.1), however, Hindus are free to claim indigenous nationalities, e.g. Kiranti and nature worshippers as Hindus.
- Transmission of disproportionate radio programmes in Khas-Nepali language.
- Under-representation and misrepresentation of minorities in media.
- Public service exams based on dominant values and norms and in Khas-Nepali language.

Source: Lawoti, Towards a Democratic Nepal, 2005, Sage Publication.

Dalits

Caste based untouchability was abolished in Nepal in 1963. The Constitution in Article 11 guarantees that "no person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities" and makes it an offence punishable by law. The Constitution also provides for affirmative action - that "special provisions may be made by law for the protection and advancement of the interests of women, children, the aged or those who are physically or mentally incapacitated or those who belong to a class which is economically, socially or educationally backward". However, as independent studies (2001 & 2002) reveal, Dalits continue to be marginalized in every field due to caste based discrimination. The Nepal Parliament did not have a single dalit represenatative in 1994 and 1999. 68% of Dalits are below the poverty line.

Dalits are the groups made up of the traditional 'untouchable' castes, following Hindu tradition. They are made up of Madhesi, hill, Himalayan and Newar dalits. They make up 14.99% of the population according to the 2001 census. Newar dalits have disassociated themselves as Dalits and in 2003 the National Dalit Commission drpped them off the list of dalits.

Institutions

- National Human Rights Commission (an independent and autonomous statutory body).
- National Dalit Commission.
- Ministry of Local Development.
- National Committee for Development of Nationalities.
- National Committee for Development & Upliftment of Oppressed, Marginalized and Dalit Community.
- Courts of Law.

bhutan

ASSIMILATION, EXCLUSION AND EVICTION

"Pluralism is only practical for a larger country where diversity of customs traditions and culture enriches the nation. A small country like Bhutan cannot afford the luxury of such diversity among its people."

Bhutan is where a hereditary feudal monarchy has ruled over a multi-ethnic, multi religious and multi-linguistic society and sought to homogenize it into a 'one nation, one people' state. Drukpaization euphemistically termed Bhutanization, has resulted in conflicts, and produced one of the biggest refugee situations in the world, making thousands of peoples stateless. Some 120,000 people belonging to Lhotsampa ethnic minority in Bhutan have been forced to flee to Nepal and India. State policies of ethnic discrimination and persecution have targeted not only the Hindu Lhotsampas, but also the Buddhist Sarchops and other smaller communities of indigenous populations. Over the last three decades, the government has been mounting an aggressive campaign of cultural hegemony and assimilation to the dominant Drukpa culture, the option being exclusion and exit.

Bhutan's ethnic 'minority' concentrated in the north west, the Drukpas or Ngalong community of Tibeto-Mongol descent, has dominated the political, economic, religious and cultural life of the ethnically diverse kingdom. After the takeover of power of the Wangchuk dynasty in 1907, the Dzonkha speaking Drukpas, who comprise 16% of the population made Drukpa Kargyapa Buddhism, the state religion, Dzonkha, the state language. Populous ethnic minorities in south, the Lhotsampas (variously estimated at 35%) of Nepali origin, and the Sharchops (34%) of Tibeto Burman stock in the east and central districts were kept regionally isolated and excluded. Lhotshampas and other ethnic groups had to secure waiver of restrictions to buy and own property in the capital and in the north-western districts where Drukpas lived. For in country travel, except for the Drukpas, special permits had to be obtained.

Although the Lhotsampas and the Sarchops are numerically speaking in the majority, their status of being disempowered makes them minorities along with numerically smaller groups such as the Brokpas, Doyas, Khengs, Mangdeps, Kurteops, Adhivasis and Tibetans. Population figures for Bhutan have been notoriously problematic. Bhutan does not collect ethnically disaggregated statistics. Travel sites, like www.spot.Bhutan ,which can not operate without official sanction cite as the majority 'Bhote' 50%, who speak Tibetan dialects and Lothsampas, 35% and the indigenous populations as 15%.

Bhutan is a controlled society with no guarantees for enjoyment of fundamental freedoms. Bhutan has no written constitution or bill of rights. Structures of governance, from the National Assembly, Council of Ministers, the Courts and the administration, all are dependent upon the Monarch's patronage; all resources were controlled by an autocratic state; there was no rule of law and dissent against the ruling order was treated as treason. The domination of the minority, ethnic Drukpa elite was made more hegemonic and exclusivist with the "Drukpaization' policy of 1980s. The Government claimed that it

was concerned about the rapid population growth, however the ethnic issue was twined with the political agitation spearheaded by the 'Bhutan Peoples Party' that was dominated by the ethnic Nepalese. It prompted aggressive government efforts to assert a national culture, to tighten control over southern regions, to control illegal immigration, to expel ethnic Nepalese, and to promote national integration.

Ironically, it was followed by a democratising impulse. Bhutan's first Constitution was drafted in 2005 and awaits a national referendum. However, as it articulates the hegemony of the Drukpa community, it essentially continues the policy of homogenization.

State Ideology: "One Nation One People".

This policy stresses the need to evolve a distinct national ethos based on an exclusivist (minority) Drukpa identity, excluding the Lhotsampa and Sarchop populations. Defending ethno-centricism, the official position is that "Pluralism is only practical for a larger country where a diversity of customs, traditions and culture enriches that nation. A small country like Bhutan cannot afford the luxury of such diversity which may impede the growth of social harmony and unity among its people."

Democratizing impulses in the Himalayan region; the dynamics of political change in the 'kingdom'of Sikkim and the role of the ethnic Nepali community in its eventual takeover by India, fostered insecurity about the survival of the minority rule of the Drukpa elite and precipitated cultural homogenization.

Driglam Namzha (1988): State decrees homogenization. Driglam Namzha a code of conduct and ethics of the feudal Drukpa society of the north-west, was made mandatory for the whole of Bhutan. A dress code was proclaimed and enforced the wearing of 'Gho' by men and 'Kira' by women with penalties for offenders. It forbade the wearing of 'baku' by the minorities of Tibetan descents and the 'daura suruwal' by the Lhotsampas. The 'Gho and Kira' are heavy robes quiet unsuitable for the tropical forest areas.

Language Policy: Under the Driglam Namzha decree, Dzongkha, the mother tongue of the Drukpas was made the sole national language. The other languages, Tsangla spoken by the Sarchops, and Nepali by the Lhotsampas, were silenced. Nepali language which had been a part of the school curriculum in southern Nepal since the 1950s, was removed. Failure in the Dzonkha language, disqualifies students for promotion to the next higher grade. Similarly, all aspirants to Civil Service must pass Dzongkha as a compulsory paper in their exams. This rule favours the Drukpa community to the disadvantage of other language speakers especially the Lothsampas who had been educationally more advanced before the new regulations.

Place names changed: Nepali place names in southern Bhutan were changed like Chirang, Sarbhang, Samchi and Pinjuli in southern Bhutan were replaced with Drukpa sounding names like 'Tsirang', 'Sarpang' 'Samtse' and 'Penjoreling".

Structures of Discrimination

Citizenship Act (1985). Enacted in 1985 and implemented in 1988, the Act was given a retrospective effect of thirty years, i.e. from 1958. Consequently 31 December 1958 was made the cut-off year for granting citizenship. This Act defined three criteria for granting of citizenship, by birth, registration, and naturalisation. However, whereas the previous National Law 1958, had provided for citizenship by birth on the basis of the patrilineal line (fatherhood), the 1985 Act prescribed parenthood as the sole criteria. It debarred foreign spouses of Bhutanese citizens and their children from grant of citizenship. Since the Act was given retrospective implementation, it revoked the citizenship of southern Bhutanese recognised under earlier citizenship laws. All children born of a marriage between a Bhutanese father and a non-Bhutanese mother from 1958 to 1988 were declared non-nationals and so-called 'illegal' and 'economic migrants'.

Marriage Act (1980) compounded the disabilities imposed by the Citizenship Act. It declared foreign wives of Bhutanese citizens as non-nationals, even those who had been granted citizenship under previous citizenship laws. The Act fell heavily on the Lothsampas given the social pattern of intra-ethnic matrimonial alliances for which Lothsampas sought wives among Nepali populations in Darjeeling,

Sikkim (India) and Nepal. Moreover, the Act was only enforced against the Lhotshampas. Under the Act, Lhotshampas who had foreign spouses, were denied voting rights and made ineligible for election to the National Assembly, they were discriminated against in promotion to the civil services, denied training and fellowships and medical treatment abroad and denied business and agricultural grants and subsidized agricultural inputs. They were excluded from the Foreign Service and Armed Forces.

Participation in Public Life: The National Assembly (Tsongdu) has a total representation of 151 members constituting the representatives of the clergy (10), the bureaucracy (35) and people's representatives from the south, north and the east. The combined representation of the Drukpas to the National Assembly is 77%. The Lhotshampas are left with only 14 seats. The other minority groups such as Brokpas, Doyas, Tibetans, Adivasis etc. have no representation in the Parliament. There are no political parties.

'No Objection Certificate': In 1990 the government made it mandatory for a Lothsampa to obtain a 'No Objection Certificate', issued by the police or local authorities. Without this clearance it was not possible to access health, education facilities, jobs in the civil service, the sale of cash crops or a passport.

Constraints on Freedom of Religion: Lamaistic Buddhism is the dominant religion, and is divided into two sects - the ruling Drupka Kargyapa sect while the Sarchops follow the Nyingmapa sect. The Lhotsampas are Hindu and many of the indigenous populations are animists. A little over 2 % of the population is Christian. Ostensibly citizens are free to practice openly any religion. However, the government provides financial assistance for the construction of Drukpa Kagyupa and Ningmapa Buddhist temples and shrines and gives aid to one-third of the Kingdom's 12,000 monks.

NGOs reported that government permission to build a Hindu temple was required but rarely granted. There were no Hindu temples in Thimphu, despite the migration of many ethnic Nepalese to Thimphu. The King has declared major Hindu festivals as national holidays, and the royal family participated in festivals like 'Dashai'.

Followers of religions other than Buddhism and Hinduism generally were free to worship in private homes but may not erect religious buildings or congregate in public. Proselytization is illegal, and dissidents living outside the country claim that the government prohibits conversions. The Government denied the dissidents' claims, and asserted that any citizen is free to practice openly any religion.

Since the nineties, the government has been pursuing a policy of converting the minorities to the state religion, Drukpa Kargypa Buddhism. Even the followers of Nyingmapa Buddhism, have come under pressure. The monasteries of Nyingmapa Buddhists in the east have been affected. Drukpa Kargyupa monks have been appointed in place of Nyingmapa monks.

Christians in particular, have been targeted. The Bhutanese National Assembly had in 1969 banned the practice of Christianity. More recently, they have come under hostile state scrutiny. On Palm Sunday, April 8, 2001, Bhutanese authorities and police went to churches to register the names of believers. Many pastors were detained for interrogation and threatened with imprisonment. Other believers scattered for fear of being identified. Christians have been threatened with termination of employment, expulsion from the country, cancellation of trade licenses, and denial of all state benefits.

Draft Constitution (2005)

The Constitution has been drafted in consonance with the dominant Drukpa ideology and implicitly legitimizes the 'Drukpaization' of Bhutan. Dzonkha is made the sole national language and the spiritual heritage of Bhutan is equated with Buddhism. 'Religious institutions and personalities' are obliged to promote the spiritual heritage. Significantly there is a separation of religion from politics. The Drukpa Gyalpo (King) is declared protector of all religions. The Fundamental Rights section of the Constitution (Article 7) provides for equality before the law, non discrimination and freedom of religion and Article 21 institutes Rule of Law. However, discriminatory citizenship regulations are reiterated, including intolerance of dissent, that could be used against refugees returning. Disabilities continue to apply to Bhutanese citizens married to non nationals.

Article 1, establishes Bhutan as a Democratic Constitutional Monarchy. The Head of State will be the His Majesty, Druk Gyalpo

Article 2 (1) enunciates that "The Chhoe-sid-nyi of Bhutan shall be unified in the person of the Druk Gyalpo who, as a Buddhist, shall be the upholder of the Chhoe-sid"

Article 2(3)(f) debars from becoming Druk Gyalpo, a person married to a non national.

Article 3 (1) recognizes Buddhism as the 'spiritual heritage' of Bhutan and flags the Buddhist principles and values of non violence, tolerance and compassion. (2) The Druk Gyalpo is made the protector of 'all religions' in Bhutan. (3) It emphasizes the responsibility of 'religious institutions and personalities to promote that spiritual heritage. It provides for a separation of religion from politics.

Article 1 (7) recognized Dzonkha as the national language

Article 7 (1) A Bhutanese citizen shall have the right to freedom of thought, conscience, and religion. No person shall be compelled to belong to another faith by means of coercion or inducement.

Article 7 (15) All persons are equal before the law and are entitled to equal and effective protection of the law, and shall not be discriminated against on the grounds of race, sex, language, religion, politics or other status.

Article 7 (8) equal opportunity in public employment

Article 21 (1) The Judiciary shall safeguard, uphold, and administer Justice fairly and independently … in accordance with The Rule of Law …

Article 6 Citizenship is to be obtained by a three way criteria - birth, registration and naturalization. Birth is determined on the basis of parenthood, registration on the basis of record of domicile before 1958 and naturalization on the basis of knowledge of Dzonkha and the culture and tradition of Bhutan and have no record of speaking against the King.

Legal Pluralism

In questions related to family law, including divorce, child custody, and inheritance disputes, were adjudicated by the customary law of each ethnic or religious group. The minimum age of marriage for women is 18 years. The application of different legal practices based on membership in a religious or ethnic group has often resulted in discrimination against women. Polygamy is allowed, provided the first wife gives her permission. Polyandry is permitted but did not often occur. Marriages may be arranged by the marriage partners themselves as well as by their parents. Divorce was common. The law requires that all marriages must be registered; it also favors women in matters of alimony.

3 living modes of exclusion

living modes of exclusion

The brave new state building order of the post colonial societies of India, Pakistan, Bangladesh and Sri Lanka and the kingdoms of Nepal and Bhutan - has delivered majoritarianism. To be a minority or an indigenous person is to face everyday discrimination, exclusion and violation of rights. It has led to violent insurgencies for self determination and counter insurgencies against 'defiant' peoples. Wherein does the rot lie? Is it in the ideology and the design of the state's legal, institutional and administrative framework? Is the rot in practices of governance and in social attitudes? Has dominance been produced by limiting minority group rights in the political, economic and cultural spheres? How have the hegemonic elite used the concern for 'public order,' and the institutions for its maintenance to disadvantage minorities?

Producing Domination by Limiting Minority Group Rights:

The challenge of pluralism in South Asia is enormous and so too the gap between the fundamental rights promised in the constitution and the every day forms of discrimination and inequality. More than 800 languages are spoken in the region and only 66% of the population have access to education in their mother tongue. (UNDP HDR 2004). The rights of religious based minorities are openly flouted and they are attacked with impunity. Social minorities continue to suffer from exclusions on the basis of caste disadvantage and are 'missing' from decision making structures and the ranks of the literate and the landed; they are the victims of atrocities and of justice denied. Minority groups and indigenous peoples disproportionately make up the majority of peoples under the poverty line. It is members of minority groups who are predominantly targeted by Prevention of Terrorism and other Emergency Regulations; it is they who disproportionately make up the numbers of victims killed and who crowd the prisons charge sheeted for communal violence.

NEPAL

In Nepal, exclusion and disadvantage are structured around caste, ethnicity, region, language, religion and the urban-rural divide. Mahendra Lawoti descriptively groups the dominant elite as Caste- Hindu- Hill Elite male (CHHEM). They make up 16 % of the population and dominate the political, economic and socio-cultural life while 85 % of the population including women, are marginalized and excluded. More commonly grouped as Bahun-Chettri, they comprise the dominant caste group while the indigenous-janjatis, Newars, Madhesi and Dalits make up the 'minorities'. Gender intersects these categories but that should not diminish the analytical validity of focusing upon women as a discriminated constituency.

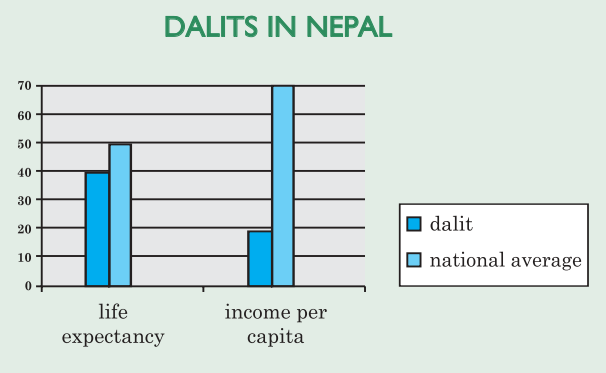
Index of Power & Exclusion (1999)							
Institutions	**Bahun-Chhetri**	**Indige-nous**	**Mad-hesi**	**Dalit**	**Newar**	**Others**	**Total**
Courts	181	4	18	0	32		235
Constitutional Bodies	14	2	3	0	6		25
Cabinet	20	4	5	0	3		32
Parliament	159	36	46	4	20		265
Public Administration	190	3	9	0	43		245
Political Parties Leadership	97	25	26	0	18		165
DDC chair/vice chair mayor/ deputy mayor	106	23	31	0	30		191
Industry/ Commerce Leadership	7		15	0	20		42
Educational Association Leadership	75	2	7	1	11	1	97
Culture: Academic & Professional Leadership	85	6	0	0	22		123
Science / Technology	36	2	6	0	18	0	62
Civil Society Leadership	41	1	4	0	8	0	54
Total	**1011**	**108**	**170**	**5**	**231**		**1520**
Percentage	66.5	7.1	11.2	.3	15.2		100
Population %	31.6	22.2	30.9	8.7	5.6	.1	100
Difference %	+34.9	-15.1	-19.7	-8.4	+9.6	-1	

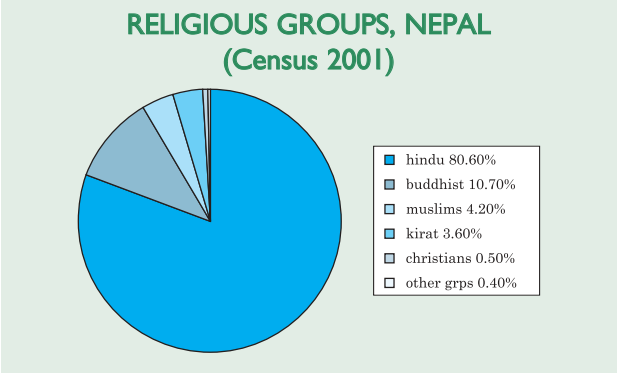
Source: Neupane (2000): Nepalko Jatiya Prashna (The National Question), p. 82.
Note: Newar is also an indigenous community, and 9 percent of the Madhesi are Indigenous Peoples.

The 1990 pro democracy movement had brought out into the streets, the janjatis, the Newars and the women but when it came to claims to power, the upper caste kept their dominant control with 60%, of the seats in Parliament and 78% of the Ministerial berths. Post multi-party democracy, in successive elections from 1994-1999, not a single Dalit made it to the National Assembly, although they make up 15% of the population. (The Maoist insurgency transformed the janjati peasant and women into political protagonists and the 2006 people's movement propelled the disempowered to the centre stage of street politics, but the process of political consolidation is producing upper caste dominated decision making committees). The Bahun-Chettri dominate political party leadership - 58%, and in the CPM-UML upto 88%. Even at the local government level the Bahun-chettri combine retain their hold over 55% of the seats. There is no Dalit District Development Chair or Vice -chair.

In the Courts, the Bahun-Chettri dominance is 77% with the Newar community making its presence felt with a little over 13% of the positions. Nepal's janjatis, indigenous nationalities make up 36% of the population but there are only 4 persons from the janjati community in the judiciary and a little over 1% in the civil service and the security forces. However, it is in the Public Administration that upper caste dominance is overwhelming with over 77% of the positions, and the Newars slipping in at 17%. Dalits are altogether missing here as well as in industry and commerce. Civil society draws more than three fourths of its leadership from the Bahun-Chettri community. 40% of Nepal's population is literate but only 10% of Dalits can read and write. Not unexpectedly, educational associations are dominated by the upper caste who make up 77% of its leadership.

Madhesi, are discriminated on the basis of region, the inhabitants of the Terai (plains) abutting the Indo-Nepal border and are often pejoratively called peoples of Indian origin and their 'native'/indigenous status is challenged and even denied. They comprise 'indigenous nationalities' of the tropical forest, high caste, Dalit and Muslims. Madhesia leaders claim that more than 300,000 are deprived of citizenship. They have





been resisting the domination of the hill peoples and state encouraged settlement of the hill peoples in the once malaria infested Terai. Madhesi, ethnically of 'Indian' origin are Maithili and Bhojpuri speaking, they often become targets of attack in the intricate political dynamics of India baiting. For example, Nepali nationalist outrage at the alleged remarks of Indian actor Hrithik Roshan, manifest itself in beating up Madhesi. The Sadhbhavana party claims to speak for the Madhesi but has failed to leverage democratic politics to press the case against their exclusion. In Parliament, their representatives have been humiliated for not wearing the national attire- daura suruwal, derived from the dress of the hill people and for speaking in Hindi, the link language of the Terai.

Social Exclusion

Although prohibited by law, caste discrimination continues to be widely practiced at Hindu temples in rural areas and strongly influences society.

Oct 2004: After a group of dalit women visited a Hindu temple in Siraha District villagers prohibited them from entering shops or using public facilities available in the village. The villagers allowed the dalit women to shop after a few days, but continued to prohibit the women from revisiting the Hindu temple. No action was taken against the villagers.

October 2004, some upper caste locals in Sarakpura VDC in Saptari District imposed a blockade on a dalit hamlet, to punish the latter for not playing drums during a local fete. Six dalit families were prohibited from using the public path and denied access to rice mills, medical shops, and public taps. A compromise was reached after a few days, and the dalits resumed playing drums during festivals.

Nepal's 1990 Constitution recognises its multi lingual character but the Supreme Court of Nepal in 1999 prohibited the use of any language other than the 'official' language Nepali Khas in the elected local bodies.

Census Jugglery

State census process has sought to exaggerate the numerical dominance of Hindus in the Kingdom. The 1991 census claimed 86% of the population as Hindus. In the 2001 census, Hindus are 80% of the population. Official recognition of Kirant religious identity is relatively recent. Also there is a distortion in the process of collecting census data, especially in the formulation of the questionnaire. For instance, in the religion category, the 2001 census refused to add 'unbeliever' or 'secular' category, in a country where the communists form the main opposition party.

In the case of indigenous peoples/nationalities, anthropologist and ethnic activist, Krishna Bhattachan alleges that there is a deliberate undercounting of their communities and manipulating the census to project an overwhelming Hindu and Khas-Nepali speaking population. The census does not record populations of less than 10,000 Indigenous peoples. In a country with more than 100 ethnic groups, there are many Indigenous peoples with less than ten thousand population. The 1991 census recorded only 26 of the 61 Indigenous Peoples/nationalities' separately and the remaining small communities were lumped in the 'other' category. The 2001 census identifies 59 indigenous nationalities.

Religious Discrimination

The state has projected Nepal as an overwhelming Hindu kingdom, not acknowledging its multi-ethnic identity and discriminating against the numerically small religious minorities. However, the contagion of

communal violence, has been largely contained in comparison with developments across the border. Nonetheless there have been incidents of communal violence. August 2004 saw an eruption of anti Muslim violence in the wake of the beheading of Nepali migrant workers in Iraq. There is evidence to suggest that the police and the ruling political party was complicit in the attack and desecration of a historic mosque in the heart of Kathmandu.

At the other end of the spectrum, there are reports of Maoists enforcing a "people's calendar" in schools that did not allow religious holidays. It should be noted that Nepal's religious holiday calendar is overwhelmingly Hindu.

INDIA

Snapshots India: 2006, India has the distinction of having as head of state, a Muslim; as head of government, a Sikh and as head of the ruling Congress party, a Roman Catholic and an Indian citizen by naturalization. A Dalit woman, ruled India's largest state, Uttar Pradesh, till recently. It is a dramatic testament to the material reality of the constitutionally guaranteed principles of non-discrimination and equality for the minorities. Shift the lens.

Gujarat June 2006, Muslims and Dalits were found being excluded as beneficiaries from the Rural Employment Guarantee Scheme. The village Sarpanchs and local officials were unwilling to register the names of Muslims and Dalits eligible under the scheme. (Media exposure obliged the state administration to defend itself.) It was an indicator of the every day discrimination that minorities face more dramatically in Gujarat but routinely all over the country.

Rajasthan 2006, two Christian Fathers of the Emmanuel Mission are persecuted and imprisoned without bail, because the Mission bookshop stocked copies of a book "haqeeqat", found offensive by Hindu fundamentalists. They withdrew the book, not authored by them, and apologised. But, it did not pacify the Hindutva brigade. (The Supreme Court intervened and stayed the proceedings against the two Fathers and hadthem released.) Days later, the Mission run orphanage, now taken over by the state Social Welfare Ministry, was attacked, the girls allegedly molested by the Police, with the tacit connivance of local officials. (The case is being investigated by the National Commission of Women).

