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India in European Perspective**

by

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Collective Violence and the Making of Civil Society

India in European Perspective

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Are riots, risings and revolutions acts of collective madness, or are they political events, offering a rare glimpse into the inner workings of a system, laying bare the legitimacy deficit that moves rational men and women to kill and die? Fun, profit, peer pressure, or moral outrage - which of these is the main motive of rioters? Is collective violence a form of *violent participation*, which, in the final analysis, acts as the midwife of civil society? The full investigation of these general and comparative questions is beyond the scope of my paper. Still, they provide the main inspiration for the empirical analysis undertaken here. The paper develops a model of conflict resolution based on countervailing powers, the symbolic recognition of memories of violence, and new institutional arrangements. This framework is used for the analysis of three identity-related issues from post-independence Indian politics. Two of these have been successfully resolved where as attempts to resolve the third have been less successful. Drawing on the contributions of Natalie Davis (1973), Ian Gilmour (1992) Pierre Nora (1989) and Simon Schama (1989) to collective violence and the foundation of civil societies in the west, the paper characterises the outbreak of pogroms, riots, and other forms of collective violence as political phenomena that indicate deeply seated conflicts

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over the core values of a society. How these conflicts are solved has important implications for the establishment of an institutional framework that promotes a society based on interpersonal trust, respect of individuals and groups, orderly rule and the rights of expression and association.

Scholarly interest in the role of violence in accelerating social change has gone out of fashion since the general diffusion of utopian ideas like democracy, social capital and world governance in western liberal democracies. The insistence of donors in the North and their clients in the South on these canons² as the only modes of correct political behaviour has consequence for transitional societies of the South that are far from