New Delhi 2006, a government Minister's off the cuff announcement precipitates a major government policy thrust - implementation of the 'unfinished' recommendations of the Mandal Commission - 27% reservations for OBCs in Educational Institutions, unleashing middle class outrage at the threat to their privileged domination. The political-administrative process betrays the cynical manner in which reservations are politically used; and the public discourse of resistance, mediated by an upper caste controlled media, reveals the failure to inculcate values of social justice and equality, to locate reservations in a social and democratic context. It is reflected in the metaphor of upper caste kids being reduced to sweeping the streets, invoking the archetype of the 'bhangi' outcaste.

Dalits, the ritually excluded in the Indian caste system, have been beneficiaries of affirmative action for more than five decades. They are over 16 % of the population, overwhelmingly rural, poor and landless. To be a Dalit means to live in a subhuman, degraded, insecure fashion. According to a document of the Ministry of Social Welfare (1991) every hour, two Dalits are assaulted. Every day, three Dalit women are raped, and two killed." In most parts of India, Dalits continue to be barred from entering Hindu temples or other holy places. Dalit men are beaten up for daring to cycle through the centre of a village. The women are banned from wearing shoes in the presence of caste Hindus. Dalit children often suffer a form of apartheid at school by being made to sit at the back of the classroom and eat in segregated spaces.

These living modes of discrimination and exclusion are a testimony to the limits of a constitutionalism that enshrines diversity, cultural rights and autonomy for protecting minority rights when there is no accompanying philosophic affirmation of the values of tolerance of difference, justice for righting historical wrongs and autonomy for enabling self rule.

Ranabir Samaddar, analyzing the paradox of constitutionalism and the everyday reality of denial of minority rights in India, presciently notes, "the contentious history of democracy in India has shown that

Table 1: Minorities in All India Services (% in brackets)				
Service	**Officers**	**Muslims**	**Christians**	**Sikhs**
IAS	3975	128 (3.22)	109 (2.74)	165 (4.15)
IPS	2159	57 (2.64)	49 (2.26)	117 (5.41)
IFS	1433	45 (3.14)	23 (1.60)	44 (3.07)
Total	7567	230 (3.04)	181 (2.39)	326 (4.31)

Source : Gopal Singh Committee Report on Minorities, 1983, p 33.

Table 2: Minorities in Indian Administrative Service (% in brackets)				
Year	**Total**	**Muslims**	**Sikhs**	**Christians**
1971	87	1 (1.14)	4 (4.59)	5 (5.74)
1972	142	1 (0.70)	6 (4.85)	4 (2.81)
1973	124	3 (2.41)	5 (4.03)	7 (5.64)
1974	141	1 (0.70)	9 (6.38)	4 (2.83)
1975	129	2 (1.55)	5 (3.87)	7 (5.42)
1976	138	5 (3.62)	9 (6.52)	10 (7.24)
1977	158	10 (6.32)	4 (2.53)	13 (8.22)
1978	134	10 (7.46)	6 (4.47)	13 (9.70)
1979	117	3 (2.56)	8 (6.83)	7 (5.98)
1980	124	1 (0.80)	5 (4.03)	3 (2.41)
Total	**1294**	**37 (2.86)**	**61 (4.71)**	**73 (5.64)**

Source: Gopal Singh Committee Report on Minorities, 1983, p 31.

Table 3: Minorities in Indian Police Services (% in brackets)				
Year	**Total**	**Muslim**	**Sikhs**	**Christians**
1971	35	—	—	—
1972	59	—	3 (5.08)	—
1973	116	1 (0.86)	—	1 (0.86)
1974	75	5 (6.66)	12 (16.0)	3 (4.00)
1975	65	—	12 (18.5)	3 (4.61)
1976	92	—	3 (3.26)	2 (2.17)
1977	212	6 (2.83)	3 (1.41)	4 (1.88)
1978	45	2 (2.22)	2 (4.44)	3 (6.66)
1979	50	2 (4.00)	5 (10.00)	1 (2.00)
Total	749	15 (2.00)	40 (5.34)	17(2.27)

Source: Gopal Singh Committee Report on Minorities, 1983, p 31.

Table 5: Minorities in Subordinate Services (Central Government)			
Religion	**Percent of Population**	**No. and % of Applicants**	**No. and % of Successful Candidates**
Muslims	11.21	5336 (2.59)	83 (1.56)
Christians	2.60	9502 (4.61)	366 (3.85)
Sikhs	1.89	3643 (1.77)	90 (2.47)

Source: Gopal Singh Committee Report on Minorities, 1983, p 33.

majoritarianism appears not by contravening these principles ('justice to all', 'dignity of the individual') but on their basis, as a majoritarian power structure that can wield this to its advantage".

Unequal Citizens

Of the Religion based minorities - Sikhs, Muslims and Christians - all three have been targets of community based violence and discrimination, particularly in relation to the institutions of 'public order'. To this may be added the Kashmiri Muslim community, a majority within its area of geographic concentration, but a minority within the Indian state. Its distinct political history, the circumstances of its accession, a unique constitutionally guaranteed status of self rule and the Centre's blatant violation - make Jammu and Kashmir the site of the Indian state's communal bias and its anti-democratic politics. Insurgent Kashmir is a testimony to the betrayal of rights and the denial of justice.

In the case of the **Sikhs**, the geographic concentration of the community has made possible an accommodation based on a diluted autonomy - state hood. Indeed the Khalistan movement for a separate Sikh state has its antecedents in the Anandhpur Sahib Resolution (1973), aimed at merging all neighbouring Punjabi speaking areas with Punjab to create a 'single administrative unit where the interests of the Sikhs and Sikhism are specifically protected'. Right from the time of its creation, the state of Punjab was locked in a battle with the Centre over the demarcation of the boundary and the sharing of water with the neighbouring state of Haryana. Sikh leaders accused the Centre of discriminating against Punjab. As Sikh grievances festered, what was a political tussle between the Congress and the Akali Dal degenerated into Hindu-Sikh religious conflict.

The decisive turn came when the army launched a massive assault on the Golden Temple on June 5, 1984 to flush out Khalistani militants. Sant Bhindranwale and about 1000 Sikhs were killed, a large number of whom were innocent Sikh pilgrims. Operation Blue Star created wide-spread alienation among the Sikhs who felt that the army had desecrated their holiest shrine, the Golden Temple. The climax was reached with the assassination of Prime Minister Indira Gandhi by her two Sikh bodyguards on October 31, 1984.. For four days and four nights, Delhi was engulfed in a spree of violence. Sikhs were beaten, hacked into pieces, doused with kerosene and burned to death by Hindu mobs. According to official estimates, at least 3000 Sikhs were killed. Some 50,000 people were displaced and tens of thousands of Sikh homes and business establishments were razed. A fact-finding team organized by two Indian human rights groups, attributed them to a "well-organized plan marked by acts of both deliberate commissions and omissions by important politicians of the Congress party at the top and by authorities in the administration."

Violence produced consciousness of a Sikh 'ethnicity', among a community that had till then been well integrated, producing recruits for the Khalistan movement. By the end of the 1990s, the Khalistan armed insurrection was virtually over in Punjab, not least because of severe police repression and criminalization of the movement. Three decades later, at the Golden Temple and the rebuilt Akal Takht, there is no public testament to the event that transformed the Sikh psyche into a minority psyche. It is a chapter of contemporary Sikh 'minority' history that the dominant Sikh leadership, seemingly has sought to erase. So, while the Sikhs and Christians have not suffered from disadvantage in equal opportunities to education, employment and political representation, the Muslims are set apart, in being marginalized and excluded.

MUSLIMS

"Hemmed in by deprivation, prejudice and riot after riot".

Rowena Robinson, social scientist

India has the third largest Muslim population in the world. Yet this 12% of the population is just a little better off than the country's Dalit population. The income of the average Muslim is 11% less than the national average. According to the 55th round of the National Sample Survey Organisation, (1999-2000) The incidence of poverty among Muslims is higher than among Hindus. The poverty head count is more among the Muslims at 43% as against all India figure of 39%. In rural India Muslim landlessness is 51% as compared to 40% for Hindus. Literacy rates are substantially lower among Muslims, leading to deprivation of jobs in higher positions in government offices and skilled professions in the commercial

sector. In urban India, 60% of the Muslims have never gone to schools as against the national average of 20%. Only five percent of Muslim women have completed high school education and only one percent have studied beyond that level. Each communal attack only worsens the poverty and marginalization.

Syed Najiullah, in a study on *The Status of Indian Muslims* (2005), states "The Muslims leaders were always concerned with religio-culture issues rather than socio-economic development of the community." He quotes Moin Shakir on the role played by Muslim leaders: "Muslim politics has been elitist. They all confine themselves to the discussion of Muslim Personal law, character of Aligarh Muslim University and the status of Urdu. These problems being religio cultural in nature tend to make the discussion take on a communal hue, partly because separate cultural identity is cherished more strongly by community living in a setting that threatens to overwhelm it... The issues of education, unemployment, poverty, under representation of Muslims in elected bodies hardly figured in their agenda." Indian governments have found it prudent to address the symbolic and emotional issues of Muslims - banning of a book, personal law issues, minority institutions, etc.

Muslims in Indian Administrative Service

Year	Total	Muslims	%
1981	126	1	0.79
1982	167	5	2.99
1983	235	1	0.43
1984	233	6	2.58
1985	214	4	1.87
1986	216	6	2.78
1987	178	5	2.81
1988	249	15	6.02
1989	246	13	5.28
1990	298	9	3.02
1991	217	8	3.69
1992	157	3	1.91
1993	147	2	1.36
1994	131	2	1.53
1995	91	8	8.79
1996	81	3	3.70
1997	76	3	3.95
1998	55	1	1.82
1999	56	2	3.57
2000	93	6	6.45
Total	**3266**	**103**	**3.15**

Source: Muslim Representation in the IAS and IPS: An Overview; Nation and the World, March 2002, cited in Muslim India, No 238,October 2002, p 462.

However, growing concern about the socio-economic backwardness of the Muslim community led the Prime Minister to appoint in 2005 a High Level Committee to report on the social, economic and educational status of the community with the objective of devising appropriate policies. Two decades earlier or so, the Dr Gopal Singh Report on Minorities (1983) had revealed clear deficiency of Muslim representation in the All India Services. Then, 35 years, after Independence, there were only 128 Muslims in the Indian Administrative Services out of a total of 3,785 (3.2%), 57 Muslims in Indian Police service (2.6%) and 45 in the Indian Forest services (3%). The Justice Rajinder Sachar Committee was mandated to find out, after five decades - "What is the Muslims' relative share in public and private sector employment?"

The Sachar Committee Report has got mired in controversy over its questionnaire on Muslim in the armed forces, with fears being raised that it may undermine the secular ethos of the army. The Army Chief's response is - "It is not the Army's philosophy to discriminate or maintain such information. We are equal-opportunity employers. We strive to take people on certain standards after which only merit takes them forward. We do not bother about where they are from, their faith or their language. We have responded to the Defence Ministry (on the Committee's demand)." Statistics available reveal a serious under representation of Muslims , especially in the higher ranks. Among the several hundred officers of Brigadier rank and above, there are only ten Muslims. Only about 25 Muslims have apparently made it to this rank since Independence. On the eve of Independence, Muslims comprised 32% of the army personnel. By 2004, according to anecdotal evidence, there were 29,093 Muslims in the 1.3 million strong army (Indian Express Feb 12, 2006)

Sachar Committee Findings (Preliminary)

Rajasthan: A BJP ruled state

- The much publicised 15-point programme for minorities is non-existent and no financial and physical targets are fixed to implement these programmes.
- The state government has few programmes for the minorities and the outlays of these programmes have been abysmally low.
- Even the Sarva Shiksha Abhiyan and Shiksha Abhiyan (to universalize primary education) do not appear to have entered the Muslim-dominated areas.
- Sanitation and sewerage facilities are next to nothing in poorer Muslim areas.
- There was only one primary school with an "improper building" and a few teachers in an exclusive Muslim locality of over 1.2 lakh population on the outskirts of Jaipur.

When contacted, Madan Dilawar, state Social Welfare Minister, said: "Muslims are our brothers and we all are children of Mother India. So why is there this demand for everything separate for Muslims? They can study in the same schools where the children of other communities study. Every community has to follow certain procedures like furnishing guarantees in getting bank loans and there cannot be any exception to a particular community."

Uttar Pradesh: A Samajwadi Party ruled state with a strong 'secular' orientation

- All pervasive presence of an inferiority complex and sense of insecurity among the Muslims
- Adverse impact of economic liberalization on the traditional occupations of Muslims, brass, woodwork, lock industry (Aligarh) powerlooms.
- Disturbing practice of child marriages which is the cause for high mortality rate among Muslims.
- Communal harmony despite UP being a centre of controversy related to demolition of the Babri Masjid and Ayodhya issue
- CM Mulayam Singh is known for his determination to improve the weaker sections of society, but we get little help from the UPA government which swears by secularism. HRD Minister apprised of the immense problems the madarasa teachers are facing and the need to upgrade curriculum. No response.
- GoI programme for Universalization of Elementary Education, mandated by 86th amendment, making free and compulsory education for children 6-14 years age, a Fundamental Right.

Indian Express Feb 12, 2006

POLITICAL REPRESENTATION

Muslim under representation in the Lok Sabha is about 50%. Common citizenship has failed to deal adequately in relation to political representation in the legislatures. It is argued that administrative action in delimiting electoral constituencies, has further circumscribed the ability of Muslims to translate their numbers into electing community representatives

Delimitation Commissions are set up by Acts of Parliament, the latest being the Delimitation Act, 2002. Its orders have the force of law. Retaining the total number of Lok Sabha seats at 542, the new Commission has been assigned the task of re-designing the constituencies in terms of geographical area in order to ensure uniformity in terms of number of voters. This exercise is repeated every 25 years to readjust electoral demographic balance which gets altered due to factors such as rural influx into urban areas.

Delimitation Process: Flaw in Electoral Dynamics

Numerically smaller groups which have a thin, but even spread through the length and breadth of the country, justifiably feel suppressed in matters of legislative representation.

But that it should happen with a minority as large as Muslims (12%), comprising 25% of electoral strength of 67 Lok Sabha segments, is something that points to the basic flaw in the electoral dynamics. The Panel took strong note of Muslim representation hovering between five to six per cent in the lower house of the Parliament, i.e., Lok Sabha. It even noted that in states like Gujarat (9% Muslims) and Madhya Pradesh (5% Muslims) no Muslim could be elected to the Assembly in some elections. Assam with nearly 35 per cent Muslim electorate sends just two Muslims among the 12 MPs to Lok Sabha. Nearly a fourth of West Bengal population is Muslim, but it has only six Muslim MPs among its contingent of 42. Maharashtra and Tamilnadu have no Muslim MP in the Lok Sabha.

A cursory study reveals that of the 67 above mentioned constituencies, 12 are reserved for the Scheduled Castes (SCs) or Scheduled Tribes (STs). But for SC reservation, some of these constituencies could have sent a Muslim to the Lok Sabha. Figures speak for themselves: Karimganj in Assam has 45% Muslims, but is an SC reserved constituency although the SCs make up only 15% of the population. Bijnore (SC) 38% Muslims and 23% SC; Birbhum in West Bengal (SC) 35% Muslims and 32% SC; Ottapalem in Kerala (SC) 30% Muslims and 17% SCs; Araria in Bihar (SC) 28% Muslims and 21% SCs. In several other cases, there has been hairline difference in numerical strength of Muslim and SC voters in certain constituencies. (Islamic Voice 2006).

Muslim Members in Lok Sabha

Year	Muslim Members	Total	%
1952	22	499	4.4
1957	23	499	4.6
1962	23	496	4.7
1967	29	520	5.5
1971	29	520	5.5
1977	34	544	6.2
1980	49	531	9.2
1984	45	517	8.7
1989	29	531	5.4
1991	27	533	5.6
1996	27	545	4.9
1998	29	545	5.3
1999	31	545	5.6
2004	35	545	6.4

EDUCATION

"To a large extent, the Muslim leadership in the country must share a large part of the blame for the educational backwardness of Muslims which, incidentally, also partly explains the under-representation of Muslims in various fields of employment," states Iqbal Ansari. The literacy rate among Muslims is lower than all the religious communities in India.

Distribution of Persons by General Education

Rural India 1987-88 (%)						
Educational level	**Hindus**		**Muslims**		**Christians**	
	M	**F**	**M**	**F**	**M**	**F**
Not Literate	51.3	75.0	58.2	76.1	33.7	43.1
Primary	19.0	11.8	18.6	13.1	20.5	17.8
Pri-middle	22.7	11.2	19.1	9.9	35.4	29.2
Secondary	5.7	1.7	3.4	0.8	9.3	8.1
Graduate	1.2	0.2	0.6	0.0	1.8	1.5

NSS 43rd Round, 1987-88 cited in Muslim India, August 1994, p.378)

Minority Educational Institutions

The Constitution guarantees certain collective rights for the minorities to help them preserve their language, religion and culture, i.e. Articles 29 and 30, grouped as Cultural and Educational Rights. Under Article 30, minorities are allowed to 'establish and administer educational institutions and Article 350A provides for state support for adequate facilities for instruction in the mother tongue. What does it mean to be a student in an Urdu medium schools? Across the country, students of Urdu medium schools have done poorly in the CBSE Class X examination (2006) scoring a pass percentage of 27%. According to a survey by NGO 'Friends of Education', this is largely due to non-availability of textbooks, funds and resources from state governments and the 'non-serious attitude of most teachers'. In Andhra Pradesh, nine Urdu schools scored zero pass percentage, Bihar scored 27%, Delhi 20%. Government aided Urdu medium schools lag behind in comparison to government schools.

Preference among many Muslim families for old-fashioned training in religious instruction in madrasas - a custom encouraged by the community's religious leaders - instead of sending their children to modern educational institutions, has crippled generations of literate Muslims who can earn a meagre livelihood only by being religious preachers. However, the concern to reach missing children in schools in promoting education for all, has seen a new thrust through Madarsa network. Central assistance is being provided to state governments under the Assistance for Infrastructure and Modernisation of Madrasas for the appointment of teachers in each Madrasa to impart education in non traditional subjects of Mathematics, Science and English.

The capacity of the Muslim community to draw upon social capital within the community to creatively re-design and modernize Madrassa education is demonstrated by a Madrasa attatched to the Rehmani Masjid, in Jaipur, Rajasthan. It was declared the second runner-up in the excellence in IT Education Sector by the Rajasthan Government, Science and Technology Department. This Madrasa introduced modern education over a decade ago and has over the years established a computer lab with over 30 terminals.

Even more significant is the Communist ruled government in West Bengal that has transformed Madrasa institutions into 'beacons of tolerance'. In West Bengal and Assam, the All India Madrasa Board has worked out an equivalence structure which can enable students to be integrated into the school education system.

Indian Madrasas: Lesson in Harmony

Schoolgirl Julita Oraon, a devout Christian, never misses Sunday mass, but the rest of her week is spent studying Arabic and Sufi literature among other subjects at an Islamic religious school, or madrasa. Oraon is one of tens of thousands of Hindu and Christian students in West Bengal now attending such schools,

considered breeding grounds for religious intolerance and even terrorism in much of Asia. In this part of India, madrasas are emerging as beacons of tolerance.

A quarter of West Bengal's population of 80 million are Muslims and one percent are Christians. In the wake of violence in the 1960s and 70s and after the creation of Bangladesh, officials moved to reform West Bengal's schools and especially its madrasas. In 1977, they started reviewing the Islamic schools, introducing history and social science to the staple of Koranic study. And after 2002, on the recommendation of a specially appointed committee, students had to study science, geography and computing.

The changes have been credited with bringing about a change in the social outlook of the state's various faiths, and have attracted both teachers and students from other religions to the madrasas. School boards have recruited non-Muslims in a bid to find the best tutors for their students. Now about 25% of the 400,000 students who attend madrasas, and 15% of their 10,000 teachers, are non-Muslims, officials say.

Swapan Pramanik, a leading sociologist and vice-chancellor of Vidya Sagar University in Kolkata, agrees that the reforms have helped bridge the divide." The conservative outlook of the Muslims as well as Hindus have changed," he says. (April 4, 2006 Reuters)

Autonomy of Minority Institutions

While Article 29(2), lays down that no citizen shall be denied admission to any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them, Article 30 (1), guarantees all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice. The Courts have been called to adjudicate on this tension between two rights.

In St. Stephen's College vs University of Delhi (1992), the Supreme Court had held that even a minority institution receiving aid from state funds was entitled to accord preference to or reserve seats for candidates belonging to its own community on the basis of religion or language. However, the court allowed such institutions to admit students of its own community to the extent of 50% of the annual intake and insisted that such differential treatment must be in conformity with the university's standards. The court held that differential treatment of students in the admission process did not violate Article 29(2) or Article 14 (equality before law), and was essential to maintain the minority character of the institution.

Analysing the judgements of the Supreme Court on issues relating to minority issues dealing with religious freedom, Gurpreet Mahajan argues that, "The tendency to uphold freedom of religious practice and autonomy in matters relating to religion, has been so pronounced that the Supreme Court has often given the impression of being socially conservative. For example, it endorsed the right of the religious head to excommunicate dissidents on religious grounds, even when the action deprives the victim of civil rights (Sardar Sayedna T. Saiffudin Sahib vs. The State of Bombay, 1962). On many occasions the Supreme Court has overturned the ruling of the high court and protected the freedom of religious practice, e.g. on the issue of Gowda Saraswath Brahmins excluding sections of the Hindu population from their temple at certain times (Devaru vs. the state of Mysore,1958)."

Public Order

In endemic communal violence it is largely Muslims who are the victims - Ranchi, 1967- 164 of 184 killed were Muslims; Ahmedabad, 1969 - of 512 dead 413 were Muslims; Bhiwandi, 1970 - of 79 killed 59 were Muslims; Nellie, 1983 over 1800 Muslims were massacred. From the 1980s, there was riot after riot every year - Biharsharif (1981), Meerut and Baroda (1982), Nellie in Assam (1983), Bombay-Bhiwandi (1984), Ahmedabad (1985-86), Meerut (1987), Bhagalpur (1989). Official Commissions of Inquiry have revealed the complicity of police and administration and the involvement of the RSS-Sangh Parivar.

The year 1990 saw a chain of riots, in the wake of the BJP leader L.K. Advani's rath-yatra, haranguing Hindus all the way during his journey to build a Ram temple on the site in Ajodhya where the ancient historical monument of the Babri Masjid stood. The Muslim minority was targeted as the descendants of Babar. At every point he touched, Advani's fiery speeches drove Hindu mobs, led by cadres of his party the BJP, to attack Muslim houses and shops, and kill them. Its climax was the 'planned' demolition of the Babri Masjid in Ajodhya in December 1992, by kar sevaks, encouraged by the BJP led state government

and the party's national leaders, and aided and abetted by a pliant administration and police. The retaliation was tragic and horrific. In January 2003, a series of blasts ripped through Bombay killing over 1,000 people, the majority being Muslims. Nearly ten years later, an 'accidental' train fire in which more than 60, largely kar sevaks, were killed at Godra railway station, was manipulated to inflame Hindu sentiment. In the massacre that followed, 200 Hindus and 3000 Muslims lost their lives and property, while the police, according to authoritative sources, were instructed 'to allow the Hindus to vent their anger'.

Comments on the Role of the Police

> ***"...The police force wilfully abandoned the state and its citizens to the depredations of violent mobs. The Bajrang Dal and VHP activists taunted the Muslims with the cry 'yeh andar ki baat hai, police hamare saath hai' (it's an open secret/the police is on our side)."... In the weeks and months that preceded the Godara violence, the police ignored the incendiary implications of pamphlets being circulated by the Sangh Parivar, the hate speeches that it's leaders were delivering and the distribution of trishuls and other weapons to the Hinduva organization's rank and file... Carrying swords 'capable of being used for carrying out physical violence' is prohibited under section 37 of the Bombay Police Act, yet the VHP and the Bajrang Dal, through Trishul Diksha Samarohs continued to distribute weapons. By noon of February 27, 2002, when the extent of the violence had become clear, the police ought to have started taking precautions against likely revenge attacks by Hindutva organizations....i.e preventive arrests by habitual touble makers. In Gujarat, however, by the evening of February 27, only two men- Mohhammed Ismail Jalaluddin and Fateh Mohhammed were picked up by the police... [for instance] near Bapunagar police station on 28th February, in police firing 40 men were shot dead, they were all Muslims. Most were shot in the head and the chest. They had been defending themselves from a 3000-strong mob... Vibhuti Narain Rai, a senior serving officer in the Uttar Pradesh cadre points out "no riot can continue for more than 24 hours unless the state wants it to continue."***
>
> ***(Teesta Setalvad, activist)***

Gujarat, 2002, demonstrated the takeover by the majority community of all public space and state institutions. The national media and sections of the local press played an important role in exposing the violence and moving the Centre and central institutions (NHRC) to finally act and stop the violence. However, the Hindu majority in Gujarat refused to be defensive and went on to re-elect the patron of the carnage, Chief Minister Narendra Modi.

Political violence against the minorities has peaked with the consolidation of Hindutva forces leading to the further communalisation of institutions, the police, the administration and the judiciary. In the Gujarat of the 300 to 400 persons arrested only three were Hindu. Draconian laws like TADA and POTA have been used extensively against rebellious members of the minority community. A study carried out by the NGO "People's Tribunal" in 10 states in July 2004 found that 99.9 percent of those arrested under POTA were Muslims.

Role of Judiciary

Ironically, while scholars like Gurpreet Mahajan draw attention to the role of the courts in protecting the cultural rights of minorities, it is on issues of protecting the fundamental right to life and liberty that there is increasing misgivings about the Courts internalising the prejudices of the majority community and denying minorities protection and justice.

December 8 1992, Shiv Sena leader Bal Thackeray, wrote in his Marathi language paper *Samana* "Muslims should draw a lesson from the demolition of the Babri Masjid, otherwise they will meet the same fate. Muslims who criticize the demolition are without religion, without a nation."

The government of Maharashtra did not launch legal proceedings against him under Section 153(a) of the Indian Penal Code. Some Citizens groups filed a writ petition in the Bombay High Court for direction to the government to prosecute Bal Thakeray. The High Court took a long time to hear the case and finally dismissed the petition because too much time had passed (two years) and it was unwise to 'rake up' old

issues all over again. The petitioners went in appeal to the Supreme Court. It dismissed the petition on the ground that since the High Court had declined action, it was not wise in the public interest, for the Supreme Court to do so.

The Best Bakery case involved an incident of March 1, 2002, at the 'Best Bakery' in Vadodara, during the 2002 Gujarat violence in which 14 people were murdered, many of them burned to death. All 21 accused were acquitted on June 27, 2003 by a "fast-track court for lack of evidence after 37 out of the 73 witnesses, including key witness Zaheera Sheikh turned hostile. The judgement was critical of the police for delay in registering FIR and for not investigating the incident properly and harassing innocent people. Key witnesses, the wife and daughter of the bakery owner had told the police and the National Human Rights Commission, that 500 people armed with petrol bombs had attacked the bakery. They accused Bharatiya Janata Party and other party politicians of threatening and harassing them into withdrawing their testimony.

In September 2004, the Gujarat High Court admitted the government's appeal seeking retrial. In October, after being indicted by the Supreme Court of India, the police registered a case against Bharatiya Janata Party legislator for intimidating the witnesses. In December, the Government of Gujarat admitted there were lapses on the part of the police in registering and recording the FIR in the case and on the part of the prosecution in recording the evidence of witnesses. It said the police had attempted to help the accused by not submitting names of the accused.

In November 2004, Zahira Sheikh retracted her statement again. She stated that the judgment passed by the Gujarat court was correct. She also stated that she had never met the BJP legislator. She claimed that she made all the statements under the pressure of NGO activist, Teesta Setalvad.

In December 2004, the prosecution declared Zahira Sheikh to be a hostile witness. She became the 7th witness to turn hostile in the case after her mother, sister, brothers and another two witnesses. On December 24, 2004, Zahira was ousted from the Muslim community on the grounds that she was lying constantly. This decision was with consent from the All India Muslim Personal Law Board.

On February 24, 2006, the Mumbai retrial found nine of the defendants guilty and sentenced them to life imprisonment, while another eight were acquitted. The court has persecuted Zahira Sheikh for perjury. On March 29, 2006, a court ordered Zahira to undergo a one-year prison term for lying under oath in a Mumbai prison and siezed all her properties.

DALITS

Persistent Inequalities, Social Servitude and Economic Bondage

The government's official criteria for listing a community as Scheduled caste is "extreme social, education and economic backwardness arising out of the traditional practice of untouchability". The terms, 'Scheduled Caste' (SC) and 'Scheduled Tribes' (ST) are administrative terms adopted from pre-independence days. Constitutionally mandated affirmative action, as articulated through reservations in educational institutions, government jobs, and elected positions has had some impact in enabling them to overcome histories of social injustice and religiously sanctified discrimination. Despite this Dalits continue to be one of the most underprivileged groups in India in every index of human development. Moreover, the bitter clash of castes (intersected with class) is increasing with Dalit assertion and increasing competition for resources. State institutions have reflected social prejudices

Reservation: A Measured Success

SC in Central Government Services (%)					
Class	**1959**	**1965**	**1974**	**1984**	**1995**
I	1.18	1.64	3.2	6.92	10.12
II	2.38	2.82	4.6	10.36	12.67
III	6.95	8.88	10.3	13.98	16.15
IV	17.24	17.75	18.6	20.2	21.26

SC Enrolment in Higher Education			
Year	**Total**	**SC**	**% SC**
1978-1979	2,543,449	180,058	7.08%
1995-1996	7,955,811	1,058,514	13.30%

SCs Employed in Central Universities (1/1/93)			
Position	**Total**	**SC**	**% SC**
Professor	1,155	2	0.17
Reader/Associate Professor	1,774	6	0.34
Lecturer/Assistant Professor/ Directors of Physical Education	1,491	35	2.35
Research Associate/Tutor/Demonstrator	257	3	1.17
Group A, non-teaching	756	26	3.44
Group B, non-teaching	1,525	49	3.21
Group C, non-teaching	9,001	414	4.60
Group D, non-teaching	10,635	2,368	22.27

Total Population below Poverty Line	
Year	**Below Poverty Line**
1977-78	51.32%
1983-84	44.48%
1987-88	38.86%
1993-94	35.97%

Source: The Planning Commission

The reservations system has evolved into a bureaucratic structure with major inefficiencies. It has been manipulated by the political leadership to garner votes with little interest in effective implementation of reservations. Affirmative action based on caste/community identity has ended up reinforcing casteism in society. The absence of a rooted social justice consciousness has produced an extremely cynical attitude to reservations in the political, educational and economic realm without translating into equal rights and equal opportunity. Also, the Dalits have been unable to leverage their all India strength because of division, internal rivalries and their own caste hierarchy. There have been remarkable Dalit political success stories, such as the rise to power of the Bahujan Samaj Party in Uttar Pradesh, but these achievements have been restricted to certain regions. Moreover, as we shall see in the delimitation of electoral constituencies, by design or by accident, SC interests have tended to undermine Muslim political interests. There is no vision of political unity among the disempowered and discriminated - the Muslims, Christians, Scheduled castes and Scheduled tribes, instead they are pitted against each other.

Husband of Dalit Victim Accused of Rape: Police Complicity

Haryana: 12 October 2004: A Dalit woman accused five members, including two women, of the upper caste family of Mohinder Singh of Dhodipur village of abusing and molesting raping her. An Anganwari worker, she had gone to administer polio drops to children in the area. Although she reported the matter to the police on that day, the police refused to register her complaint. After more than two months, an FIR was registered on 3 December 2004, and that too because of a protracted dharna outside the office of the Samalkha Deputy Superintendent of Police. A case was filed against the five members of the upper caste family under the relevant sections of the SC/ST Prevention of Atrocities Act (1989). Simultaneously, the police registered a counter-FIR lodged by a woman of the Mohinder Singh family, accusing Karan Singh, husband of the Dalit woman, of raping her on 11 October 2004, a day before the incident. No medical examination of the alleged rape victim was conducted nor a case registered against Karan Singh on that day.

The failure of the democratic system to enable the Dalits to transcend the structures of exclusion, discrimination and injustice even after five decades of 'affirmative action' and welfare policies, has made a substantive number turn to radical left politics - naxalism. The Dalit population still is overwhelmingly rural - 85% of the population and the core issue is land and social dignity. The clash of caste and class can be seen entwined in the confrontation between the Dalits and landlord backed armies of the Ranvir Sena and its ilk. State institutions, especially the police, the administration, legal system, reflect the social prejudice and class interests of the upper caste.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Enacted specifically to act as a deterrent against physical caste based violence, the SC/ST (Prevention of Atrocities) Act widened the scope of criminal liability and provided for an institutional structure for enforcement of the Act , i.e. special courts, special prosectors . Public officials who do not perform their duty under the Act will be can be punished with a jail term upto a year.

Mass Dalit massacres, like Belchi, Bihar 1977, had shocked the nation, when 11 Dalits were torched to death. Again in Belchi,Bihar 2006, a Dalit family of six was burnt alive. Kumher, Rajasthan 1992, was one of the worst with 17 Dalits massacred. Between 2000-2003, Rajasthan, had an annual average of 5,024 crimes (2000-2002) - in particular 46 killings, 134 rapes and 93 cases of grievous injury every year.

The Act has had only a modest effect in curbing abuses which human rights activists say are on the increase. Conviction rate is very poor. In a damning reflection on the non implementation of the law, the NHRC in its 2002 Report on Prevention of Atrocities said, "there was virtually no monitoring in the implementation of the SC/ST PA Act at any level". The Vigilance and Monitoring Committees prescribed under the Act were either not constituted or non functioning. The quality of perscution was poor because functionaries lacked both competence and motivation. A study of 11 atrocity prone districts in Gujarat found that 36% of atrocities were not registered under the Act; in 84 % of the cases where the Act applied, they were mis-registered to conceal the violent nature of the incidents; only in 53 cases were charge sheets framed, 22% of the registered cases closed for investigation. 92 % of the cases resulted in acquittal.

Protection of Civil Rights Act

Year	Conviction Rate
1991	26.2
1992	29.4
1993	33.0
1994	21.4
1995	35.5
1996	23.9
1997	27.2
1998	22.6

SC/ST Prevention of Atrocities Act

Year	Conviction Rate
1995	39.2
1996	38.1
1997	31.4
1998	32.2

Incidents of violence and atrocities against Dalits are routine. Reports of such incidents end up on dusty shelves, ignored and neglected, leaving Dalit victims vulnerable to pressure to withdraw charges.

The National Commission of Scheduled Castes and Scheduled Tribes is mandated to produce annual reports to be given to the President of India, and then presented to Parliament. Any investigative report that is placed before Parliament is placed under the Action Taken Report. The logistics of getting ATRs from 35 states and union territories is formidable. Journalist, P Sainath, who has extensively reported on India's rural poor, tried to track these reports. In 1999, for instance, the Indian Parliament took up the Report of 1988. By that time most of the cases had been thrown out of court for want of evidence, many of the biggest and openly self-proclaimed killers had been acquitted, and many of the victims had been forced to withdraw their charges. For example, in the village of Kumher, Rajasthan, the victims had been forced to withdraw charges, by the time 40 ministers and 250 members of parliament visited the area, eight years after the massacre.

Caste Conflict: The Banality of Social Exclusion

Chakwara village, Rajasthan 2002 The Dalits of Chakwara village laid claim to a common or public resource: the village pond, bathing in which is an important ritual. The pond and the steps leading to it have been built and maintained with state funds and contributions raised by the entire village, including the Dalits. But caste based tradition excluded Dalits from using the common 'ghats'. Buffaloes, cows and pigs have virtually unrestrained access to the pond. Women, irrespective of caste, are barred from the pond.

Earlier, in December, 2001 Babulal and Radheshyam, (Bairwa Dalits), in defiance took a dip in the pond. Outraged, the caste Hindus subjected the Bairwas to vile abuse, threats of a "bloodbath", a nightly siege of their homes and a crippling social boycott. The Dalits could no longer buy tea or vegetables or hire farm implements. The local doctor would not treat them. The grocery shop ostracized them. The local mechanic would not repair their bicycles. Their men were stalked, their women abused.

The local administration and police generally sided with the upper castes. In January, officials allied with the caste Hindus and bullied the Dalits into signing a "compromise" agreement, erasing their right to the pond. The agreement produced discontent and resentment that has been simmering ever since.

Emboldened by the support of human rights organisations, the Bairwas reasserted their rights taking out a rally. The caste Hindus retaliated, mobilizing a mob of 10 to 15,000 men armed with sticks. The police tried to stop the men from attacking the rally and were attacked. Police fired teargas and bullets. 50 people were injured, including 44 policemen.

Text Books: Reinforcing Prejudice

'the varna system was a precious gift from the the Aryans to mankind. It was social and economic organisation of the society bult on the basis of the principle of division of labour...'

'Problems of Scheduled Castes and Scheduled Tribes: Of course, their ignorance, illiteracy and blind faith are to be blamed for lack of progress because they still fail to realize importance of education in life...'

Gujarat State Board Class 9 Social Studies text

' the dark skinned natives were Shudras, the lowest class in society, whose duty was to serve the high class.'

Indian Certificate of Secondary Education (ICSE) text

Dalit Agency: Social transformation in Talhan village

Punjab 2003 : In village Talhan, the majority dalit community of Chamars challenged the domination of the Jat Sikh landlords, the Bains and Randhawas and asserted their right to be part of the governing committee of the samadhi of Shaheed Baba Nihal Singh, a locally revered saint. The samadhi draws offerings of Rs 3-7 crore annually and was controlled by the landlord families who gobbled up a substantial portion of the offerings. Although, the dalits Sikhs form more than 60 percent of Talhan's 5,000-strong population, local 'traditions' ensured their exclusion from the governing committee.

The landlords retaliated by razing the samadhi overnight and constructing a gurdwara on the site with aid of the Sikh organization for the management of Sikh shrines, the SGPC. The dalit Sikhs were not deterred, they fought a four year battle in the Courts. In June 2003, dalit men, women and children fought for six hours with Jat Sikh landlords and a heavy police contingent, for their right to be equal.

Today, two dalit Sikhs with flowing locks and beards represent the confidence of a community that has added social and political power to its long-acquired economic independence. Significantly, Talhan also has a dalit woman, Inderjit Kaur, as the village sarpanch. Chanan Ram Pal, president, Talhan Dalit Action Committee, says, "We fought a war for swabhimaan (self-respect). The teachings of Guru Ravidas and access to modern education inculcated in us this desire. Here, we do not work for landlords, we are self-employed".

Their opponent, the leader of the landlords, Bhupinder Singh Bains 'Bindi', who is a village sarpanch acknowledges, "The earlier notions of untouchability, a Brahmanical concept, no longer prevail. Earlier, poor Chamar families were dependent on us, for example taking the molasses' waste. Now, they stand equal to us. Many of their children become Class I officers earning fat salaries."

SRI LANKA

Making a 'Minority' a 'People'

In the decades following independence democracy and development has meant that the Sinhala majority increasingly dominated an highly centralized welfare state which intentionally and occasionally inadvertently, chipped away at the economic and political privileges that some ethnic minorities had come to enjoy - Burghers of Eurasian descent and elite Tamils. The political and cultural tyranny of the Sinhala majority was used to push through a set of social engineering policies - positive discrimination - whereby the minorities became the losers. The dynamics of the ethnic polarization of the political imagination produced new minorities within a minority, i.e. Tamil speaking Muslims and the Hill Tamils and also the internally displaced peoples (IDPs) as a minority.

To address the question of minority rights in Sri Lanka is to be drawn into the lived reality of two decades of civil war bringing into focus new challenges - IDPs, peoples of the border villages, High Security Zones, use of food and medicine in waging war and its consequences for civilians deemed citizens with entitlements on the state. Ironically, the armed struggle for ensuring the rights of the Tamil people has ended up reducing the regions of Tamil concentration into the most deprived and impoverished.

Sri Lankan anthroplogist, Darini Rajasingham-Senanayake argues that the growing cultural hegemony of the Sinhala Buddhists has been the greatest irritant to the minorities. Minority cultures have been made invisible in the national culture dominated by a highly politicised and organized Sinhala Buddhist polity.

The Parliamentary debate on a national flag dramatically demonstrated the fact that by the time of independence, the majoritarian appropriation of the post-colonial Sri Lankan state had already become a political fact. Representatives of Tamil and Muslim minorities in parliament argued for a revision of the proposed flag on the ground that what has been proposed was the flag of the Sinhalese community. It did not represent Sri Lanka's other communities. No concession was made to the 'other' communities. Every fortnight Poya Day, (full moon day) sacred to the Buddhists, is a national holiday.

Political Representation

The turning point was the 1956 elections after which competitive Tamil and Sinhala nationalisms replaced the concept of a multi ethnic polity. SWR Bandaranaike's MEP political alliance established the exclusive hold of the Sinhala majority in Parliament, while Chelvanayakam's Federal Party had run on a platform of a Tamil linguistic state in a federal Sri Lanka.

From then onwards Tamils were to be politically marginalized from holding Ministerial berths. Following the 2005 elections, there is only one Tamil Minister in President Mahinda Rajapakse's Cabinet - the Minister for Social Welfare

A combination of legal and administrative regulations reduced the political representation of the minorities:

- Franchise & Citizenships Acts and the 'Unitary' Electoral Oath.
- voting registration procedures discriminated against minority group members.
- distortion in the delimitation of the boundaries of electoral constituencies or failure to redraw them e.g. disenfranchised Tamils were used for delimitation purposes as 'population' to confer an additional 14 seats on Sinhalese voters.
- proportional representation (PR) electoral system under the 1978 Constitution turned an entire administrative district into an electoral district fro purpose of deciding the winning MPs , and made it look virtually impossible for minorities to get re-elected as candidates of Sinhalese parties. However a community based political party e.g. Muslim stood a better chance of getting a few seats. It prompted the emergence of community based parties e.g. Sri Lanka Muslim Congress.

(Minority) Representation in Parliament (total seats 225)				
Tamil	**2000**	**2001**	**2004**	
Federal Party				
TULF	5	14	22	} Tamil National Alliance
EPRLF				
TELO		3		
All Ceylon Tamil Congress		1		
EPDP	4	2	1	
DPLF		1		
Ceylon Workers Party				
UP Country Peoples Front			1	
Muslim	**2000**	**2001**	**2004**	
Sri Lanka Muslim Congress Party	4	5		
Muslim National Unity Alliance			4	

FP becomes TULF 1977; TNA created in 2001; NUA 2004 elections in alliance with PA allied with UNP ; SLMC (1981)

Education & Employment

Two moments in the history of post independence Sri Lanka transformed the education and employment prospects of the Tamils - The Official languages Act (1956) and the Standardization Policy (1970). Tamils were knocked down from their privileged dominance of 30% of the jobs in the public service with the promulgation of the Sinhala only Official Languages Act 1956. By 1970-71, although 18% of the Sri Lanka population, Tamils slumped to 11% in 1970-71 and to 5.7% in 1978-81. Less than 8% of Sri Lanka public servants are Tamil speaking while 26% of the country's population including the plantation Tamils and the Muslims are Tamil speaking.

The introduction of the Standardization Policy in the University entrance exam, suddenly limited the number of Tamil medium students gaining University admission. Till then Tamils who constituted one eight of the population had dominated the science based university. Tamil medium students had to score higher aggregates compared to Sinhala mediun students. The UNP government when it came to power in 1970 took action to alter this policy but the harm was irreversible. In 1969, Tamils made up 50 % of the students in Medicine and 48 % in engineering. Within a decade Tamil enrollment was down to 22 % in Medicine and 28% in engineering.

Tamils in the skilled and professional areas of government service sharply declined in numbers. State-employed Tamil physicians declined from 35 % (1966-70) 30 % (1978-79); engineers from 38 % (1971-77) to 25 % (1978-79) and clerical workers from 11% (1970-77) to 5 % (1978-79). By 1980 Tamil employees in the public sector, excluding public corporations, was down to 12 %

The legal distortions brought in by the Sinhala Only Act were sought to be corrected by the 13th Amendment (1987) which made Tamil the second official language of the country and the 16th Amendment (1988) made Sinhala and Tamil the languages of administration throughout Sri Lanka.

Official signposts are prominently in Sinhala and Tamil. But that is where the parity stops. Official Languages Commission (1991) set up to oversee and monitor the use of Tamil across the island has revealed an alarming shortage of Tamil speakers in the public service. In a report released in June 2005, the Chairman of the Official Languages Commission, Raja Collure, has indicted successive governments for failing to implement the use of Tamil as a second language. He had urged that some way had to be found to take in more Tamil speakers immediately and steps need to be taken to teach Tamil to non Tamil public servants. At the high school level, both Sinhala and Tamil should be made compulsory so that in 12 to 15 years' time, Sri Lanka would have a large group of people knowing both the languages, Collure said. In June 2006, Constitutional Affairs and National Integration Minister DEW Gunasekara announced that every public servant would be taught both Sinhala and Tamil.

Shortage of Tamil Speakers in Public Service

- Tamil-speaking population (Sri Lankan Tamils, Indian Tamils & Muslims): 26 %
- Sri Lanka Public Service: 900,000
- Tamil Speaking Public Servants 8.3 %.
- Police Department: 36,031employees; Tamils: 231; Muslims: 246; Total Tamil Speakers: 477

  'Wellawatte' (Colombo) Police Station: 156 personnel, only 6 are Tamil speaking. Wellawatte is overwhelmingly Tamil with 21,417 out of 29,302 residents Tamil speakers.
- Sri Lankan armed forces are also almost completely Sinhala or Sinhala speaking. Tamil speaking personnel are Muslims who are often bi-lingual.
- Acute shortage of Tamil speaking officers in North and Eastern districts: Consequently Government Agents and Assistant Government Agents serve past official retirement age.
- Official translators in tri-lingual Sri Lanka are 166 out of which 58 are Tamil-speaking.
- OLC determined that for 61.68 per cent of the 7.74 lakh public servants (1998), knowledge of the second official language (Tamil for Sinhalese officers and vice versa) "is not essential for the discharge of their functions".
- Some 3.35 lakh public servants require proficiency in both official languages.
- Based on needs-based classification, 87,000 public servants (police officers and health workers) would have to be trained in conversational ability, 1.18 lakhs in correspondence skills, and 16,298 upto analytical skills.

Official Languages Commission 2005

An audit of the effectiveness of the Official Languages Policy in Sri Lanka in areas outside the north and east, where there is a significant presence of Tamil speakers, indicated that 66.5% of the public interviewed, were unaware of the Official Languages Policy in Sri Lanka. More than 70 % were ignorant about the existence of the Official Languages Department. 71.6% of them were unaware of the Official Languages Commission. The audit was undertaken by the "Social Indicator of the Centre for Policy Alternatives" The public, when asked about the public's satisfaction with the Tamil language competence of the staff at the institutions surveyed - 77.4% of the respondents expressed that they were either very dissatisfied or somewhat dissatisfied. When the respondents were asked whether the institutions they visited provided an official Tamil translator, 94.1% replied in the negative. (Kumar Rupasinghe *Daily Mirror* Sept1, 2006)

Development : Regional Deprivation

In 1977, was the turning point for economic policies and ethnic relations in Sri Lanka and many social scientists in Sri Lanka argue that the two processes were inter-related. Comparatively, the liberalisation policies increased the economic insecurity of the Tamils. Also, much attention is focused on the accelerated Mahaweli Development project 1981-2 in the South as responsible for generating anxiety among the Tamils. The project widened the existing pattern of resource polarisation between Sinhala and Tamil communities to the disadvanatge of the Tamils. There was no such major state sponsored development project in the areas where Tamils inhabitants are largely concentrated, in the Northern and Eastern Provinces.

In the 1977 UNP election manifesto, President Jayawardene promised to improve ethnic relations and was supported by Tamils. However, the decentralizing structure of District Development Councils designed to give Tamils greater local control, was not properly implemented. The majoritaraian domination of the electoral and bureaucratic system predicated that the North and East would lose out on access to resources.

Two decades of protracted war was to devastate these areas destroying, in particular educational and health infrastructure; laying of mines in agricultural fields, successive displacement and economic blockades. During the decade long 'war for peace', the military imposed a blockade on about 40 items including petrol, cement urea based fertiliser, torch batteries and high emergy food items like chocolates,

medicines and bandages, including santiary towels. The consequence was disastrous as evident from local studies on infant and maternal moratlity rates and malnutrition and wastage among children. Sri lanka's impressive national average on the MDG scoreboard does not take into consideration the northern and eastern areas.

Violence against Minorities

Black July 23, 1983: The LTTE had killed 13 government soldiers in Jaffna, reortedly in retaliation for the alleged gang rape of a Sri Lankan Tamil doctor. Once President Jayawardene allowed the bodies to be brought back for a ceremonial funeral to Colombo, the spark was lit. It unleashed a two week outburst of killing and raping of Tamils and the wanton looting and destruction of their property. Elements associated with the ruling Sinhalese dominated United National Party (UNP) under the patronage of hard line Minister Cyril Mathew, were conspicuously involved in organizing the pogrom. Using official voters lists, the mob went looking for Tamil residents. Rioters were brought in state owned buses from outlying areas into minority Tamil commercial and ethnic neighborhoods. The Sinhalese dominated army which was called to control the violence stood by doing nothing. Finally, it was a stern warning from the Indian Prime Minister Indira Gandhi, that prompted the Sri Lankan government to act to restore 'public order'.

- Borella: Buddhist monks were seen leading mobs of high school age children from prestigious Sinhalese language schools -Nalanda College and Ananda College - in attacking Tamil civilians.
- Mobs armed with petrol stopped passing motorists at critical street junctions and burnt alive Tamils inside. Buses were stopped and Tamils knifed, clubbed or burnt alive. Moving from house to house, the mob raped and killed, looting and burning houses
- Injured Tamil civilians in the Accident Ward next to the Colombo General Hospital, were attacked by hospital staff and jewelry and money stolen from bodies.

Sri Lankan Tamils view Black July as the continuation of anti-Tamil pogroms sponsored by the governments of Sri Lanka that started in 1958 under the patronage of Sinhala nationalist S.W.R.D. Bandaranaike. The timely action by a Tamil Chief of Staff, Brigadier Mutucumaru, saved the life of many Tamil civilians then. Again in the 1960s and 1970s, there were organised terror campaigns against the Tamils. After 1983, nothing was the same. Violence produced the histroical moment when as Yash Ghai succinctly describes, "the cultural markers cease to be mere means of social distinction and become the basis of political identity … ethnic distinctions are transfromed into ethnicity identity."

Two decades of conflict has targeted civilians of all 'ethnicities', during the high intensity phase to its current low-middle intensity phase, against the backdrop of a crumbling ceasefire.

- Trincomalee, Jan 2, 2006, state security personnel retaliating to a grenade thrown at a truck by unidentified persons, killed five young Tamil men who were mere bystanders at the incident. No state agency claimed responsibility.
- Akkaraipattu, Nov 2005, violence between Tamils and Muslims in the East, culminating in the grenade attack on the Grand Mosque which took the lives of 6 persons.
- Welikanda May 29, 2006, the murder of 12 Sinhala persons including 10 villagers working as labourers on a construction site in Omadiyamadu,

In the conflict's most recent phase, the rights of civilian Sinhalas, Tamils and Muslims have all been grossly violated. According to the civil society 'Peace Support Group', in April 2006, of the 191 persons killed, 90 were civilians; in May 2006, of the 171 killed, 83 were civilians and 8 children. June's (claymore mine) attack on a bus carrying civilians in Kebitigollewa killed 64 persons and the concerted land and air attacks in Batticaloa, Trincomalee, Kilinochchi and Mullaitivu have resulted in indiscriminate killings of civilians and massive displacement.

The anxiety of those living in these conditions day after day is compounded by the impunity that prevails with regard to gross violations of human rights. The investigations into extra-judicial killings tend to be slow and designed to exhaust the survivors and witnesses, even in cases in which testimonies and other evidence have enabled the identification of perpetrators.

The Peace Support Group (2006) has been careful in not making a distinction in violations on ethnic grounds, but nonetheless emphasises, "there is no denying that the impunity we are referring to in the context of the on-gong conflict has a very sharp and specific impact on the Tamil community living in the North and East of Sri Lanka". The Coalition for Muslims and Tamils (2005) also speaks for and pleads for placing people at the centre of peace and the need for the peace process to work towards justice for all peoples in this country.

Public Order

To be Tamil in the middle class Colombo suburb of Wellawatte, is to hear the midnight knock - a police 'combing operation'. In the time of ceasefire, December 2005, the police launch a major crackdown, ostensibly on 'drug smuggling', but the racial profiling of the scores of suspects taken in for questioning by Sinhalese speaking police, speaks a different tale. Moreover, the backdrop was the intensification of the shadow war between the LTTE and the Karuna faction and state agencies. Tamils disproportionately are picked up under the state's emergency anti terror laws.

The law enforcement framework of 'public order' means very different things for Tamils and Sinhalas as dramatically epitomized in the widespread incidence of checkpoint rape. The Sri Lankan security forces are mono ethnic and mono lingual, thus reinforcing the psychology of the 'state and us' divide. Muslim youth who are Tamil speaking or bi-lingual were recruited by military intelligence in the late 1980s to inform on LTTE activity. It has contributed to inter community tension. The targeting of high value Muslim intelligence officials also feed into this tension.

More broadly speaking, Sri Lanka is a glaring example of a national security imagination with a majoritraian bias. As social scientist Sanjana Hattatuwa argues, "national security is almost always a question of the threat to Sinhala-Buddhist interests by encroaching marauders in the form of minorities or Western influences in the form of NGOs. The securitisation of Sri Lanka - from the rank and file of the armed forces to the police, from the mentality of checkpoints to governmental directives to safeguard the interests of the nation, are all couched in varying degrees of majoritarian ideology that only serves to alienate those who are not woven into Sri Lanka's larger civic fabric".

Minorities within Minority

Muslims and Hill Tamils have claimed for themselves the status of minorities within minorities, pursuing at first policies of accommodation with common citizenship as the basis for accessing rights and then assertion as a minority community entitled to rights. In addition there is the community of the displaced, who are ethnically divided.

Muslims: A status quo minority.

Muslims make up 8.8% of the population and range from poor fisherfolk and framers to wealthy traders. Although Tamil speaking, Muslims have differentiated themselves on the basis of their religious identity rejecting Tamil leadership demand to co-opt them, by laying claim to a 50-50 structuring of entitlements. They have distanced themselves from Tamil nationalism and have pursued accommodation with the Sinhala majority for protection of their minority interests. They see themselves in competitition for land and resources with the Tamils. Only in 1981 did a Muslim community based political party emerge, in reaction to intensification of the ethnic conflict in the north and east, the major areas of Muslim concentration. At issue was security of the Muslims and their place in the constitutional arrangements that were being worked out about the merger of the Northern and Eastern Province under a Tamil majority mandate.

Consequences of the war has been a virtual ethnic cleansing, relocation in refugee camps, communal massacres, tension over land and taxation, abduction and ransom.

Forgotten IDPs: Muslims.

In October 1990 the LTTE expelled, with 48 hours notice, all Muslims living under their control in the four northern districts of the island. 72,000 Muslims walked south towards government areas with little other than the clothes on their backs. Most ended up in Puttalam, along the west coast.

Currently, about 52,000 displaced Muslims live in camps or temporary relocation sites in Puttalam. Their living situation resembles Sri Lanka's 800,000 conflict induced displaced. Employment is scarce and most families depend on government food handouts and day labor at $1.25 per day. Twenty percent of the Muslims from northern districts were deep-sea fishermen, but they had to leave behind their boats. Government security regulations prohibit night fishing and fishing beyond a two-mile limit to prevent LTTE arms smuggling by sea, even when they have secured new boats.

The vagaries of Sri Lankan law place them in a legal limbo bordering on statelessness. In Puttalam for a decade, they still are considered residents of their original communities in the north. Their entitlement for government social services goes to the northern districts. The North Western Province, where they currently reside, has no funds to invest in expanding education and health facilities to meet the needs of the Muslim displaced. Their quota of civil service positions is allocated to the north. Their capacity to leverage the democratic system is undermined by the fact that their voter registration is in their former constituencies. They are expected to vote there despite it being 200 kilometers away.

They face forfeiture of their rights to an estimated 500,000 acres of land and property because under Sri Lankan law, an owner forfeits his property rights after an absence of ten years. According to community leaders in Puttalam attempts have been made to return and exercise their property rights in Jaffa, which the Sri Lankan army re-took from the LTTE in 1995, but many areas are simply too dangerous to resettle. In addition, some property has been either destroyed or occupied by the army. In Mannar, direct discussions between community leaders and the LTTE have made it clear that the latter retain their hostility to the Muslim community.

Petitions for redress from the Muslim community to the President, to the Supreme Court, and to the National Human Rights Commission have gone unanswered or unsatisfied. Even Muslim MPs have refused to take up their grievances on the grounds that they are not members of their constituencies.
www.refugeesinternational.org June 2006

In the eastern province where Muslims comprise 33% if not more of the population in a situation where a dual structure of power exist - Sri lankan state and the LTTE, the over all deterioration in the security environment has had consequences for the tense relations between the Muslims and the Tamils. In May 2006, in Muttur, Trincomallee district, handbills appeared demanding that the Muslim community vacate the areas in 72 hours. Issued by a group called the Tamil Eela Tayaham Meetpu Padai (Tamil Eelam Motherland Retrieval, Force). The LTTE has not condemned the handbill. Tamils argue that villages like Akkaraipattu and Pottuvil have become Muslim dominated through anti Tamil violence by the security forces supported by the Muslims.

Muslim representation, both within the peace process and in any solution to come, has been a forgotten element in the peace process. The creation of a Muslim Secretariat was a belated recognition of this missing stakeholder. The Muslim question, whether it concerns the north or the east, is treated as a secondary and temporary problem of managing conflict and not as a fundamental part of the solution to the ethnic conflict.

Muslim consciousness of a minority under siege has reinforced the assertion of a distinct Islamized identity with particularly adverse consequences for the autonomy of women as evinced in the introduction of practices like veiling since 1990s.

Hill Tamils.

Variously referred to as the hill country or up country Tamils, the estate Tamils are largely of Indian origin brought over as indentured labour for the plantation economy. They are concentrated in the central hills, the most deprived region as regards social development indicators. On independence, this 6 % of the population was overnight disenfranchised by new citizenship and franchise laws. Their trade union based dominant political formation- Ceylon Workers Congress- has focused its energies on securing citizenship as a means of accessing equal rights. In the bi-partisan mainstream politics of the island, articulated through the UNP and the SLFP, the Ceylon Workers Congress has left behind its left genealogy and 'opportunistically' maneuvered to work with one or other party, i.e. a stake in the unitary structure of Sri Lanka.

CWC split in 1989, with Periyasamy Chadrashekarn forming the United Peoples Front (UPF) He has tried to tap the more socially mobile Upcountry constituency. The essential difference between the two say Rampton & Welikala (2005) is that the UPF no longer claim to see the citizenship issue and the gradual equalizing of status to be the main aim of an Upcountry Tamil political party. Instead, the UPF emphasizes their suffering at the hands of Sinhala chauvinism - as well as their long term educational employment, infrastructure and cultural deprivations - can only be answered through a federal or devolutionary structure of power.

On the national question, the successive targeting by Sinhala chauvinists of Upcountry Tamils 1977, 1981 and 1983 , 1998 and 2000 has moved the UPF to adopt a more militant nationalist platform. While differentiating the up country Tamils, UPF has forged important links. Moreover, violence has uprooted rising numbers of hill Tamils who have settled in the LTTE controlled Vanni area. Also present in the hill country are 41,445 Sri Lankan Tamils.

BANGLADESH

Bangladesh's fierce dream of nationalism as articulated by the popularly mandated leader, Sheikh Mujibur Rahman, was to create a homeland for Muslim, Hindu and Christian Bengalis, (and for indigenous peoples the option of assimilation or marginalization). But the historical process of consolidating the new nation state - predicated on privileging the commonality of race, language, ethnicity or religion - has produced every day exclusion and insecurity for the minorities. Repeated amendments to the Constitution have eroded the civic, economic, religious and cultural rights of minorities. More cynical Bangladeshi public intellectuals like Afsan Chowdhury are skepical of adducing weight to constitutional changes. "The constitution neither provides direction to repress nor protection from repression", he argues.

Successive regimes, whether democratic or military, to consolidate power, have steadily shifted the country towards a mono linguistic and increasingly mono religious hegemony, culminating in the Eighth Amendment and Art 3 enunciating Islam as the state religion. Growing land hunger and the compulsions of democratic politics have encouraged state sponsored resettlement policies in tribal lands and 'legal' land grabs practices of minority lands and properties. Globalization has reinforced the pressure for extractive development of resources of tribal areas, placing vulnerable communities at greater risk.

Bangladesh's fiercely competitive bi-polar mainstream politics is dominated by two political formations, the Awami League and Bangladesh National Party. Street violence as the language of politics in Bangladesh, has made for a situation of 'minorities at risk'. The AL with its genealogy of the liberation struggle and secular values, has cynically used the minorities as vote banks making them vulnerable to attacks by the rival BNP which has allied with Islamist forces for its survival. Finally, the dynamics of cross-border politics has mutually reinforced the takeover by fundamentalist forces, i.e., the surge of Hindu fundamentalism in India has emboldened the assertion of Muslim fundamentalist forces in Bangladesh with disastrous consequences for the minorities on both sides.

The phenomenon of 'missing' Hindus, the two decades long insurgency for self determination in the Chittagong Hill Tracts and the violent persecution of the Ahmadi minority community, is an index of the discrimination and insecurity that minorities in Bangladesh suffer. Nonetheless there are sites of democratic resistance against the capitulation of Bangladesh's two main political formations to the fundamentalist Islamist and ethno-nationalist forces. It is reflected in the opposition to the demand to ban the Ahmadiya community and to the introduction of blasphemy laws as well as in the positive repeal of the Vested Properties Act and the CHT Peace Accord.

Limits to Participation

- Non Muslim minorities are disadvantaged in access to jobs in the civil service, the military, and political parties. The government has not appointed religious minorities to sensitive positions in the civil service. Public service selection boards lack minority group representation. The government owned Bangladesh Bank employs approximately 10 percent non Muslims in its upper ranks. Hindus dominate the teaching profession. Employees are not required to disclose their religion, but it generally can be determined by a person's name.

- In the 300-seat Parliament, religious minorities hold 7 seats--4 for the Awami League and 3 for Bangladesh National Party. In the current government three non-Muslims hold Deputy or State Minister or equivalent positions in the Government. Within mainstream political parties, there are very few members of the minority communities in high positions. It is rare to find a members of a minority heading an Institution.

- Religious organizations are not required to register with the Government; however, all NGOs, are required to register with the government's NGO Affairs Bureau to receive foreign financial assistance. The government temporarily revoked the registration of an NGO in September 2003, allegedly because a government official claimed it had too many Hindus on its Board of Directors.

- There are no known government run Christian, Hindu, or Buddhist schools.

- Home Ministry asked commercial banks to restrict substantial cash withdrawals and disbursement of business loans to the Hindu community in the districts adjoining the India-Bangladesh border. This was in the aftermath of communal violence in Bangladesh after the destruction of Babri Masjid in Dec 1992. Generally, minorities are discriminated in trade, access to bank loans and credit.

- In 1993 government initiated a survey of Vested Properties as one more method of persecuting the Hindu community, who were at the mercy of officials.

- Pahardis hill people were required to obtain curfew passes to go to the market. Free movement was made conditional on the tribals swearing 'Bangladesh is my life.'

Minorities, Judiciary & Police

The Constitution provides for an independent judiciary; however, under a longstanding "temporary" provision of the Constitution, the lower courts remained part of the executive and were subject to its influence. On June 21, 2001, the Supreme Court reconfirmed an earlier High Court ruling on the separation of the judiciary from the executive.

Art 27 provides that "all citizens are equal before the law", but impunity for violence against minorities, including members of the adivasi, Hindu and Ahmadiyya communities, is endemic. No independent inquiry was conducted into the killing, rape and sexual assault and burning of hundreds of homes of adivasis in the CHT in 2003. No one was brought to justice for the killing of an Ahmadi preacher, or attacks against the Ahmadiyya community's places of worship. Although several people were arrested on charges of involvement in the burning of a Hindu home in Banskhali Upazila in 2003, there were concerns that the main culprits were not among them. A Judicial Commission was formed to inquire, inter alia, into the Dec 2001 bombing of a Catholic church during Sunday Mass Baniarchar, Gopalganj District. In its report, the Commission blamed Sheikh Hasina's party members for six of the seven bombs that occurred in 1999,2000 and 2001, including the June 21 church bombing. However, two of the three Commission members dissented and indicated that Justice Abdul Baki Sarkar had inserted his personal views in the report.

In several cases of violence against minorities, the police is seen backing the culprits as evinced in the recent attacks on Ahmadi mosques in April 2005. A sinister pattern has emerged - when mobs approach an Ahmadi mosque with a sign declaring the place " a house of worship not a mosque", replacing the existing sign, the police aided the crowd in putting up the sign. They claimed it was a preventive measure to control the mob.

Low Intensity Violence

- Bangladeshi Christians and foreigners were attacked in 1991-9, during the Gulf War. Several churches were damaged. Throughout 1993-95, extremist Muslim organizations attacked minorities, as well as progressive forces for maligning Islam and the Prophet.

- In the 1992 outburst of communal violence in Dhaka after the demolition of the Babri Mosque in India, the government did not condemn the looting, arson, rape and destruction of temples. Neither did the Opposition political parties demand justice for the victims. Administrative and law enforcing agencies remained silent and inactive in rural Bangladesh and district towns when religious minorities complained of attacks and destruction of temples.

- The Bangladesh Hindu-Buddhist-Christian Unity Council at their annual meeting in April 1992 claimed that about five million people belonging to different minority communities were forced to flee to India during the last 20 years. While, the Hindus constitute the largest number, the second largest are the tribal Santhals who migrated as a result of oppression and eviction from their ancestral lands. (State of Human Rights 1992)

Minority Agency: Symbolic Protest of Bangladesh Hindus

The year 1993 saw for the first time organised protests by the Bengali Hindu community against their unabated persecution by the communal Bengali Islamist forces, and the indifference of the state to their grievances. During the biggest religious festival of the Hindus, the Durga Puja, the community in reponse to a call given by the Bangladesh Puja Udjapan Parisahd (the Bangladesh Council for Observing Puja, the BPUP demonstrated its anger and protest by hoisting black flags in all religious temples and places of worship.

In a significant departure from the traditional norms of worship, no images of the goddess durga and other deities were set up in public, no decorations were made. The Hindus performed the Puja that year without any demonstrative religious fervour.

The BPUP put forward a charter of demands ….scrapping of the Vested properties Act, repeal of the 8th Amendment (making Islam the state religion) and reservations of seats for Minorities in Parliament.

The Minister for Religious Affairs in a statement in Parliament in November 1993 stated that a sum of Taka 20.77 million has been allocated for 1993-94 for the reconstruction of Hindu mandirs and other places of worship which had suffered damages".

- In June 2001, in Baniarchar, Gopalganj District, a bomb exploded inside a Catholic church during Sunday Mass, killing 10 persons and injuring 20 others. The army arrived to investigate approximately 10 hours after the blast. Police detained various persons for questioning. The police reported no progress on the case. Judicial Commission of Inquiry nominated.

- Post 2001 elections there was a string of attacks on Hindu villages allegedly by BNP supporters out to punish AL voters. Reported incidents included killings rape looting and torture and led to a wave of Hindus fleeing across the border. In 2001 the High Court ordered the government to investigate and report on attacks on religious minorities and steps being taken to protect them. The Government's Report 2002, claimed that the incidents of violence were not connected with communal relations and that the reports of violence were exaggerated and even fabricated.

- Chittagong district: In 2003, 11 members of a Hindu family burned to death after assailants set fire to home near Chittagong. Officials ascribed the crime to robbers, but the Opposition Awami League alleged BNP members attacked the family as a local Hindu cleansing effort. Government Ministers visited the home within a few days of the incident and police arrested 5 persons, three of whom confessed to the magistrate.

- August 26, 2003, post CHT Accord, Bengali settlers from the plains accompanied by the security forces attacked Pahardi (hill) villages. It was sparked off by the abduction of a Chakma tribal girl by a Hindu Bengali settler and the counter abduction of a Hindu businessman by the Hill people.

  Five villages were attacked, about 231 houses were burnt including places of worship, and about 400 families were affected. NGOs working there confirm - 10 Chakma women were gang raped in Pahartoli and Babupara. Two people were killed, and a eight month old baby strangled to death. People were beaten and mentally and physically tortured and their houses burnt. People were left homeless, all their possessions either looted or burnt.

- March 11, 2005 following a week of processions throughout Bangladesh demanding the government declare Ahmadis non Muslims, a mob attempted to lay siege to a mosque in Bogra , hoping to remove the 'Ahmadi Mosque' sign. Police controlled the mob but removed the sign. After a few hours the police put the sign back up.

'Missing' Hindus

In the Liberation War, Hindus had made a common cause with the Bengali Muslims for a homeland. Bengali ethnicity was the core element of nationalist imagination. However, the steady drift of the state towards an Islamic orientation has found the religious minorities in a situation where they have no political or economic space in an independent Bangladesh. The Hindus number about 12 million or about 10 per cent of the population. Saleem Samad a chronicler of status of Minorities in Bangladesh writes, "Encouraged by the communalization of the polity, the majority community has reverted to the traditional practices of ousting members of a minority community from land and jobs." Lack of social and economic opportunities, low intensity hostility at all levels including the discriminatory practices of the state, has prompted a steady flow of Hindus across the border into India.

The 1941 census recorded a Hindu population of over 28% in what was to become East Pakistan/Bangladesh. In the 1974 statistics, the Hindu population is down to 13 % and dwindling to 10% by 1991. Social scientists, analysing the phenomenon of the 'Missing' Hindus have calculated that had their been no forcible/voluntary out migration of Hindus the population in 1971 would have been 11.4 million, instead of 9.6 million as reported in the official documents; and in 1981 it would have been 14.3 million (12.5 million of 1981 plus 1.8 million during 1964-1971), instead of 10.6 million as reported in 1981 census document. Similarly, in 1991 it would have been 16.5 million (12.8 million as on 1991 census document). Thus, the estimated total missing Hindu population during 1964- 1991 was 5.3 million, i.e., 196,296 Hindus missing every year since 1964. In other words, the approximate size of the missing Hindu population would be 538 persons per day, since 1964.

To follow the trail of the missing Hindus is to find human rights abuses, atrocities and forced ethno-religious cleansing. The Hindus flee from Bangladesh to neighboring India, when their lands are 'legally' grabbed by the government under the Vested Property Act.

Vested Property Act, Bangladesh

The Vested property Act first appeared in after the Indo-Pakistan war in 1965 as the "Enemy Property Act" in East Pakistan. It was directed primarily against the property of the Hindus who has temporarily fled to India in fear of their lives. The law applied to properties of Indian nationals residing in Pakistan or Pakistan citizens residing in India, identified as "enemies of Pakistan".

Curiously despite the inappropriateness of the 'enemy' nomenclature, the law survived in Bangladesh under the Laws Continuance Enforcement Order 1971 and the Bangladesh (Vesting of Property and Assets) Order 1972 and then in its reincarnation as the The Vested and Non-Resident Property (Administration) Act.1974. Significantly, there was no strong protest or criticism.

It vested in the state, the rights of properties, abandoned or left behind by Pakistani and Indian owners. Whereas earlier the state was a custodian, it now became outright owner as a result of an amendment in 1976. Property vested between 1976-1991 was far greater than when it was East Pakistan, as the government seized the property of Hindus who had migrated or were deemed to have migrated.

The Act became a tool in the hands of rural elites to dispossess and displace the Hindus. According to 'Hindu Human Rights', approximately 2.1 million acres of land were seized from Hindus, accounting for some 40% of Hindu households in the country. Most Pakistanis were able to recover their properties through court cases or by producing false citizenship certificates. The Hindus found themselves disadvantaged They were asked to provide proof of identity while making a claim for lost properties. The Muslims were not asked to do so. In some cases corrupt government officials at district level were listing properties whose owners were alive and still living in Bangladesh. Local officials and law enforcement agencies usually sided with the majority against the minorities in land cases.

The NGO Ain O Sailesh Kendra in a report on "Power, Safety and the Minorities" stated that in 1999 there were 29 cases of forceful occupation of land and property of the Hindu community. In Mymensingh district out of 29,700 acres of vested property land, 28,000 acres and 400 houses have been occupied by one influential person. It matters little who was in power. In 1995 BNP members had cornered 72% of properties, in 1998 AL members had grabbed 42%.

It took three decades for the Parliament of Bangladesh to pass the Vested Property Return Act (2001). This law stipulated that land remaining in government control that was seized under the earlier Act be returned to its original owners, provided that the original owners or their heirs remain resident citizens. Hindus who fled to India do not get any compensation. By law, the government was required to prepare a list of vested property holdings by October 2001. In 2002, Parliament passed an amendment to the Vested Property Return Act, allowing the Government unlimited time to return the vested properties. The amendment gives the deputy commissioners the right to lease such properties until they are returned to their owners.

Vulnerable Communities

Ahmadi Muslims

Ahmadis are followers of Mirza Ghulam Ahmad of Qadian (1839-1908), who founded a religious community in the late nineteenth century in the subcontinent. In 1891 he declared himself the 'Reformer of the Age' whose coming was foretold by the Messiah (masih) of Islam and other religious scriptures. When he died the Ahmadiyyahs split into two sects, the Qadianis and the Lahorites. The Qadianis claimed that Ghulam was a prophet. Many mainstream Muslims view the Ahmadis as heretics.

In Bangladesh, there are approximately 10 000 Ahmadis who have been struggling for the right to religious freedom and the right to freely practice their religion and manage their religious institutions as guaranteed to each and every citizen of Bangladesh under Art 31 and 41 of the Constitution. From 2003 there have been an increasing pattern of attacks and harassment prompted by clerics and leaders of some Islamist organisations with indications of inadequate police protection. There has been an orchestrated campaign to have them declared Non Muslim. In Oct 2003, 17 Ahmadi families in Kushtia were barricaded in their homes for several days. In Nov 2003 Police stopped a mob of about 5000 activists from destroying an Ahmadi mosque in Tejgaon, Dhaka. In Dec 2003 anti Ahmadi activists killed a prominent Ahmadi leader in Jessore. In May 2004, the Khatme Nabuwat Andolan, a group of anti Ahmadi Islamic clerics threatened to evict thousands of Ahmadis from their homes and attack mosques. In Oct 2004 police and paramilitary troops prevented supporters of two anti Ahmadi groups from attacking a mosque in a town near Dhaka. A few days later 11 Ahmadis were injured in a mob attempt to seize another mosque. In April 2005, there was a spate of attacks on Ahmadis that indicate inadequate police protection. Twice the police have aided the crowd in putting up a sign - "this is a house of worship not a mosque". The governments attempts to issue a gazette banning Ahmadi publications has been stayed by the High Court following a writ petition filed by human rights activists. However, the Courts reflect the larger societies values and biases.

In Bangladesh Anjuman - E - Ahmadiya v. Bangladesh, (45 DLR 185), the forfeiture of a book of the Ahmadiya Community under Section 95 of Criminal Procedure Code for outraging the religious belief of bulk of (Sunni) Muslims, was upheld by the High Court Division. The Court commented that the Ahmaddiya community has a right to profess and practice its faith but "their religious freedom should not offend or outrage the religious feeling of other Muslims".

Bihari Muslims: Stateless In Bangladesh

Biharis are an ethno-linguistic minority in Bangladesh, but they slip through the official census as they are legally stateless. Urdu speaking, they were the descendents of a group of nearly 700,000 Muslims who migrated from Bihar during and after the 1947 Partition. They languish in camps scattered across Bangladesh, waiting to be repatriated to land that refuses to give them recognition - Pakistan. According to a survey conducted in 1992, their total number is 238,000 in 66 camps located in 22 districts in Bangladesh. After the liberation of Bangladesh, they formally opted for Pakistan in 1973, henceforth becoming stateless in Bangladesh.

The Biharis are ideologically and linguistically tied to the umbilical cord of Pakistan. In the 1971 war, they colluded with the Pakistan army and were complicit in the looting, arson, mass rape and the genocide of Bengalis. Indeed there is a tradition or ruling class manipulation of vulnerable sections of the majority against another vulnerable minority. The Biharis from the poorest class were used as a front line community against the nationalist and Indo-Bangla forces in 1971. The After independence, the Biharis

took refuge in camps run by the ICRC and the Bangladesh government. In 1973 they were given a straight choice between Pakistan or Bangladesh citizenship. 7.8 lakh persons, largely middle class, opted for Bangladesh. They merged with the majority community, losing their language and separate identity. Some 260,000 opted to stay Pakistani. A total of 13,325 persons were repatriated and settled in Punjab, Pakistan. Given the tense ethnic situation with the Mohajir-Sind relationship, the rest were left stranded. Subsequently, state obligations to prevent statelessness and the entitlement claims of the Biharis has got complicated with the illegal movements of hundreds of thousands of Bangladeshis to Pakistan.

As for the Biharis in the camps, a survey by RMMRU (1997) in two major camps in Dhaka, found that 59% identified themselves as Bangladeshis, 62,4% opted for local integration and 55% did not want to go to Pakistan. In the context of these findings the issue of citizenship rights of these stateless peoples is important. Analysing the legal status of Biharis, Sultana Nahar invokes the UN Convention on the Reduction of Statelessness (1959), and argues that every Bihari is entitled to Bangladeshi citizenship. Even the High Court Division of the Supreme Court has accepted this. In 1984 the Court ruled, "the mere fact that he (a Bihari) filed an application for going over to Pakistan cannot take his citizenship."

Meanwhile, the lands and properties of the Biharis, have been grabbed by people close to the ruling party of the day. Under Presidential Order no 16, 1972, the properties owned by Biharis were declared Abandoned Property, and the state appointed as custodian. A supplementary ordinance (1985) requires the claimant of the property to prove that it is not abandoned. If Bangladesh grants citizenship, the Biharis could press their claims to their "abandoned properties". Not surprisingly, there is ambivalence about citizenship rights for the Biharis.

PAKISTAN

Intolerance in Everyday Conduct

Pakistan's religion based minorities - Christian, Hindu -Sikh, Parsi and Ahmadi communities (and women) are victimized by a constitutionally sanctioned legal and juridical regime that reflects and promotes a culture of discrimination, exclusion and extremism. The religious minorities represent 3.32% of the total population, though these official figures may obscure ground realities. Minority communities often remain 'hidden'. Hindus may adopt Muslim names, or prefer to identify themselves through their tribal associations.

> ***"The prolonged confusion over whether Pakistan ought to be a 'land for Muslims' or an 'Islamic State' has caused much uncertainty over the question of religious minorities. It is essential to study discrimination as it plays out in everyday life, in addition to analysing overarching legal frameworks. Although there may not be overt discrimination in the Constitution, intolerance is manifested in the everyday mode of conduct. Even the blasphemy law, which blatantly targets minorities, has never been used to officially sanction the death penalty. More often than not, when blasphemy accusations are made, majoritarian groups take the law into their own, executing the 'guilty' party through social consensus."***
>
> ***Nighat Said Khan, social scientist***

General Pervez Musharraf on taking over power in Oct 1999 stated, "I would like to reassure our minorities that they enjoy full rights and protection as equal citizens in the letter and spirit of true Islam." However, to be a minority in Pakistan, is to experience not only Constitution based discrimination but a social culture of intolerance. The limits on the public participation and socio-economic rights of members of minority groups have effectively reduced them to the status of oppressed underprivileged citizens. There is a circularity of poverty and being a member of a minority, which mutually reinforces their disempowerment and insecurity.

Limits to Participation in Public Life

There is tokenism in the representation of minorities in public life. The current National Assembly has three Hindu members, and exceptionally, in the Supreme Court, there is Justice Bhagwan Das, who is next in seniority only to the Chief Justice. Generally, however, there are very few minorities who make it to the senior ranks of the civil service, the judiciary, the political parties and of course the armed forces.

Separate Electorates.

Minorities in Pakistan have never sought separate electorates and indeed opposed them when General Zia ul Haq introduced separate electorates in 1985 dividing voters into Muslim and non-Muslim. A presidential order decreed that non-muslims would have their own constituencies and separate representatives effectively making the minorities of no interest to the political parties. Before this, there were reserved seats for minorities and women. The democratically elected governments of Nawaz Sharif and Benazir Bhutto continually shied away from annulling the separate electorate law. Both muslim and non-muslim intellectuals have campaigned against separate electorates.

The National Commission for Pakistan Justice and Peace offered the following objections:

- they incite religious prejudices; they create disorder within the nation
- they segregate minorities from mainstream national politics
- they downgrade minorities to third-class citizenship;
- the separate electorates promote only a few individuals instead of communities
- they further divide and splinter minorities causing more feuds than strife.

Eventually, it was after the US pressure on the governments for reforms, that President Musharraf, in early January 2002 abolished separate electorates. The October 2002 elections were held under joint electorate system.

Discriminatory Oaths and Electoral Procedures

They work to virtually disenfranchise persons belonging to certain communities e.g. Ahmadis or persons from contesting elections in special status areas e.g. 'Azad Kashmir'. (Ahmadi) Muslims have to swear on the finality of the Prophet and consequently stand disenfranchised.

"Azad Kashmir." Under the Azad Kashmir's constitution, which Pakistan imposed in 1974, election candidates are pre-screened to ensure that only those who support Kashmir's union with Pakistan can contest elections. To prevent those who support Kashmiri independence from circumventing the constitutional bar, the Azad Kashmir electoral law disqualifies a person from running for elected office if: "He is propagating any opinion or acting in any manner prejudicial to the ideology of Pakistan, the ideology of the State's accession to Pakistan or the sovereignty, integrity of Pakistan or security of Azad Jammu and Kashmir or Pakistan, or morality, or the maintenance of public order, or the integrity or independence of the Judiciary of Azad Jammu and Kashmir or Pakistan."

Northern Areas. Political rights activist groups from the 'Northern Areas' claim that the population stands virtually disenfranchised. They do not elect or send members to the parliament of Pakistan National Assembly. Pakistan claims that the Northern Areas are governed by a 'Local Authority' with administrative support from Islamabad. Rights activists challenge this claim of autonomy and assert that power is centralized in the office of the Federal Minister responsible for Kashmir and Northern Areas.

Denial of Social and Economic Rights

Non Muslim communities suffer a routinization of socio-economic exclusions. Their low socio-economic status is directly related to their belonging to a minority community. Christians concentrated in the Punjab and Hindus, in rural Sind, are the most economically backward segment of the population of Pakistan. Bias is reflected in textbooks and state school syllabi. Christians and Hindus are frequently portrayed as unreliable, morally unsound and as enemies of Islam in the electronic and print media, including that controlled by the state.

Christians are subject to a wide range of harassment and humiliation partly on account of their low social status, compounded by disrespect for their religious beliefs. Discrimination together with the low educational standard of the Christians, contribute to the high level of unemployment of Christian men. At the work place whether they be as domestic workers or in factories and farms, Christians are

disadvantaged by their Muslim employers. In November 1999, Riaz Masih, a Christian agricultural labourer was beaten to death by the landlord for whom he worked when he dared ask for his arrears in wages. The accused was free on bail. A large number of Christians doing farm labour or in the carpet industry are actually working as bonded labour, states Khaled Ahmed in his study on Pakistan Minorities (1999). Under a system of compound interest loans advanced to Christian farm labourers, the whole family gets indebted with children bonded in lieu of repayment

The incidence of slave labour is particularly notorious in the case of the Bheel and Kohli Hindus in Sind. Thousands of Hindu workers are kept as captive labour by feudal lords - Waderas on the basis of loans advanced to earlier generations. These labourers are not allowed to leave the farm and are kept on below subsistence rations and their women are used by the landlord as concubines. The plight of these 'Haris' was exposed when several thousand sought shelter in a church in Hyderabad. The administration was forced to protect them as slave labour is outlawed in Pakistan and so is compound interest. Eventually the feudal lords exerted their political muscle and forced many of the Hindu labourers to go back. Hindus, live in considerable fear and insecurity. In particular, communal clashes in India have violent consequences for them.

The Human Rights Commission of Pakistan, investigated reports of attacks on Hindu places of worship in May 2005. A Meghwar Hindu family had complained that they suffered violence and harassment by men close to the Sindh Chief Minister, Arbab Ghulam Rahim. A fact-finding team headed by Jam Saqi, an HRCP Council Member visited the Chief Minister's home village of Khait Lari, and found that the large Hindu community there, lived in fear of the Chief Minister and his henchmen. Furthermore, Arbab's relatives were accused of kidnapping Attam, a Sikh. Following the fact-finding, Saqi and his wife were targeted by the Sindh authorities for harassment. Saqi was arrested on kidnapping charges.

Forcible conversions are common. In March 2003, more than 30 Hindus of Rajpur Tharo Mandi village including 13 women embraced Islam at the hands of a Shakargarh religious scholar. There are countless narratives of Hindu girls being abducted and forcibly converted and married only to be abandoned. It is in this context that the Supreme Court judgement of the Neelam Ludhani case is so significant.

The Neelam Ludhani Case: Judiciary Protects Women's Rights

Neelam, a 21-year-old Hindu from Sindh, married Amjad in May 2006, a month after converting to Islam. She asserted that she changed her religion of her own free will to wed Amjad. Her father, a well-connected government official in Karachi, claimed that she had been abducted, and at other times that she was "mentally retarded."

The matter reached the Supreme Court where Neelam confidently asked to be allowed to go with Amjad. Her father had by this time altered his stance- he now had no objection to the conversion but feared for his daughter's future. He suspected that Amjad, who already had a wife and a son, would soon desert her.

The court, in an unprecedented move, ordered that Neelam be allowed to live with her husband. But more notably, the Bench obtained a guarantee from Amjad's family that that they would look after her properly. The court, further spelt out what it meant by 'properly'.

After some haggling, Amjad's father agreed to give the court a ban bond of for Rs. 15 lakh within a month as a guarantee for Neelam's welfare. The judge also asked him to transfer a share of his property to Neelam to secure her future, and provide a separate house for the couple. Furthermore, the area police was directed to give fortnightly updates on how she was being treated by her husband.

The Secretary-General of the Pakistan Human Rights Commission, I A Rehman, on the verdict said, " [the court order] underlines the vulnerability of the women in such situations. It is an implicit confirmation that such women are vulnerable." Mariana Babar, a respected Pakistani journalist added, "it appears that the Supreme Court has shown some activism at a time when Pakistan does not have a soft image with regard to how it treats it's minorities. This will negate and discourage the trend of forcible conversions". (The Hindu June 2006)

Ahmadis, declared non Muslims and considered by many muslims to be heretical, have been found to suffer open social and economic boycott in the villages, with the government remaining indifferent. In

many villages in which Ahmadis form small minorities, they have lost their jobs and income and have been forced to move to places where other Ahmadis may be able to support them. An Ahmadi school teacher, Mushtaq Ahmad in Jatoi, district Muzaffargarh, faced a total boycott in 2000. His children were not allowed to drink water from any public water tap. The education department initiated an inquiry against him and he was finally transferred to another village, where he was received with a public demonstrations and death threats against Ahmadis. Shops in some localities have ceased to serve Ahmadis, workers sometimes refuse to work for them. Ahmadi journalists, run the risk of facing false criminal charges as much of the substance of their publications is considered heretical. Some journalists have dozens of charges pending against them.

Conversions to Islam, 2004

Religion	Persons	%
Christian	56	49
Ahmadis	28	24
Hindus	30	26
Kalashis	02	1
Total	**116**	**100**

Denial of Religious Rights

Religous minorities, especially Christians and Ahmadis, have been restricted in their right to profess and propagate their faith and they have not been adequately protected by the state against such infringement by private persons. Human Rights organisations have received dozens of reports of destruction and desecration of places of worship of Ahmadis and Christians, often in the presence or with the knowledge of local authorities. Christians and Ahmadis have been prevented from building places of religious worship on their own land. In a village in Gujranwala, Punjab province, which has a sizable Christian community, the local administration stopped the building of a church and barred them from using their community centre as a place of worship. Particular forms of decorations of mosque and residences of Ahmadis, particularly those expressing the Kalima, have been another cause of friction between Ahmadis and their opponents.

On 11 January 2001, two Christians, Khalid Masih and Nasir Masih, were arrested in Jacobabad, a small town in Northern Sind along with some 100 Christian families most of whom are very poor, for having distributed some religious pamphlets among the Christian community. Ahmadis have often not been allowed to hold their religious conventions. The Punjab authorities have not permitted the Ahmadis' annual gathering in their centre at Rabwah for over a decade now. By contrast, anti-Ahmadi groups have obtained permission to hold meetings in Rabwah during which anti-Ahmadi slogans are loudly broadcast, although 95% of inhabitants of the town are Ahmadis. The rabidly anti Ahmadi organisation, Khatam-e Nabuwwat was permitted by the Punjab government to hold its annual conference in Rabwah on 12 and 13 October 2000 where speakers called for the extermination of Ahmadis. Students took out a procession shouting anti-Ahmadi slogans. They were accompanied by the police. Government officials were present in some of these meetings.

Criminal Justice System & Minorities

The Constitution provides for equal protection of law to all citizens of Pakistan, but the police and sections of the judiciary have demonstrated an apparent indifference to their obligations to adequately protect and prevent abuse of persons belonging to religious minorities or to support them in obtaining legal redress.

The police have been reluctant to file complaints of Ahmadis who have been attacked or threatened and instead have readily registered complaints forwarded by the alleged attackers against the victims, In Naukot, district Mirpurkhas, Sindh, on 26 August 1998 several hundred armed people led by local clerics attacked the Ahmadi mosque Several Ahmadis were injured and their religious books, the mosque and adjacent shops of Ahmadis set on fire. A few days earlier, on 22 August when orthodox Muslims objected to Ahmadis pulling down an old mosque on their own land to erect a new one, the police had refused to register the complaint of the Ahmadis.

Instead they registered two complaints against the Ahmadis - one under section 295A and 295B PPC against five Ahmadis (including 14-year-old Nazir Ahmad Baloch); and one against 14 Ahmadis under sections 295A and 295C PPC, for displaying the Kalima in the Ahmadi mosque in Naukot. All 15 Ahmadis were arrested and were in detention pending trial. Two weeks after the incident, a complaint was registered with police against the attackers, only after the High Court intervened. However, no one had been arrested in connection with this complaint.

More insidious is the practice by the police as well as the judiciary to add Section 295 A to existing secular charges. It also means that the cases will be tried before courts set up under the Anti-Terrorist Act of 1997. They were set up to curb sectarian violence by providing quick trials and deterrent punishments. Their accelerated procedures curtail the right to present a full defence and usually do not permit bail.

Sections of the high judiciary brazenly advertises their bias against minorities. Justice Mian Nazir Akhtar of the Lahore High Court is quoted by the Pakistani daily Din saying " we shall slit every tongue that is guilty of insolence against the Prophet." In a public lecture on 18 November 2000, Justice Akhtar reportedly asserted that the blasphemy law provides protection to the accused as otherwise the masses would kill him. ''The restraint and carefulness shown by the government in this regard can be judged through the fact that not even a single person has been sentenced since the enforcement of this law.'' He described critics of the law who sought its amendment as 'agents of anti-Islam forces' who did not understand it.

The addition of section 295A PPC often appears to be arbitrary and not to bear any relation to the offence alleged to have taken place, but it usually takes months during which the accused continues to be detained, for the lawyers to have the irrelevant section removed and to obtain bail. The accused suffer long months in pre-trial detention while their lawyers argue before the courts that section 295A PPC be removed as the cases do not warrant the inclusion of this section of the penal code. According to the Code of Criminal Procedure in section 196(22), no court, whether an anti-terrorism court or a regular court, may try any case under section 295A PPC unless the complaint is filed by the national or provincial government or anyone authorized by either. Lawyers representing Ahmadis and other accused charged under 295A PPC, have pointed out that this requirement has often not been fulfilled. Most accused are charged under section 295A PPC on the basis of private complaints.

Generally, cases involving religious offences take much longer than other criminal cases as judges often feel threatened by the presence of Islamicists in the courtroom and thus adjourn hearings endlessly. Judges rarely grant bail to members of a minority community accused of religious offences. Despite the fact that the PPC provides for punishment of deliberate false accusation and falsifying evidence, this remedy is rarely utilized in blasphemy cases. The blasphemy laws have been used by religious extremists to target 2000 Ahmadis and more recently 55 to 60 Christians.

Persecution of Ahmadi Muslims

The vast majority of Pakistanis are either Shi'a or Suni Muslims. Two of their foundational beliefs are that Muhammad was the last and greatest of the prophets, and that the Messiah is expected sometime in the future. However, followers of the Ahmadi Movement believe that God sent Ahmad to be that Messiah. While followers of Ahmadi consider themselves to be a part of Islam, Shi'a and Suni Muslims disagree; they consider Ahmadis to be guilty of apostasy, to be non-Islamic. The Ahmadi community currently has more than 10 million members worldwide.

Pakistan has legally declared Ahmadis as non Muslims. In 1974, the National Assembly of Pakistan approved the Second Amendment to the Constitution, literally excommunicating Ahmadi Muslims and banishing them from the fold of Islam. In 1984, General Zia-ul Haq, promulgated Martial Law Ordinance XX branding Ahmadis as criminals liable to fine and imprisonment if they practiced their belief in Islam, used Islamic terms or posed as Muslims. The punishment is up to 3 year in jail and a fine.

In 1993 the Supreme Court of Pakistan heard a case by a number of Ahmadis who asserted that they were being deprived of their religious rights and freedoms, as guaranteed under Article 20 of the constitution. The appeal was rejected. The court felt that granting the Ahmadis equal rights would be against public order. The Justices said that Shi'a or Suni Muslims, who vastly outnumber the Ahmadis, consider the

"movement ideologically offensive." The majority opinion of the court stated that many Islamic phrases were, in effect, copyright trademarks of the Islamic faith. Thus the use of these phrases by Ahmadis was a form of copyright infringement; it violated the Trademark Act of 1940. They also found that Ahamdis were committing blasphemy when they spoke or wrote specific Islamic phrases.

Ahmadis continue to face discrimination in accessing the electoral system. Although separate electorates introduced by Zia have been abrogated by General Musharraf ahead of the 2002 elections, for most practical purposes the distinction of Muslims and non Muslims remained in place. The Chief Election Commissioner Justice Khan announced that Muslims who had applied for registration as voters in the annual revision of voter's lists would have to submit a declaration about their religious beliefs and declare absolute faith in the finality of the prophethood. The status of Ahmadis, as a result, remained unchanged, as they remained on separate voters' list even though joint electorate were in force. Ahmadis as such remained effectively disenfranchised, with the community declining to take the oath that went against their faith.

BHUTAN

Making People "Stateless"

At a conservative estimate, the Lhotsampas made up a third of the population but out of 105 seat National Assembly (plus 35 representatives from government and 10 clergy) they had only 14 seats. According to government figures, the ethnic Nepali comprised 16% of the jobs in the civil service. Since 1989 the government has terminated the services of over 1000 Lhostsampas and Sarchops by labeling them 'anti-national' or relatives of refugees living in Nepal, claims Thinley Penjore, a refugee rights activist.

Senior posts in the army, the police and the government departments are monopolized by the Drukpa-Ngalung community. The representation of the other minorities - Tibetans and Adivasis- is barely 1 percent. There is not a single minister from these ethnic groups in the government nor in the judiciary. The Sharchops did not have representation in the Cabinet till the late 90s when the government nominated five.

Development activities are largely concentrated in areas where the Drukpas live, while the minorities have little access to health, education, communication and transport facilities. In 1990, the government closed down all the 72 schools in south Bhutan, thus depriving Lhotsampa children of educational opportunities. Although 11 schools were later reopened they were reserved for children of army personnel, local administrative personnel and settlers form the north. Police and census certificates are mandatory for school admission. Equality before law is notional. The minorities have to produce their citizenship identification papers at police check posts spread all over the country, members of the Drukpa community do not.

'Missing' Ethnic Nepali Bhutanese

As a consequence of the 'voluntary' expulsion of nearly 120,000 Lhotsampas, the ethnic Nepali population should have been down to 27%. However, results of a nationwide census held in June 2005 suggest that the government may be categorising a significant number of the Lhotshampas (Southern Bhutanese) still living in Bhutan as non-nationals. In 2004, official figures put Bhutan's population at 730,340, and the number of foreign workers in Bhutan at 40,350. The June 2005 census has found the population of Bhutan to be 553,000. As declared by the King in October 2005, there are more than 125,000 non-nationals working in Bhutan. It amounts to a declaration of "denaturalization" of the majority of Lhotshampas remaining in Bhutan. (NGOs letter to the Donors before the Geneva Round Table Conference, February 9, 2006: Human Rights Watch)

Ethnic Expulsion: The damaging consequences of the Citizenship Act (1985) became evident when the actual enumeration process was taken up in 1988, only in the Lhotsampa settlement districts. All Lhotsampas were required to provide roof of domicile in the country during 1958, the cut off year The only valid and acceptable documentation was land tax receipt for that particular year. Receipts issued before 1958 were not considered on the ground that the family could have migrated out of Bhutan prior to 1958

and returned after the cut off year. Most Lhotsampas were declared 'illegal immigrants'. The 1988 census placed Lhotsampas into seven categories from 'genuine' Bhutanese citizens able to produce land tax receipts to non-nationals, migrants and illegal settlers.

The protests against the census, acquired an 'ethnic' consciousness , when in 1990 ethnic Nepali students formed the Bhutan Peoples Party. Though banned' it became a rallying point for those opposed to the 'Bhutanization' policy. In the face of official repression the BPP became more militant and the protest demonstrations reportedly became violent. Large numbers fled across the border, the outflow rising dramatically during 1992. Many refugees claimed that their citizenship had been revoked after they were forced to sign Voluntary Migration Forms. These forms were printed in Dzongkha language which the southern Bhutanese could not read. Others fled because of a generalized atmosphere of terror, schools were closed and turned into army barracks, prison and torture centres. Hundreds were jailed, land and property confiscated, homes destroyed. Many suffered detention without trial, rape and torture before leaving. It is estimated that the Bhutan government expelled one sixth of its population. Subsequently, the Bhutanese Parliament enacted a law empowering the state to confiscate the property of Lhotsampas who had left the country and resettle people from the north and east.

Resettlement Program: In 1998 Bhutan's National Assembly announced that over 1000 households from northern and eastern Bhutan would be rehabilitated in southern Bhutan. The first resettlement plan involved 58 former royal Bhutan Army families.

Stateless in Nepal

Since 1990, approximately 96,500 Bhutanese refugees have been languishing in seven UNHCR run camps in Nepal and more than 10,000 are unregistered refugees. After a decade long stalemate on the fate of the refugees, Nepal and Bhutan agreed on a pilot study of the Khudunabari camp to begin the process of 'verification' and possible return. However, the 2001 process got deadlocked over the Bhutanese insistence on a classification structure by which 2.5% of the refugees were categorized as bona fide Bhutanese citizens; 70% as refugees who supposedly "voluntarily" migrated from Bhutan and would have to reapply for citizenship in Bhutan after a probationary period of two years; 24% as non-Bhutanese nationals and 3% as those who had committed "criminal" acts, including participating in "anti-national" pro-democracy activities in Bhutan - to stand trial. It took two years to complete the process in one camp. Also, there is no certainty whether there will be any restitution of property or lands. Both countries have refused to involve UNHCR in the verification and repatriation process. And there has been little progress since Bhutanese rights activists and NGOs have been lobbying with international 'donors group' to pressure Bhutan to take cognisance of its responsibility to take back its nationals and its international obligations to not make them stateless.

However, the Oct 2005 census based declaration of the King that 125,000 non-nationals are working in Bhutan amounts to a declaration of "denaturalization" of the majority of Lhotshampas remaining in Bhutan. It augurs ill for the prospects of the return for the refugees, and their continuing ethnic discrimination. Elements of Bhutan's draft Constitution, published in July 2005, tend to confirm doubts about the possibility of Lhotshampas retaining or reacquiring their citizenship. The citizenship status of Lhotshampas has been eroded by various measures taken since the end of the 1980s. Essentially, what makes their situation precarious is the denial of their right to a nationality. The provisions of the draft Constitution, if followed to the letter, would make it very difficult for Lhotshampas to reacquire citizenship status of which they had been deprived.

4 indigenous peoples

indigenous peoples

Indigenous Peoples

Uneasy Coexistence: Development Paradigm & Adivasi Deprivation

> ***"Indigenous peoples are proponents and representatives of humanity's cultural diversity. Historically, however, indigenous peoples have been marginalized by dominant societies and have often faced assimilation and cultural genocide. Indigenous peoples have dynamic living cultures and seek their place in the modern world. They are not against development , but for too long they have been victims of development and now demand to be participants in -and benefit from - a development that is sustainable."***
>
> ***(O H Magga, UN Permanent Forum on Indigenous Issues August 2, 2006)***

Indigenous peoples, from occupying most of the earth's ecosystems two centuries ago, today have legal rights to use about 6% of the earth's territory. Around 300 million people belong to the world's indigenous groups spread over 70 countries. India, alone has an indigenous population of more than 88 million. Military conquest, ecological destruction, forced labour, lethal diseases, nationalist ideologies of assimilation, development paradigms and now globalization, challenge the survival of their unique cultures and ways of relating to peoples and the environment. Their "enclavement" as environental activist Mihir Shah states, "is a result of a long drawn historical encounter involving the subjugation of the adivasis by stronger better endowed communities. Driven over centuries further away from the alluvial plains into 'refuge zones'- hills, forests and drylands - in successive waves by communities armed with superior military technology," they revered and protected the forests. That bond the state's mega development policies have ruptured. A vast majority of adivasis, have been displaced from the Kaptai dam (Bangladesh) Mahaveli (Sri Lanka) to Narmada (India).

> ***"I was born in the forest. My ancestors come from here. We are the forest beings, and I want to live and die here. And even if I were reborn only as a fly or an ant, I would still be happy so long as I knew I would come back to live here in the forest."***
>
> ***(Uru Warige Tissahamy 97 years old wisdomkeeper Wanniyala-Aetto or Veddha-Sri Lanka)***

Indigenous peoples' sparse occupation of large areas of land and non-intensive use of resources, has tempted 'outsiders' to see it as an opportunity for 're-settlement' of the landless and for economic exploitation. Globalization has accelerated the flows of investment into extractive industries, thus profoundly threatening the livelihood of many indigenous peoples whose territories are rich in natural resources.

The experience of independence and democracy - for India's adivasis, Nepal's janjatis Bangladesh's indigenous populations and Sri Lanka's Wanniyala-Aetto (Veddhas) - has put at risk their cultural identity, their socio economic equity and their very survival. In Bangladesh, a hegemonic ideology of cultural assimilation produced the militant assertion of a Jumma ethno-nationalism.

"Why do you call us upajati (sub nation)? We have a rich culture, tradition, language, history, land of our own. Tell me whose 'sub' we are. These are you values, not ours, please don't impose these on us. Already, you have played havoc with us and our lives, by imposing your values. Just leave us alone, leave us in peace."

Shubimol Dewan, social activist CHT

In India, the constitutional concern to protect the 'well being' of the adivasi has proved weak and ineffective to prevent mass land alienation and exploitation in the drive for development in the larger 'public' interest. It has resulted in devastating their environment, destroying their identity and taking away their livelihood. But tribal resistance is growing. In Kalinga Nagar, Orissa the state government is bent on developing the iron rich tribal areas into an industrial hub producing 25million tons of steel. But in January 2006, the Adivasis came with bows and arrows to block the clearing of the land for a fourth factory. They had been duped too often - the government could not be trusted to respect their land rights, give compensation and guarantee jobs and resettlement. More and more tribals are being drawn into the Naxalism or as the state describes it 'left wing extremism', widespread in 13 states and 160 districts. Officially, it has been declared the country's most serious internal security threat.

Expropriation of indigenous lands in the name of national development is both a symptom and an underlying cause of the overall failure of states to give adequate protection to indigenous land and resource rights. It is a symptom in the sense that, if indigenous rights were adequately recognized and protected, the resources pertaining to indigenous lands would not be available for exploitation without indigenous consent. It is an underlying cause because often states are opposed to recognizing indigenous rights precisely because indigenous lands are rich in exploitable natural resources or the lands themselves are prime agricultural production zones.

Who are indigenous peoples or populations?

To be 'indigenous' or a 'people' confers rights and a psychological advantage over minority status, as is evident in the use of language to deny their unique status, and the resistance of governments of the region to recognize indigenous peoples. Given the huge diversity of peoples subsumed in the usage of the term - indigenous peoples or populations/ aborigines/ indigenous nationalities/ indigenous minorities/ adivasis/ scheduled tribes/janjatis - there is no internationally accepted definition. Instead, there is a history to the evolution of the concept from 'first nations' towards greater flexibility and accommodation of the self definition of indigenous groups.

Defining Indigenous Peoples:

ILO Convention 107 (1957): "[…] regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization […]"

ILO Convention 169 (1989"): "peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions."

Special Rapporteur Jose R. Martinez Lobo (1983): Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

Para 381: "On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group)."

The Working Group on Indigenous Populations (1982) allowed participation by any indigenous person or representative of an indigenous community, largely on the basis of self-identification. 'Indigenous' representatives from Bangladesh and India, began attending, though their governments do not recognize the existence of indigenous groups in their territory. The text of Declaration on the Rights of Indigenous Peoples (1993) avoids any definition of "indigenous".

INDIA

Adivasi (forest dwellers) are estimated to make up more than 8 percent of the population of India. These 88 million people speak some 200 distinct languages and are concentrated largely, in the tribal belt of central India, with a second concentration in the northeast. These areas also contain the majority of the remaining primary forests of the country. Historically treated as outside the caste system, the adivasis continue to suffer severe discrimination and socio-economic marginalization. British efforts to abolish village autonomy and introduce zamindari (tax-gathering landlords) into tribal areas in the 18th and 19th centuries led to tribal rebellions in today's West Bengal, Bihar and Jharkhand. They responded by removing zamindari and implementing land settlements aimed at securing tribal tenure in these areas.

The 1901 Land Revenue Code prevented the sale of tribal land without permission of the Collector. It was the British who categorized adivasi as 'Schedule Tribes' and established "Scheduled Areas" to protect them from incursions. In central India, British administration promoted registers of individual land title (patta), with all other lands being considered "wastelands" and thus crown lands. The Chota Nagpur Tenancy Act 1908 prohibits tribal to transfer rights in land, and permits transfer to another resident tribal only with the sanction of the Deputy Commissioner.

With the transfer of power in 1947, the largely contiguous tribal belt was distributed over several non-tribal majority states. Indeed all but five states of the Union, there are tribal populations, the most significant concentrations (2001census) being Chattisgrah (38%), Jharkhand (26%), Madhya Pradesh (20%), Orissa (22%), Andhra Pradesh (6%) Gujarat (15%) Rajasthan (12%), Maharashtra (9%) Bihar (0.9%). Indeed there was a prolonged struggle for self rule of tribal concentrations in territory of Jharkhand against the discriminatory colonial relations of the Bihar ruling elite.

In the North -East hill region, with its distinct history, topography and myriad tribal ethnicities, British administrative control had been, at best, shadowy as against the plains areas. The genesis of the myriad movements for autonomy by different ethnic groups in the North-East, lay in the British policy of demarcating the hill areas as 'excluded' or 'partially excluded', with tribal communities living in such areas allowed to continue with their traditional arrangements of self- governance. Constitutional concern - providing for a structure of special autonomies - have failed to meet the aspirations of the newly emerging political consciousness of the tribal groups. The central government has carried out several rounds of reorganisation of the region with tribal concentrations formed into 'ethnic' states - Meghalya 85%, Nagaland 88%, Mizoram 95%, Arunachal Pradesh 64%, Manipur 34%, Tripura 31%, while in Assam the tribal population has become 12%. But, instead, of settling the issue, the creation of new states, had encouraged other ethnic groups to organize movements and agitations demanding greater autonomy and separate states. It has produced the splintering phenomenon of minoritization - the relentless reproduction of 'ethnicities', without translating into equal rights and social justice.

Constitutional Provisions Relating to Tribals

Recognising the special needs of the Scheduled Tribes due to their isolation and socio-economic backwardness, special safeguards against exploitation and aimed at promoting social justice were consolidated under the Fifth and Sixth Schedule of the Indian Constitution. The V Schedule provides for the administration of designated scheduled areas in nine states and the VI Schedule relates to Assam, Meghalaya, Tripura and Mizoram and provides for a special structure of autonomies.

Art 15 (4) & 16(4) makes special provisions for 'backward class' of citizens in education and representation in the public sector.

Art 46 promotes educational and economic interests of Sc and ST and other weaker sections and to protect from social injustice and exploitation;

Art 275: promises grant-in aid for promoting the welfare of STs and for bringing the administration of the ST area up to the rest of the sate.

Art 330, 332, 335 stipulates reservation of seats for STs in the Lok Sabha, State Legislative Assemblies and the civil services.

Fifth Schedule Prescriptions

Art 244 (1) provides for the setting up of Tribal Advisory Councils, a statutory body. Three quarters of 20 member Council shall be tribal MLAs. The Governor is empowered to frame laws and make regulations that -prohibit or restrict the transfer of land; regulate the allotment of land, and money-lending to members of the ST in such area. The Governors have extensive powers to prevent or amend any law enacted by Parliament or the state assembly that could harm tribal interests. Governor is required to submit Annual Reports to the President.

Critique of the V Schedule: Vague and inadequate.

- Governors could have brought appropriate modifications to Acts like the 1927 Indian Forest Act, Indian Penal Code and the CrPC and other mining and land acquisition laws for the benefit of adivasis. Instead, all laws have been routinely extended to the scheduled area.
- Governors are required to make annual reports to the President. In case of Bihar,Gujarat Himachal Pradesh, Maharashtra, Rajasthan and Orissa, no report has been received by the President since 1992. Madhya Pradesh with nearly a third of its population tribal, has not submitted a report since 1990 and Andhra Pradesh since 1986.
- Some adivasi areas were omitted by the President while scheduling. In 1976 the Parliament amended the fifth schedule to enable President to increase coverage. Central government directed the state governments to send proposals for rescheduling. Adivasi area in Kerala, Karnataka, Tamil Nadu and West Bengal remain unscheduled.
- Tribal Advisory Councils have not been set up in all states and where they have, they are not regularly convened. Moreover, as evident in the A P study below, the TAC, although a statutory body, has not acted independently and often comes under pressure from the state government. Also it consists of tribal MLAs who come from outside the scheduled areas, so their commitment to protect the rights of the tribal inhabitants of the scheduled areas is not so strong.

Sixth Schedule Prescriptions

Art 244(2) provides for designation of certain tribal areas as Autonomous Districts and Autonomous Regions, to be administered by constituting Autonomous District Councils and Regional Councils. The District Council will comprise not more than 30 members, four of whom shall be nominated by the Governor and the rest shall be elected. Similarly, there shall be a Regional council for each area constituted as autonomous region. Although these autonomous districts shall not be outside the executive authority of the state concerned, the DC and RC have been empowered to exercise certain legislative and judicial functions.

Benefits of VI Schedule have not flowed down to the weaker section of tribes

- District Councils have been unable to play any significant role in strengthening the planning process at the micro level. Lacking expert inputs in developmental matters the leaders of the District Councils do not take interest in plan formulation, schemes and its monitoring at the micro level effect. Consequently, the councils have neither been able to do anything of a standard in the interest of hill masses nor to involve the poor tribes in development activities either as beneficiaries or as decision makers on any significant scale
- The Schedule was specifically designed to ensure the protection of the minor tribes from the threat of marginalization, domination and homogenisation by the major tribal group under the jurisdictional area of the Autonomous District Councils (ADCs). However, the emerging socio-economic power

structure in the tribal areas does not allow the benefits of the Sixth Schedule to flow down to the weaker section of the tribes. In many District Council areas, ethnic minorities; hardly find any representation in the Councils either by election or by nomination-violation of the provisions of the Sixth Schedule.

- Courts are to be set up at the village level. However, the village councils try only such suits and cases which are not excluded from their jurisdiction by the rules made by the Governor. In Meghalya and Mizoram, any laws made by the District Council or Regional Council repugnant to provisions in the law made by the state legislature, will be void.

- There is the structural weakness of dependence on State Governments for financial grants and allotments. Although, the District Council has power to levy and collect taxes on profession, trade, callings and employments, animals, vehicles and boats, even within the jurisdiction of the Regional Council (The Regional Council has no such power), the District Councils neither enforce the tax regulations strictly nor realises the amount efficiently, resulting in meagre tax returns.

- There is no provision for coordination of the activities of the District Council, the Regional Council and the State Government. The State has no power to review and assess the working of these councils except to approve their legislations by the Governor and to sanction loans and grants for development schemes. As a result, the councils do not surrender the unspent balances of the grants to the State Government.

- Within the councils, over a period of time, due to large development funds available, a nexus has emerged between the neo-rich middle class or classes or rich traders, contractors, bureaucrats and educated, who have emerged from within the tribal society of north east India.

Panchayat (Extension to Scheduled Areas) Act : Empowering Tribals in Governance

The 73 & 74 (1993) Amendments providing for local self governing structures - have been extended to ST-through the Panchayats (Extension to the Scheduled Areas) Act (PESA) 1996. The Act recognizes "tribal self-rule" at the local level, giving greater authority to adivasi to control future land transfers. Gram Sabha concurrence is required by this Act for mining, the auction of mining materials and of entitlements under under the new Forest Rights Bill.

Ministry of Tribal Affairs (1999)

The Ministry of Tribal Affairs being the Nodal Ministry for overall policy, planning and coordination of programmes for the development of tribals, monitors the progress and achievement made by various Ministries/Departments for 22 Tribal Sub Plan States/UTs under Point 11(b) of the 20 Point Programme.

National Scheduled Tribes Finance and Development Corporation (2001). Catalytic agent for financing, facilitating and mobilizing funds from various sources for promoting economic activity of STs living below 'double the poverty line'.

International Obligations

ILO 107 (1957), GOI was among the first countries to ratify it. The integration/assimilation orientation of the convention made it attractive to Indian policy makers engaged in consolidating the nation state. However the revised ILO Convention 169 (1989), was much more problematic as it recognized the distinctive cultural traditions of indigenous and tribal peoples and places them on an equal footing in terms of their contribution to the making of the world's culture.

UN Working Group on Indigenous Peoples: India has resisted the international processes and structures focusing on indigenous peoples, and joined issue with the Special Rapporteur of the UN Sub Commission on Indigenous Population, on the applicability of Martinez Lobo's criteria and definition of indigenous population to the Indian situation and in particular their non dominant colonial conquest status. Indian interlocutors have challenged 'who' are the indigenous populations, who displaced whom and which of the races in India today are descendents of the conquered of the conquerors. (*Scenario of the Seven Percent*)

Living mode of 'non dominant' status

Literacy Rates								
	1971		1981		1991		2001	
	F	M	F	M	F	M	F	M
General population	29.45	18.69	36.23	29.85	52.21	39.29	65.38	54.16
Scheduled Tribe	11.30	4.85	16.35	8.04	29.60	18.9		
Gap	18.15	13.84	19.88	21.81	22.61	21.10		

Source: Planning Commission Tenth Plan

The gap between the literacy rates of ST's and the general population persists and is widening. Adding to this are the problems of huge intra and inter state /district variations in literacy rates. In 1991 census, Lalitpur district of Uttar Pradesh had the lowest literacy of 4.74% for STs in the country. For ST males literacy rate was lowest in Mau district of U.P (3.85%) and for females it was Jalore district of Rajasthan(0.55%)

Population below Poverty line						
Category	1993-94		1999-2000		Percentage Change	
	Rural	Urban	Rural	Urban	Rural	Urban
Total	32.38		23.62		(-) 10.18	(-) 10.04
STs	41.14		34.75		(-) 6.08	(+) 4.10
Gap	14.67	7.48	18.77	11.13	(-) 6.39	(+) 3.65

Source: Planning Commission Tenth Plan

The gap between the poverty rates of the general population and of STs has increased. The incidence of poverty amongst STs continues to be high with 45.86 and 34.75 % living below the poverty line in rural and urban areas respectively.

Financial Flows to ST areas

STs are supposed to benefit from the overall general plan as well as special expenditure allocated to Tribal sub-Plans and special programmes under backward classes. The reality as the study "*Scenario of the Seven Percent*" revealed is that the tribal sector receives far less than their fair share of general sector funds. Citing the 1969 Ao Commission, it demonstrated that development of the tribal areas has depended largely on small outlays under the special sector of welfare of backward classes and not general sector. These have never constituted more than 2% of plan expenditure in all six five year plans schemes; out of total outlay for Backward classes, ST share is 43% .The Planning Commission in 1983 noted that in most areas , STs were left with only Rs 4 per capita per annum as they were denied a share of general plan expenditure - all India per capita being Rs 59.

Affirmative discrimination through reservations has made some impact on the presence of STs in the civil service as well as their participation in democratic processes. However, the majority of tribal communities continue to suffer from deprivation and poverty - the story of displacement sans resettlement; land alienation, indebtedness, deprivation of forest rights and indigenous knowledge rights.

Displacement: Between 1951-1990 in states of Andhra Pradesh, Bihar, Gujarat, Maharashtra, Madhya Pradesh, Rajasthan and Orissa, 21.3 million were displaced of which 8.54 million were tribal, of which only 24.8% have been resettled.

Tribal land alienation: 4.65 lakh cases of alienation of tribal land covering 9.17 lakh acres were registered in the states of Andhra Pradesh, Assam, Bihar, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and Tripura in Jan 1999. Only 2 lakh cases were disposed in favour of 1.56 lakh families covering 5.31 lakh acres. (Ministry of Rural Development)

Crimes /Atrocities against STs: Crimes that attract the provisions of Protection of Civil Rights (1955) & ScSt Prevention of Atrocities Act (1989) has shown an increase from 731 in 1997 to 759 in 1998, declining to 619 in 1999. However, the number of violent crimes registered has steadily increased from 491 in 1997 to 577 in 1999.

Forest Rights:

Forests and tribals share a symbiotic relationship, their cultural and spiritual identity and their livelihood are intertwined with the forest. Pressures of commercial logging, forest conservation policies, wildlife protection concerns, combined with mega development projects and extractive industries - have pushed out the tribal from the forests. Cash for land policies have beggared them and robbed them of their identity.

Forest Acts

The Forest Act of 1864 empowered the British government to declare any land covered with trees, brush wood or jungle as government forest by notification. Adivasi homelands were therefore declared, by law, to belong to the government; and Adivasis became illegal occupants or 'encroachers'.

The Forest Act of 1878, provided for classification of forests into 'protected forests', 'reserved forests' and 'village forests'.

The 1927 Indian Forest Act assimilated all the major provisions of the previous forest laws and remains the main legal basis and Indian law for depriving the adivasis of their forest rights. The imposition of this 1927 Act has led to intense conflict between the Adivasis and forest officials throughout the 20th century.

The 36, 260 sq km of state forest in 1878 were rapidly expanded to 750,000 sq km in 1970s. Forest revenue rose from 5.6 million to Rs. 13,000 million in the 1970s.

The Forest Conservation Act of 1980, placed all forests under the central government and made mandatory central government approval for de-reservation of forest land, thus ending state-level moves. But in 1990 the Union Ministry of Environment and Forests had to issue five circulars for similar purposes. Only Maharashtra and Madhya Pradesh have made even token attempts at implementing them - both after a Supreme Court order. Meanwhile, Joint Forest Management (JFM) schemes tried to involve communities in conservation. But every one of these efforts stayed within the existing structure. JFM committees typically function under the de facto control of the local forest guard.

The consequences of this failure became apparent in May 2002, when the Ministry of Environment and Forests directed the states to evict all 'encroachers' in the wake of a Supreme Court ban on regularizations. The years since have witnessed unprecedented eviction drives., in addition to being under the concerned state, centralizing the power further.

The Wildlife Protection Act of 1972 had severely restricted the rights of Adivasis in the wildlife sanctuaries and removed their rights in national parks. The 1991 Amendment to the Act enables the expansion of the 147 wildlife sanctuaries and 75 national parks covering 4.26 percent of the land area, with the support of the World Bank and other international agencies. The consequence for the adivasis - is the abandonment of their survival activities in the forests.

The National Forest Policy of 1988 did for the first time explicitly recognize that domestic requirements of local people should be the first charge on forest resources. It also emphasized safeguarding their customary rights and closely associating adivasis in the protection of forests. But movement towards a people-oriented perspective has not been matched by reality on the ground. Corruption is institutionalized and destruction of the forest by all parties proceeds apace.

Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 seeks to legally recognise the existing rights of Scheduled Tribes in forests and to change the way the forests are managed in their areas. It recognizes that India's forests can only be saved if we involve the adivasis in their governance, while also providing them sustainable livelihood options that reduce pressure on forests. It makes them secure and empowered stakeholders in the process. In particular, it secures 13 rights for the adivasis that include access to and

ownership of minor forest produce, grazing rights, habitat and habitation for primitive tribes, settlement of old habitation and un-surveyed villages and the community right to intellectual and traditional knowledge relating to forest and cultural diversity. The vested forest rights are heritable, but not alienable or transferable. Significantly, they are to be registered jointly in the names of husband and wife. It proposes a major reform in governance of India's forests by bringing the gram sabha centre stage as the authority for recognition and vesting of the 13 rights provided under the bill. Most controversial is the cut off date of 1980, which many feel predicates conflict with rights of non tribal settlers.

Andhra Pradesh

50% of cultivable land in scheduled caste areas is under occupation by non tribals. The Andhra Pradesh story is one of the failure and ineffectiveness of protective legislation to safeguard tribal rights when they lack the political clout to leverage the democratic system. In AP, the tribals constitute 6 to 7% of the population, so in the larger sphere of state politics their voice goes unheard. When there are revolts the state government rushes forth with loud declarations of ameliorative measures and protective laws. Once the turbulence subsides, the government slides back into apathy. Indeed, the whole process of disempowerment of the indigenous people is done legally by the state.

Dilution of Land Alienation Laws

- Land Transfer Regulation (LTR) of 1959, proscribed the transfer of tribal lands to non-tribals and provided for retrieval of tribal lands illegally acquired by the non-tribals. The working rules were formulated 10 years later.

- LTR extended to Telegana (1963), superseding an existing regulation, the Tribal Areas Regulation of Fasli 1356 which offered effective protection to the tribals against land alienation. Thus an existing protective law was revoked and was substituted by an ineffective regulation.

- LTR of 1970 amended the 1959 regulation making it more stringent. It provided that the non-tribals could transfer their lands only to tribals or to the government, and could not sell them to other non-tribals. It postulated a statutory presumption that land in possession of a non tribal would be deemed to have been acquired from a tribal. A serious lacunae in the law was that it was not given any retrospective effect. Particularly in view of the 10 year vacuum 1959-1969.

- A P Mahals (Abolition and Conversion into Ryotwari) Regulation of 1969, A PMutta (Abolition and Conversion into Ryotwari) Regulation of 1969 and A P Scheduled Areas Ryotwari Settlement Regulation of 1970- the purport of these successive legislations was to tell non-tribals that if they could produce some evidence to show that they were in possession of the lands in the preceding eight years, they could get legal titles ('pattas'). It was at cross purposes with the LTR of 1970 which was aimed at putting the legitimacy of the possession of lands by non tribals to severe test. Moreover, the Scheduled Area Ryotwari Settlement Regulation was given overriding effect over all other Acts and Regulations.

- Successive governments passed a series of executive orders, further diluting the provisions of LTR of 1970, e.g. 1969 order -non tribals occupying less than 2 ½ acres of wetland or 5 acres of dry land should not be evicted; 1979 order exemption ceiling raised to 5 and 10 acres.

- 1988 Amendment repealing the LTR and enabling non-tribals to transfer their lands in the Scheduled areas to other non-tribals by sale. Tribal Advisory Council a statutory body was harangued to endorse the amendment. Government notification could not be issued because of protests but the ambiguity of the situation undermined the protective legislation especially as the Chief Minister was against it.

In 2005, detected cases of non-tribal encroachments were about 70,000, involving 3,15,000 acres. Only a third could be restored to the tribals. (N Subba Reddy *Economic & Political Weekly* April 15, 2006)

Around 90% of India's bauxite, coal, uranium and other minerals, and about 40% of its ion and copper ore, are in tribal areas. Constitutional safeguards have been unable to protect tribal interests. State governments, like in Orissa, are rushing to open up the iron ore rich tribal belt, wooing MNCs. In the last decade, the state government has signed nearly 40 MoUs with various industrial houses to set up plants in tribal land to exploit its mineral riches. Orissa, already has a track record - 22% of its population is tribal

and 62 tribal communities designated as ST. 73 % of the tribal families live below the poverty line. The tribal people own only around 13% of the scheduled area, deprived in the name of development. The state owns 74 % of the land. Officially, 81,176 families from 1,446 villages were displaced due to extractive industry projects from 1950 to 1993 i.e. Rourkela Steel Plant, Hindustan Aeronautics Ltd, and National Aluminium Company (NALCO). UNDP estimates that 20 lakhs have been affected by development projects in the state. Walter Fernandes, a student of tribal displacement estimates 40% were tribal and 25% were never re-settled.

Tribal Resistance & State Force

Kalinga Nagar (2006) in Jajpur district, Orissa 13 plants are planned as part of the project of transforming tribal belt into an industrial hub. Three plants were already up and running. On January 2, 2006, TISCO announced the setting up of its new industrial plant in Kalinga Nagar. When the company started to clear the land, angry tribals with bows and arrows and axes tried to block it, demanding that the affected be paid adequate compensation and proper rehabilitation. The government responded with police firing. By the end of the day one policeman and 12 protesters had been killed.

Indraveli (1981) in the tribal district of Adilabad in Andhra Pradesh, Gonds had gathered to hold a rally and a meeting under the banner of the Ryoytu Coolie Sangham to protest against the alienation of their lands and harassment by the Forest Dept officials. The evening before section 144CrPc was imposed. Armed Police shot down 100 Gond tribals.

Gua, (1980) in Singbhhum district Bihar, 3000 tribals had gathered at Gua to present a memo to the Forest Range Officer and the Block Development Officer demanding their rights to the forest of the area and restoration of their lands. Bihar Military Police with two magistrates arrived. Sec 144 CrPc was imposed and the tribals dispersed to re gather in the local bazaar. BMP fired 37 rounds at the tribals who had their traditional bows and arrows 25 killed and 100 injured.

As evident, there is a history of endemic tribal resistance, increasingly, however, tribal disaffection is getting canalized into the Naxal/Maoist armed struggle for the rights of the poor and marginalized. According to the government, 'left wing extremism' is rampant in more than 160 districts in 13 states. The propensity to deal with it as a 'law and order' issue and by militarizing the situation, has reinforced their desperation.

While constitutional safeguards and state institutions, largely, have failed to protect the rights of tribals, nonetheless there have been significant interventions in support of adivasi rights that indicate the possibility of some redress within the system.

Judicial Agency: Protecting Adivasi Rights against Extractive Industries

Samata Judgement Supreme Court 1996

The Supreme Court in the historic Samata judgement declared that even government lands in scheduled areas could not be transferred to non tribals. At issue was the Andhra Pradesh government's decision to lease tribal lands to private mining industries. Samata, an advocacy and social action group, fighting for the rights of tribal communities and the environment, in 1992 filed a Special Leave Petition in the Supreme Court challenging the legality of the leases. Under the Andhra Pradesh Scheduled Area Land Transfer Regulation of 1970, the law states that tribal land cannot be transferred to non-tribals.

The majority of the Supreme Court held that the word 'person' includes the State Government, and the transfer of land in scheduled areas by way of mining leases to non-tribal people or companies is prohibited by the Fifth Schedule and; and section 3 of the Regulation. However, tribals could exploit the minerals in the scheduled areas, either individually or through cooperative societies with the financial assistance of the State. State instrumentalities (ie state-owned organisations or corporations) were excluded from the prohibition since a public corporation acts in public interest.

However, the Samata judgement has not been able to hold back the explosion of private investment in mining industries. Globalization has spurred state governments to reframe the law to accommodate investment. Andhra Pradesh government in 2000, decided to open up the tribal areas for bauxite mining by a MNC located in Dubai. This stands in violation of the Mining Act of 1957 which prohibited granting

of prospecting license or mining lease to any non-tribal within the scheduled areas. However, concurrence could not be obtained for mining from the Tribal Advisory Council (TAC) despite repeated efforts by the state government.

Experiments in Autonomy: Autonomous Area Councils

Sixth Schedule: District Councils in North-Eastern States

Under Article 244(2), fifteen District Councils have been set up - two in Assam, three in Meghalaya, three in Mizoram, one in Tripura and six in Manipur (in West Bengal the Darjeeling Gorkha Hill Council has not been brought under VI Schedule) which is outside the VI Schedule)-The District Councils have elaborate legislative, executive, judicial and financial powers and have responsibility for primary education, health, culture, social customs, social welfare, forest, land, agriculture, water management, village administration, economic and rural development.

The performances of the Tribal Councils have been disappointing, the deficiencies being both structural and political. Indeed there is widespread cynicism about the functioning of the autonomous area councils as reflected in the remark of an NGO activist working in the Bodo Autonomous area, on devolution of power, enabling self rule and entitlement to rights- "it's a decentralization of corruption". The Bodo Tribal Council (BTC) was constituted following the tripartite accord between the Centre, the Assam government and Bodo Liberation Tigers in February 2003. It substantially expanded the powers of the earlier District Tribal Council (1993).

Tripura Tribal Areas Autonomous District Council (1982)

The Council comprises two-third of the State's geographic size, though the population structure is one-third tribal and two thirds non tribal. Tripura has in the last century been transformed from a tribal majority to a tribal minority state as a consequence of in migration of ethnic Bengalis, with its current tribal population down to 28%. The situation is one of a bitter ethnic feud between the tribals and the settlers from the plains through a convergence of using the democratic process and by means of armed struggle.

The Tripura tribals are determined that in the Tribal Council area the population does not come down to less than 70% .The Council covers 68% of the total area of the state and has thirty members of whom the Governor of the state directly appoints two, the rest being elected. In September 1991, the Council passed a resolution seeking to enforce Inner Line Permit System. In 1997, a bill was passed to set up its own police force. Both initiatives brought the Council in confrontation with the State government in relation to devolution of power and functions. The Council has demanded more powers and direct funding by the Centre under Article 244A of the Constitution. To carry out developmental activities, the Council is dependent on the state government for the disbursement of funds. The state government has been notoriously lax in disbursing the said funds.

Recommendations for Autonomous District Council in Tripura State:

- Allow for greater devolution of financial powers to the Councils.
- Additional tools like the Inner-Line Permits, have to be considered for applicability in the areas demarcated as Autonomous District Councils.
- Home Ministry should recommend direct grants from Planning Commission to Councils as funds allotted to the Rural Development departments of the state government, have in turn to be reallocated to the Council.
- Armed police should be brought under the control of the Council in the Autonomous Areas, as the police tended to subvert the rule of law and bypass the authority of the Councils.
- Necessary powers should be given to the Council in order to enable it to undertake land reforms and surveys of land value and taxation, in the areas covered by their jurisdiction.

(Hebal Abel Koloy, "*Experience of Autonomous District Council in the North East India with special reference to Tripura State*", Calcutta Research Group, Kolkata 2003)

In the structure of the Autonomous Area Councils, the Governor has the overriding power to annul any Act or resolution of a District Council if it is likely, in his opinion, to endanger the safety of India or is likely to prejudice public order and may take such steps as he thinks necessary, and he may even resume all or any of the powers of the Councils. Anthropologist B K Roy Burman (1995) looking at the track record of 'insurgent north east' and the imposition of emergency regulations - Armed Forces Special Powers Act, observed, "those who are aware of the socio-political cross-currents in North east India know that the Sixth Schedule in its present form has reached a road block in the harmonious functioning of the State Government and the Autonomous District Councils".

Many critics argue that there is need to interrogate not only the functioning but also the relevance of the VI Schedule, especially as many of the "areas" which the Schedule was supposed to protect, have graduated from districts into full-fledged States such as Meghalaya and Mizoram. The District Councils in these States, seem to be an anachronism as they overlap the normal district administration and have tended to duplicate the former and become a rival focus of power and financial burden.

Moreover, the Sixth Schedule has an inherent tendency to promote ethnic polarisation and sub-nationalism. It has brought out the clash of interests between the non-tribal valley dwellers and tribal hill dwellers. Further, the Schedule has proved problematic on the issue of representation privileging STs to the disadvantage of the growing non tribal population in these states. The Legislative Assemblies of Arunachal, Mizoram and Nagaland have all but one seats reserved for STs. There is also a need to re-look at the way Panchayati Raj Institutions (PRIs) are working in the North-East. They have been defunct in the region, largely due to parallel traditional structures.

BANGLADESH

Land Hunger & Displacement of Indigenous Peoples

The indigenous communities of Bangladesh constitute 1.13 per cent of the population, and are divided into two groups - of which the plains group make up 40 % and the hill tribes 60%. The ethnic people of the hill group live in south eastern part of the country i.e. the Chittagong Hill Tracts, in two different ecological zones, the valley and the ridges. The plains groups straddle the northern border areas, communities divided by arbitrary delimitation of political boundaries. For example the Garo peoples of Bangladesh plains refer to themselves as Achik people: hill people - the reference point of their world view being the Garo Hills in Meghalaya, India. Ethnic communities that previously lived in contiguous regions have been divided- the Santhals, Garos, Khasis, Chakmas, Tripuras and Manipuris. State resettlement plans have created diaspora enclaves, e.g. tea plantation workers from Andhra Pradesh.

Denying Indigenous Identity

Bangladeshi officials, deny the existence of indigenous communities on its territory, as it entails conceding customary rights. Social scientist Meghna Guhathakurta points out that officials claim that tribes such as Chakmas, Tripuras and Santhals originate outside the national boundaries and are therefore not indigenous. It is significant that the 1997 CHT peace accord between the Jana Sanghati Samiti and the Awami League recognizes the CHT as a 'tribal inhabited area'. Amena Mohsin quotes Rupayam Dewan a member of the Presidium Committee of the JSS saying "they (JSS) had to concede to the term tribal under tremendous pressure for the sake of the Accord, although they wanted recognition as Adivasis, if not nation, since their struggle was based on the contention that they too constitute a nation which they termed Jumma." Recognition of the hill people as adivasis would have put the state under pressure to give the same status to the other ethnic communities. As the other communities are scattered, a spatial categorization sets no precedent for recognizing other tribal inhabited areas in Bangladesh.

In south Asia, as elsewhere, the survival and sustenance of indigenous communities is crucially dependent on legal and political safeguards of their customary rights and practices. Instead, state policies have deliberately denied adivasi customary rights to land and forests, adivasis have been dispossessed and impoverished; mega dams and commercial forestry projects have displaced them and deprived them of their livelihood and identity. State policies of settlement of land hungry, poor Bengali Muslims have put further pressure on the land and transformed the demography of adivasi forest habitats, pitting the adivasis against landless poor Muslim Bengali settlers, backed by the organized violence of the state.

Moreover, Bangladesh's formation, through an intensely nationalist Liberation War based on Bengali language and culture, has produced a political-juridical structure that is mono ethnic, hegemonic and exclusionary. The state does not recognise the existence of ethnic communities. Assimilation into a mono ethnic identity is the sole option, as articulated in constitutional provisions, Art 6, citizens of Bangladesh will be known as Bengalis; Art 3 Bengali as state language, Art 2 Islam will be the state religion; Art 17 provides for a uniform system of education, etc. Bangladesh did not observe 1993 as the International Year of Indigenous Peoples.

In the majoritarian politics of assimilation, the closure of democratic space to leverage rights as a citizen, led a desperate Manobendra Narayan Larma to declare in Parliament in 1972, that he was - a Chakma national, not a Bengali, though he was a Bangladeshi citizen. In the crucible of 25 years of civil war was to be forged a new ethnicity - the identity of the Jumma nation out of the 13 tribes inhabiting the CHT.

The Land Question

Land is at the center of the indigenous peoples' question in Bangladesh. In view of the overwhelmingly adverse land: population ratio, it was inevitable that the state would look to the 'sparsely' populated tribal lands, and especially the CHT would be a magnet. It comprises 10 percent of the land areas, and the total indigenous population is estimated at 1.13%. The majoritarian politics of electoral democracy have marginalized the adivasis as the state responded to the land hunger of poor Bengali Muslims. The settlers lured by the military to risk it all in the CHT, were the poor and landless from the tidal flats of south Bengal.

The pressure on land was compounded by development paradigms that ignored the devastating consequences of big dams for the adivasis whose lands were appropriated in the public interest. The adivasis allege that they have been dispossessed from their lands through deliberate government policy of non recognition of their customary rights over land. Jhum has been the dominant mode of cultivation in the hills, involving the notion of community ownership of land. This was first challenged by the British colonial power:

- Colonial state declared all land in CHT as government land; however, the tribals were given tenancy rights .
- CHT Manual of 1900 - Art 34 & 36 prohibited sale of land and resettlement of non residents without prior approval of District Commissioner
- Successive governments after independence, East Pakistan/Bangladesh have eroded the constitutionally protected status of the CHT as "excluded" area.
- Under Pakistan administration, in the CHT, the Kaptai dam was built as part of the Karnafully Multipurpose River Valley Project in the 1960s, inundating 40 % of prime arable land and displacing nearly 100,000 hill people. Some 54,000 became refugees in India and were canalized to then NEFA/ Arunachal Pradesh to form a buffer against the Chinese.
- The Bangladesh government by the 1979 Amendment Rule 34 of the CHT Manual - did away with the restrictions against settlement of CHT lands by non residents. Between 1979-84, an estimated 400,000 Bengalis were settled through government sponsored resettlement schemes on what the government said was Khas land, and the hill people claimed as communal or traditional land. Rising resentment led to the creation of an armed insurgent group and 25 years of civil war. Conflict and military repression led to 50% of the indigenous population fleeing the CHT. Some 64,000 sought refuge in India and 600,000 became internally displaced. An accelerated policy of settlement, saw the non tribal ethnic Bengali population in the CHT jump from barely 9 % in 1947 to 45 % in 1991.
- Reservation of Forests into different categories like Resreve Forests, Protected Forests and Unclassed state forests resulted in the deprivation of forest dwellers of their customary rights.
- Land acquisition by the military for the construction of camps and cantonments further encroached on their customary rights.
- Plains tribal are protected by the legal legacy of the colonial Chota Nagpur Tenancy Act 1908. The government recognizes special tenure status of lands falling within traditional domain of 'aborigines'

(SAT 97) and is empowered to notify aboriginal castes or tribes for purposes of this section. However, Santhals, Garos and Bhils have lost their lands and have been marginalized by the state's promotion of commercial forestry and national park.

- Enemy Property Act (1965) /Vested Property Act (1974) and complicit Bengali land registry officials along with land hungry Bengali settlers, have combined to dispossess the communities. Migration to urban areas and across the border is a testimony to their dispossession. Santhals maintain they have lost 80% of their land.

Endangered Communities

Garo community, concentrated in the forests of north Mymensingh and Madhupur Garh, practiced Jhum cultivation involving communal ownership of land. As the state began to settle the areas with Bengalis, the ecological pressure on the land obliged the Garos to shift to wet rice cultivation, introducing private ownership of land. This has undermined the matrilineal basis of the society as land is now registered in the name of male members.

Also, Madhupur Garh, the traditional habitat of the Garos, was the site of the second development project for rubber plantation in 1987. It did not involve the local people. Not only did it take away their prescribed lands but also land registered with the revenue Department.

Institutions of law and order, are discriminatory in their response to adivasi grievances. Indeed, the culture of impunity has greatly increased the vulnerability of the Garo community. Bangladesh daily, Prothom Alo (11 March 2002) reported a series of violent killings and sex based crimes against the Garo community, and the lack of police action or worse police entrapment of the victims.

For example - Nov 8,1999, three Garo girls of Shatria village had gone to collect potatoes in the Teak forest in Madhupur National Park. A Forest gurad attempted to rape one of them. Adhir Dopho, working in his pine apple garden nearby, rushed to her rescue. He was shot and died of his injuries. His wife lodged a complaint with the police. Meanwhile the Forest Guard, Abdur Rahman filed a counter case accusing the victim of attempted murder. No investigation was carried out and the cases stand.

Mr Benedict Mangsang, ex Chairman of the Madhupur Gahr and Committee to Protect land Rights protesting against the killings of tribal peoples stated, " We tribals are oppressed, neglected and denied our rights. One after another, the lives of the mandi/garo tribals are being sacrificed. We want justice for these murders".

It is estimated that Garo's have dwindled to less than 16,000 and are threatened with extinction.

Survey of Garo and Santhal Tribal students

Dhaka and Rajashahi divisions (1999) The independent survey revealed deep disaffection with the state and the living experience of discrimination and deprivation.

All the Garo and Santhal respondents held the state responsible for the plight of the adivasis - dispossession from land and forests resources, lack of opportunities in the job market, and their exclusion in the cultural and political sphere of Bangladesh.

- On feeling discriminated, 80% of Santhals respondents and 95% of Garo's complained of discrimination. "Many Garos maintain that they have been denied jobs because of their flat noses. In hotels and restaurants, they are served in separate tea cups".
- On good relations with Bengalis, 32% of Santhal respondents and 30% of Garo respondents said they had good relations with Bengalis.
- On matrimonial relations, 53 % of Santhals and 40 % of Garos had matrimonial relations with Bengalis (Garo and Santhal women marrying Bengalis)
- Self identification as adivasi - 90 % of Garos identify themselves first as Garos; Santhals 85% (consolidation of ethnicity).

(Amena Mohsin 2001)

Chittagong Hill Tracts: Limits of Peace Accords

In November 1997, the Jana Sanghati Samiti and the Awami League government of Bangladesh, signed a peace accord bringing to an end 25 years of armed insurgency for self rule against the state of Bangladesh. The Bangladesh state's policies denied the cultural identity of the tribals, deprived them of their customary rights to land and rode roughshod over their interests in the establishment of development projects. Matters came to a head with the policy of mass settlement, subsequently accelerated as a counter insurgency strategy. From being 91% of the population in 1947, the indigenous community was reduced to 55% in 1991. The conflict pitted the CHT tribals against the Bengali settlers backed by the organized violence of the state. It was brought to an end by the signing of the 1997 CHT peace accord, not least prodded by Indian interest in the return of the refugees.

Broadly speaking, the Accord provides for:

- Devolution of power to Hill District Councils, Regional Councils and the CHT Ministry
- Establishment of a land commission to resolve land and natural resource right claims;
- Recognition of the cultural integrity of the indigenous peoples and CHT as a 'tribal' inhabited area
- Withdrawal of military forces from CHT and the de-commissioning and rehabilitation of JSS forces.

The Accord has no constitutional validity; it is an executive order and already, the successor BNP government has put a question mark on its implementation, arguing that it undermines Bangladesh's sovereignty. The peace accord has been contested by both tribal and Bengali populations in the CHT. Frustration over the lack of significant progress on land and demilitarization issues, has undermined support for the accord. Moreover, government ambivalence if not opposition, has emboldened a fresh spurt in violence that has disrupted the reintegration of the displaced.

Return of the Displaced: The Accord was to pave the way for the return of the hundred thousands who had been displaced. Amnesty International reports estimate that more than 50 % of the indigenous population fled during the conflict - 64,000 crossing the border into India and 60,000 dispersed as Internally Displaced persons. But without a functioning mechanism to adjudicate the land issue, there can be no stability. The proposed Land Commission has yet to start functioning. At issue is the basic tension between the customary land rights of the indigenous peoples and the rights of the landless poor Muslim Bengali settled in the CHT. While the rights of the tribal population have been regulated by local traditions and are not registered in public records, the Bengali settlers have obtained official documents certifying their ownership of the land. Many Bengali settlers, backed by the military and the BNP, have refused to give up the land to the returning indigenous people.

Poverty and livelihood opportunities play a significant role in suppression and repression, this applies not just to minorities, though by virtue of being minorities they are suffer in more particular ways. Afsan Chowdhury describes this as producing 'Biharification, that is the role of a population group as proxy repressors in return for livelihood options'.

It is estimated that about 30,000 returning refugees, that is, about a half, have not been able to regain possession of their land - thus placing them in a situation of internal displacement upon return to the CHT (AI Feb 2000) For the internally displaced, the land situation has not changed significantly since the civil war ended in 1997. A government task force created to supervise the rehabilitation process, complied a list of 128,364 families (500,000) of which 90,208 were indigenous and 38,156 Bengali.

The BNP government has begun actively discriminating in favour of the Bengali settlers. In July 2003, the government suspended rice rations to the 65,000 tribals IDPs, while continuing supplies to 26,000 Bengali settlers. More insidious, is the government's decision to settle more than 20,000 Bengali families On 26 august 2003, for the first time since the accord there were violent clashes - Bengali settlers backed by the army attacked tribal villages.

As Amena Mohsin argues, "the signing of a peace accord or for that matter signing of any contracts with members of ethnic communities and the government are not a solution to their problems, nor do these documents ensure them their rights. The latter requires creation of spaces and a truly democratic

environment and institutions, that requires us to go beyond out present conception of (mono-ethnic) nation state and re-imagine the state."

Politically voiceless: In a 300 member National Assembly, there is no scope for the ethnic minorities to make their presence felt in decision making. There is no policy of reservation for ethnic communities; though there is reservation for the spatial territory of CHT -three seats. State policies of settlement of Bengalis in the CHT, has transformed the demographics reducing the tribal majority so that today the non tribals constitute 50% of the population. Moreover, the money -muscle imperatives of the electoral process predicate that even when two tribal candidates get elected they have to belong to one or the other mainstream party in Bangladesh's bi polar polity. The 1977 Accord has not resulted in an expansion of field of democratic rights for indigenous people.

Post Accord, the Government unilaterally declared that the Hills would be developed through eco tourism. Reserve forest land was taken for the development of eco parks Many poor indigenous peoples who had taken refuge in these government lands were dispossessed.

Institutional Structures: Ministry for CHT Affairs

This is in addition to the decentralizing structure of the Hill District Councils and the Regional Council for the administration of the CHT. The Ministry was not a demand of the Hill people. It has created competing centers of decision making, bickering and lack of coordination. The result is that these structures for devolving power have been undermined and central control strengthened. Moreover, other ethnic communities are resentful that there is no wider Ministry of Tribal Affairs.

NEPAL

Janjatis: Awakening of a Dormant Indigenous Consciousness

Nepal's janjatis or indigenous nationalities have been at the forefront of mass movements for socio-political transformation. In 1990 janjati women and men were a substantial constituent of the pro democracy movement - only to be institutionally excluded in the new order ushered in by multi party democracy, discriminated on the basis of caste and disadvantaged by region in a highly centralized unitary state. The Maoist movement tapped the ethnic communities as an important constituency for mobilization, privileging class over ethnicity. And in the last populist push against the autocratic monarchy in 2006, they were out on the streets.

Will the Constitution making process address their concerns for equal rights and more - protection of their customary land rights, their rights to forest produce, their right to their own language and religion and their right to participate in public life? In the 1990 Constitution, Art 18 guarantees the cultural and educational rights of every community to preserve and promote its language and culture; Art 26 envisaged promoting the interests of economic and socially backward groups. But there was never the political will to translate this into policy.

Will the new Constitution restructure Nepal's unitary structure and provide for a federal framework that will foster devolution of power from Kathmandu's highly centralized power structure and make for a more balanced development of Nepal's neglected regions, largely inhabited by the janjati's. In Nepal janjati - indigenous consciousness has been relatively dormant though the emergence of radical ethnic movements - e.g. Khambuwan Liberation Front and the Maoist support for the formation of autonomous regions - Magrant Autonomous Area, is a foretaste of growing indigenous consciousness. As yet there is no 'ethnicization' of conflict, failure to take the opportunity and safeguard the customary rights of ethnic communities and to promote social and economic justice, may push Nepal to join its neighbours.

Nepal's janjatis or indigenous populations taken as a whole constitute 37% of the population according to the 2001 census, though a more rigorous caste/ethnic and linguistic survey would reveal that the number of indigenous peoples is much larger, argue Nepali social scientists. Only in 1977, the Nepal state accorded formal recognition to the existence of 59 indigenous populations, called 'indigenous nationalities'; prior to that they were classified as tribal or ethnic groups who coincided with a distinct caste known as Matawali ("liquor-drinking caste"). 'Nationality' was defined as those indigenous and ethnic groups who have their

own traditional homeland, mother tongues, religion and culture and who do not fall within the fourfold Hindu caste hierarchy. A government sponsored report of the Academy for Upliftment of Nationalities in 1996 defined the term janjatis according to nine fundamental attributes i) distinct collective and cultural identity ii) Traditional language, religion and culture, iii) traditional social structures based on equality, iv) traditional geographic area, v) written or oral history, vi) we feeling, vii) no decisive role in politics and government viii) indigenous peoples and ix) self identification as indigenous.

Nepal's unitary structure and highly Kathmandu centric functioning has produced extreme disparities and neglect resulting in a convergence of underdeveloped regions and areas inhabited by indigenous nationalities. Nearly 58% of indigenous nationalities are below the poverty line. The Human Development Index (HDI) of the indigenous nationalities lies in between the Dalits, who are at the bottom of the social ladder, and the other caste groups. Nonetheless, there are huge variations amongst the janjati communities which are at dfferent stages of development from nomads to the Newar community which is cosmopolitan and sophisticated. The Thakali and the Newar score high on HDI, while the indigenous Limbus score lower than Dalits in terms of income. Thakali score higher than Brahmins in terms of literacy rates, while Newars are relatively well-represented politically. However, the "development" of these two groups has been accompanied by loss of identity, religion and language. (Nepal Human Development Report 1998)

No Recognition of Customary Land Rights

Nepal's structure of domination by the CHEM group, and its institutionalized exclusion of the other castes and dalits, has particular implications in relation to disadvantage and discrimination suffered by the indigenous populations as a consequence of their customary rights and practices. State land reform policies (1960) have ignored customary land rights. Also continuing encroachment on their traditional habitat and exploitation of natural resources has destroyed the traditional subsistence land -water - forest balance with several indigenous communities facing extreme insecurity of existence. For example, the Limbus are on the verge of extinction. The traditional communal land tenure system of the Limbu janjati group in the Limbuwan region in east and north east Nepal, was overridden by the 1960 land reforms, dispossessing the Limbus. Multi-party democracy has not halted their destitution with 71% of Limbus being pushed below the poverty line.

Homogenizing the Culture

The state backed dominant cultural ethos is that of Bahunism (Brahmanism) reflecting the hegemony of the values of the Bahun Chettri hill elite. Anthropological surveys and writings on Nepal suggest that the "State has (mis)used cultural weapons such as Hinduisation, Sanskritisation and Bahunbad (Brahmanism) against the minority and /or indigenous ethnic groups in order to forcibly integrate them under a homogenizing and hegemonic authority that operates against religious and ethnic pluralism and cultural diversity", argues Krishna Bhattachan an influential anthropologist belonging to an indigenous community.

According to the Nepal Federation of Nationalities (NEFEN) there are more than 25 constitutional provisions and more than 40 legal provisions that are harmful to Indigenous Peoples In some cases, discrimination through omission has occurred: for example, in the equality provision, among the various spheres mentioned, language is not mentioned, facilitating discrimination between native languages..

Mulki Ain Part IV Sec 7 of Nepal's revised national code of 1963 prohibited killing of cows, and provides punishment up to 12 years imprisonment. The regulation violates the rights of indigenous communities which eat beef. Indigenous communities suffer from an insecurity of the intangible cultural heritage, the dislocation of life cycle rituals especially with displacement; the social undermining of folk beliefs and traditional healing practices; the loss of indigenous languages and dialect with no state support for their survival.

Indigenous language rights: Articles 18 (1 & 2) provides for every community to enable it to preserve and promote its language, script and culture, and to operate schools up to the primary level in its own mother tongue for imparting education to its children. But the government has neither offered any help or support to any primary school in the matter of teaching in the various mother tongues, nor has developed curricula and text books in these different vernacular languages. The mother tongue has not been made the medium of instruction in literacy and girl child education programmes either.

Government Policies

Growing indigenous consciousness and increasing janjati activism inspired by the assertion of indigenous peoples on the international plane as well as the radical influence of the Maoist movement which has transformed poor disadvantaged janjati peasants into political protagonists - has moved the government to initiate schemes to uplift the status of indigenous populations. The international donor community in Nepal has also been active in raising indigenous awareness and strengthening capacity.

Development Plans of Nepal - Ninth Plan (1997-2002) introduced some welfare and other programmes geared towards indigenous nationalities, but the outcomes were disappointing as poverty levels were found to be increasing. Tenth Development Plan (2003-2007) represented a shift in the policy paradigm towards indigenous nationalities as their social and economic inclusion in mainstream development is an explicit poverty-reduction goal.

Kamayia system abolished (2000) - the bonded labour system, known as kamayia and affecting mostly members of the Tharu indigenous nationality, was abolished. However, the absence of a follow up policy of economic support reintegration of the kamaiyas, has resulted in extreme hardship and privations for the 'freed' kamaiyas.

National Human Rights Action Plan, under the Ministry of Local Development, envisages enactment/strengthening of related national law and the updating of data on indigenous nationalities, the enhancement of their employment opportunities and the promotion of indigenous technology. Its implementation has been virtually non-existent. Local Self Governance Act (1999) provides for the participation of all people, including indigenous nationalities, in local level decision-making and for the nomination, from amongst them, to the council and board of the local bodies. The Act emphasises that while preparing their development plans, the Local governing bodies should give priority to projects benefiting, among others, members of indigenous nationalities. However, the Act was promulgated without taking into account existing traditional governance structures for decision-making and land and resource management. There is the justifiable concern that the Act legitimises and perpetuates existing power relations and patterns of exploitation. Indigenous peoples are often underrepresented in local governance institutions, which, continue to be dominated by non-indigenous people and traditional caste hierarchies. Furthermore, local governance institutions are not allowed to function in indigenous languages which precludes meaningful participation for many.

National Academy for Upliftment of Nationalities (2001). Parliament passed a bill to set up the Academy.

Indigenous Communities Organise

Nepal Federation of Indigenous Nationalities (NEFIN) set up in 2003, is an umbrella organization bringing together civil society organizations representing the country's 59 indigenous nationalities. NEFIN is the only legally recognized representative organization of Nepal's indigenous nationalities. It chooses the Vice-Chairperson of the NFDIN and runs the Janjati Empowerment Project under the enabling State Programme, supported by DFID.

NFDIN, NEFIN Adivasi-Janjati Declaration on ILO Convention No. 169 and peace-building. The Declaration states that the ratification of Convention No. 169 "has the potential to address the root causes of the ongoing conflict in Nepal by addressing the major issues of exclusion raised by indigenous nationalities and finding solutions in a participatory manner". It calls upon the Government to ensure proportional representation of indigenous peoples, including indigenous women, in the peace process and in all political structures from local to national level. It demands the repeal or amendment of all discriminatory legislation through broad-based consultations with representative indigenous organizations. It asks for the recognition and respect of indigenous peoples' customary law and institutions, as well as their rights over traditionally occupied territories, lands and forests. It demands the recognition of indigenous languages as official languages of Nepal, the use of these languages in the administration and judicial systems and access to education in vernacular languages by indigenous children.

The Declaration requires the respect of indigenous peoples' right to citizenship and the acceleration of the process of issuance of identity cards to all the indigenous population. It also asks for the revision of the present list of 59 recognized indigenous nationalities and the desegregation of data by ethnicity and gender.

Affirmative action for indigenous peoples in skills development, vocational training and access to employment is signaled out as key to raising their employment levels and employability. Within all programmes, the distinct needs and barriers facing indigenous women as well as their heterogeneity is highlighted for attention.

The Declaration also calls upon indigenous nationalities and their representative organizations to ensure the proportional participation of indigenous women, to tackle gender discrimination within indigenous communities and to bear in mind also the plight of indigenous communities living in remote rural areas. The international community is required to undertake prior consultation with indigenous peoples, including indigenous women, whenever they intend to launch initiatives that may affect them and to set up an inter-agency working group, participation of indigenous representatives, for the development of indigenous nationalities and the establishment of lasting peace. (20 January 2005).

SRI LANKA & PAKISTAN: THREATENED COMMUNITIES

Sri Lanka

The Veddhas ('hunters'), a term imposed on them by outsiders or Wanniyala-Aetto ("forest-dwellers") are the indigenous peoples of Sri Lanka. They are very small in numbers and have faced successive displacements and resettlements since the mid-1930s and 1940s when the large irrigation and colonization schemes were launched in the Polonnaruwa and Mahiyangana regions. The forestland, which was home to the Wanniyala-Aetto, was eroded further when the Gal Oya scheme was finalized in the 1950s. At that time, a Veddha Welfare Committee was set up as part of the Backward Communities Development Board to accelerate the process of modernization of the Wanniyala-Aetto.

Victimization of Indigenous Peoples

U Kekula Ratnayake of Dambana, a member of the Adivasi (indigenous) community was illegally arrested and falsely charged by the Mahiyangana police because he insisted on speaking in the Adhivasi dialect when the police questioned him. In Sri Lanka, many minority populations do not speak Sinhala, the language of administration in all of Sri Lanka except the north. After struggling with the case for over two and a half years, the victim was acquitted by the court on 11 July 2006. However, no disciplinary and legal action has been taken against the Mahiyangana police till date.

On 26 December 2003, Mr. U Kekula Ratnayake of Dambana, received a police message that instructed him to visit the Mahiyangana police station in connection with a complaint made by a village postman. The postman was angry at a media story that reported that he illegally opened mail that was addressed to the Adivasi community and pilfered the monetary donations contained in them. He suspected that Kekula was the media's source.

When Kekula went to the police station, he was wearing a traditional garb carrying a short mammoty (sharp agricultural implement) on his one shoulder. When the police began to question him, he insisted on speaking his traditional language, the Adivasi dialect that the police could not understand. After failing to get Kekula to speak in Sinhala, an irate Officer-In-Charge (OIC) of the Mahiyangana police arrested him and charged him with a fabricated criminal offence. (AHRC August 2006)

In the mid-1970s they were forced to abandon part of their traditional lands as a consequence of the construction of the large-scale irrigation Mahaveli project. Large tracts of forestlandf were logged, 11,000 hectares of the Wanniyala-Aetto's traditional hunting grounds were clear-cut and thousands of Sinhalese and Tamil settlers moved in.

In 1983, the forest they lived in became part of the Maduru Oya National Park and they were no longer allowed to remain; they were denied access to the park for wildlife hunting or forest produce gathering. Some Wanniyala-Aetto disobeyed these instructions and casualties occurred. They had to move to buffer zones and rehabilitation villages outside the forest in rice-growing areas totally unfamiliar to the Wanniyala-Aetto, with disruptive effects on their diet and health.

In December 1997, further to an impact assessment study of displacement and forced assimilation on the Wanniyala-Aetto, the President of Sri Lanka declared the Government's intention to return the forest to

them. The terms and conditions of the restitution of their traditional lands were negotiated between the two parties. These included the Wanniyala-Aetto participation in the management of the park. But no such progress has occurred since, and the Wanniyala-Aetto are asking for increased international and national support to the implementation of the 1998 government policy which provides for their return to their ancestral lands. Today the Wanniyala-Aetto are on the verge of extinction and live on public welfare.

Pakistan

State nationalist ideology of promoting Islam, has inculcated an official culture that has little tolerance or respect for Pakistan's religious, ethnic and socio-cultural diversity as a whole and which has had particularly devastating consequence for the survival of its very small indigenous community. Pakistan does not officially recognize the existence of indigenous communities and therefore there is no system of separate census enumeration. The size of Pakistan's indigenous groups is not known.

As elsewhere, the vulnerability of tribal groups and indigenous peoples has increased manifold in the wake of commercial logging, the construction of big dams and corporate agricultural farming. The government did not consider the adverse social, environmental and livelihood impacts on indigenous boat peoples, including Kihals, Jhabils, Mors and Mohanas, during the planning and implementation of water resource development projects. Voiceless and with no capacity to influence the decision making process, and with no constitutional structure of recognition or protection of their rights and identity, tribal and indigenous communities like the Kihals and Mors have lost their customary rights over natural resources and are threatened with extinction.

The Kihals are a riverine indigenous group living in the upper Indus region. Displacement from their traditional lands and loss of livelihood has undermined their identity. Kihals and Mors are considered low caste non-Muslims in some areas. A considerable number still make their living through fishing and basket making - their traditional livelihoods - supplemented by seasonal agricultural labour; but some have abandoned these activities and started farming near the river.

Plans to construct a series of upstream storage and irrigation projects under Pakistan Water Vision 2025, ignores the existence of the boat peoples. This project is an integral part of the Interim-Poverty Reduction Strategy Paper (I-PRSP), but the document is blind to the adverse impacts on indigenous boat peoples, and lacks any measures to mitigate them. The recently prepared Pakistan Water Sector Strategy and the draft National Water Policy also pay little attention to the rights of indigenous and tribal groups. The only exception is the draft National Resettlement Policy that mentions and, to some extent, recognizes the rights of indigenous peoples. However, it lacks specific provisions with regard to the mega-water development projects and subsequent impacts on indigenous peoples. International financial institutions (IFIs) have also until very recently ignored the impacts of these processes on the identity and livelihoods of these indigenous groups.

select references

Ahmed Feroz edited *Ethnicity and Politics in Pakistan*, Oxford University Press, New York 1998.

Ahmed Khaled, **"**Pakistan: Violations of the Rights of Minorities in Pakistan", in Sumanta Banerjee edited *Shrinking Space* SAFHR/Manohar, Kathmandu 1999.

Amnesty International *Legal reforms on PA Act SC ST– Recommendations to GOI*, 30 Nov 2000

Anand Javed, "*India: Minority Rights in India: Constitution and the Reality*", in Sumanta Banerjee edited *Shrinking Space* SAFHR/ Manohar, Kathmandu, 1999.

Ansari, Iqbal A "Introduction" in edited *Readings on Minorities* vol II Institute of Objective Studies, New Delhi 1996 and Ansari A. Iqbal, edited *Readings on Minorities: Perspectives& Documents Vol.1, II & III*, Institute of Objective Studies, New Delhi 1996.

Aurora, Balveer and Verney Douglas edited *Multiple Identities in a Single State: Indian federalism in a Comparative Perspective*, Konarak, New Delhi 1995

Banerjee, Sumanta "*Minorities in India*", Unpublished paper prepared for The Other Media, Delhi .2005

Banerjee, Sumanta edited *Shrinking Space: Minority Rights In South Asia, SAFHR/ Manohar* Delhi, 1999.

Baruah, Sanjib "From a Frontier to a Post-Frontier: Rethinking Northeast India's Developmental Challenges" presented at a workshop conference on North East development Perspectives in Centre for Policy Research, New Delhi, Aug 26, 2006

Bhattachan, Krishna *Consultation with and participation of indigenous peoples in decision-making in Nepal*, a paper prepared for the National Dialogue Conference on the promotion of ILO Convention No. 169 on Indigenous and Tribal Peoples and Peace-building in Nepal Kathmandu, Nepal, 18-19 January 2005.

Bhattachan, Krishna"Nepal: Minority Rights in Predatory Nepalese State" in Sumanta Banerjee edited *Shrinking Space* SAFHR, 1999.

Bhattachan, Krishna **"**Sociological Perspectives on Internal Conflicts in Nepal" in edited volume *Comprehensive Security in South Asia Ethnic Dimensions* Delhi Policy Group, 2000

Borbara, Sanjoy A Report on the Third Civil Society Dialogue on Human Rights and Peace focus on "*Experiences on Autonomy in East and North East*", Calcutta Research Group, Kolkata 2003

Bose, Tapan K "The Bhutanese Refugee Crisis: Failure of Bilateralism and why India Must Intervene" in edited P.R. Chari, et al., *Missing Broundaries: Refugees, Migrants, Stateless and IDPs in South Asia*, Manohar, Delhi 2003.

Bose, Tapan K *Protection of Refugees in South Asia Need for Legal Framework*. SAFHR Paper Series – 6, Kathmandu 2000

Bose, Tapan & Manchanda, Rita edited *States Citizens and Outsiders*, SAFHR, Kathmandu, 1997

Capotorti, Francesco "*Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic*

Minorities," UN-Doc./CN. 4/Sub.2/384/Rev.1 and *The Protection of Minorities under Multilateral Agreements on Human Rights* in The Italian Yearbook of International Law, 1976, II, 14 and *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, Geneva UN Center for Human Rights, UN Doc E/CN.4/Sub.2/384/Add.1-7.

Chaudhury Ray Basu Sabyasachi, Das Kumar Samir, and Samaddar Ranabir, edited *Indian Autonomies: Keywords and Key Texts, MCRG &* SAMPARK, Calcutta 2005.

Christian Liberation Front "*A Report on Rising Intolerance Towards the Religious Minorities of Pakistan*", Research & Advocacy cell, CLF, Lahore

Coomarasawmy, Radhika "Through the Looking Glass Darkly: Politics of Ethnicity" Committee for Rational Development (Sri Lanka) in *The Ethnic Conflict: Myths, Realities and Perspectives* . New Delhi Navrang (1984)

Consortium of Humanitarian Agencies "*The Promotion and Protection of Human Rights*": A Training Manual, CHA, Colombo 2002

"*Cultural Survival Sri Lanka's Indigenous Wanniya-aeto: a case history*". Report to the Sri Lanka National Committee for International Decade of World Indigenous Peoples Last accessed on May 1, 2006

'*Federalism and Protection of Minorities in India*' Report of Workshop organized by Academy of Third World Studies and South Asia Forum for Human Rights, Jamia Milla University , Delhi February 27-28, 2004

Haris Gazdar "Counter –insurgencies in Pakistan. *Economic and Political Weekly* May 20, 2006

Ghai,Yash edited *Autonomy and Ethnicity: Negotiating Competing Claims in Multi – Ethnic States* , Cambridge, Cambridge University Press, 2000.

H. Gurung: "Affirmative action in Nepalese context", in M. Rijal (ed.): *Readings on Governance and Development* (Vol. IV), 2005, Institute of Governance and Development IGD, Kathmandu.

Human Rights Commission of Pakistan, "*Ethnic and Language Rights II*" Report of the National Consultation on Status of Minorities, HRCP, Karachi, July 27-28, 2001.

"*Minority Rights in Pakistan: A Report*", HRCP Karachi, 12, 2003.

State of Human Rights in 2004 edited by Kamila Hyat Khan and Latif Rehan , Lahore 2005

Human Rights Watch: "Bhutan"

International Centre for Ethnic Studies & Canadian Human Rights Foundation "*Manual: Protecting Minority Rights and Defending Diversity in South Asia*" Regional Workshop of Human Rights Organizations, Waduwa Sri Lanka Oct 4-9, 2003, ICES _CHRF rev edition 2004.

India Planning Commission "*Tenth Five Year Plan 2002-2007*" (Scheduled Tribes)

Jayasundara, **"**The Dichotomy of Security: The Case of Sri Lanka" in edited volume *Comprehensive Security in South Asia Ethnic Dimensions*", Delhi Policy Group.

Katel, Narayan "Bhutan: Minority Rights in Bhutan" in Sumanta Banerjee ed. *Shrinking Space* SAFHR, 1999

Khan Rasheeduddin edited, *Rethinking Indian Federalism,* Inter University Centre for Humanities and Social Sciences Indian Institute of Advanced Study Shimla,1997.

Koloy, Hebal Abel "Experience of Autonomous District Council in the North East India with special reference to Tripura State" presented at Third Civil Society Dialogue on Human Rights and Peace, focus on Experiences on Autonomy in East and North East, organised by Calcutta Research Group, Kolkata 2003

Lawoti, Mahendra "Racial discrimination towards the indigenous peoples in Nepal" Non-government report for the *Third World Conference Against Racism,* report presented at the National Conference of the NPC in Kathmandu, 26 April 2001

Lawoti, Mahendra "*Towards Democracy in Nepal*", Sage, Delhi 2005

Mahajan Gurpreet *Identities & Rights: Aspects of Liberal Democracy in India,* Oxford University Press, Delhi 1998

Manchanda Rita 'Conflicts and the Politics of Peace in South Asia' in R.N. Kumar and Sonia Muller-Rappard edited *Critical Readings in Human Rights and Peace*, SAFHR- SHIPRA Publications, 2006

Mohsin Amena, "Ethnicity and Conflict**:** The Bangladesh Case" edited volume *Comprehensives Security in South Asia Ethnic Dimensions*, Delhi Policy Group, 2000

Najiullah Syed *"Representation of Minorities in Civil Services"*, Economic and Political Weekly, Feb 25, 2006, pp 688-689

Nesiah Vasuki "*Federalism and Diversity in India*" in Yash Ghai edited "*Autonomy and Ethnicity* Cambridge University Press, 2000

Pan Christoph, and Pfeil Beate Sibylle**,** *Ethnos: National Minorities In Europe Handbook* Braumuller, Wien, 2003.

Parekh Bhikhu, *Rethinking Multiculturalism Cultural Diversity and Political Theory*, Palgrave New York, 2000.

Perera, Jehan "Sri Lanka: Minorities in Sri Lanka" in in Sumanta Banerjee edited *Shrinking Space* SAFHR, Manohar, Kathmandu 1999.

Petricusic, Antonija "*Introductory presentation on minority rights in international law*" European Academy of Bolzano, Department Minorities and Autonomies, Bolzano Italy 2005. See Reader for South Asian Workshop on Combating Racism, Xenophobia and Discrimination against Ethnic Minorities and Indigenous Peoples, Kathmandu, 15-25 May 2004

Philipson Liz and Thangarajah Yuvi edited "The Politics of the North – East" *Sri Lanka Strategic Conflict Assessment series* (2000-2005)" The Asia Foundation Kininkrijk der Nederlanden, Colombo 2005.

Rahman, Ashaar **"***Religious Minorities and Extremism: A View of Contemporary Realities in Pakistan*" Minority Rights Group, London 2004.

Rahman, Ibn, A '*Minorities in South Asia*' Paper presented at the Commission on Human Rights, Sub-Commission on Promotion and Protection of Human Rights, Working Group on Minorities, Ninth session, 12-16 May 2003 (See Reader for South Asian Workshop on Combating Racism, Xenophobia and Discrimination against Ethnic Minorities and Indigenous Peoples, Kathmandu, 15-25 May 2004)

Rajasingham-Senanayake, Darini "Democracy and the Problem of Representation: The Making of Bi-polar Ethnic Identity in Post / Colonial Sri Lanka" in J Pfaff-Czarnecka et al edited *Ethnic Futures: State and Identity Politics in Asia"* Sage Publications New Delhi 1999

Rajasingham-Senanayake, Darini "*Data, Demography and the Conflict-Development Nexus*". Paper presented at the ICDP +10 Conference organized by IPPF Kathmandu, August 2004

Rampton David and Welikala Asanga edited "The Politics of the South", *Sri Lanka Strategic Conflict Assessment Series* (2000-2005), The Asia Foundation, Kininkrijk der Nederlanden, Colombo 2005.

Reddy, N Subba 'Development through Dismemberment of the Weak: Threat of Polavaram Project' *Economic and Political Weekly* April15, 2006 pp 1430-1434

Roy, Raja Devashish "*Indigenous Rights in Bangladesh: Land Rights and Self Government in CHT*" Paper presented at the Indigenous Rights in the Commonwelath project South and South East Asia, Regional Experts Meeting Delhi IIC, 11-13 March 2002

Rowena Robinson *Tremors of Violence Muslim Survivors of Ethnic Strife in Western India* Sage Publication, Delhi 2005

P Sahadevan "*Ethnic Conflict and Militarism in South Asia"* Kroc Institute Occasional Paper 6 OP :4 University of Notre Dame June 1999.

Samad Saleem "Bangladesh: State of Minorities in Bangladesh" in Sumanta Banerjee edited *Shrinking Space* SAFHR, 1999.

Sambandam V S "A Promise of Identity" *Frontline* Magazine 1 March 2003

Samaddar, Ranabir "India's Minorities After 50 Years of Partition and Independence" in Sumanta Banerjee edited *Shrinking Space* SAFHR, 1999.

Samaddar, Ranabir *The Marginal Nation:Transborder Migration from Bangladesh to West Bengal,* Sage Publications, New Delhi 1999

Samaddar, Ranabir "*The Juridical Political Claims of Minority Protection in India*", in Reader for South Asian Workshop on Combating Racism, Xenophobia and Discrimination against Ethnic Minorities and Indigenous Peoples, Kathmandu, 15-25 May 2004

Samaddar, Ranabir "*Identity Assertion as Contentious Acts*" in Reader for South Asian Workshop on Combating Racism, Xenophobia and Discrimination against Ethnic Minorities and Indigenous Peoples, Kathmandu, 15-25 May 2004

Scenario of the Seven Percent, Vol I and II, Cinemart Foundation, Delhi 1984.

Shah, Mihir "Tribal Bill: First You Push Them In, Then You Throw Them Out" *Economic & Political Weekly* Nov 19,2005

Shahabuddin, Syed "*Analysis of Muslim Representation in Lok Sabha, 2004*"

Tajuddin, Mohammad "*Minorities in Bangladesh: A Conspectus*" in Sumanta Banerjee edited *Shrinking Space* SAFHR, 1999.

Tayyab, Mahmud "*Migration Identity, & the Colonial Encounter*" University of Oregon, Oregon Law Review, Fall, 1997.

Thiruclevam, Neelam "The Politics of Federalism and Diversity in Sri Lanka" in Yash Ghai edited *Autonomy and Ethnicity* ,Cambridge University Press 2000

UNDP Human Development Report 2004 "Cultural liberty in today's diverse world'

UNDP Human Development Report 2005

UN Sub-Commission's Resolution 1985/6 adopted at its 38th session taking up J Deschenes, draft definition on 'minority', cited in Iqbal Ansari edited Rediangs on Minorities vol 1, pp xvii, xxx.

US State Department, Bureau of Democracy, Human Rights, and Labor, South Asia Country Reports 2005

Uyangoda Jayadeva *Questions of Sri Lanka's Minority Rights* Minority Protection in South Asia series – 2, International Centre for Ethnic Studies, Colombo 2001

Zia, Shahla**, "***Discrimination Against Religious Minorities: Constitutional Aspects*". A Research Study, International Women's Studies Lahore/ ASR, Lahore 2005.

Europe-Asia Exchange Project on Experiences
of the Politics of Recognition

Supported by the European Commission

In partnership with the Human Rights
Commission of Pakistan, the European Academy,
Bolzano, INSEC and The Other Media

SAFHR

The South Asia Forum for Human Rights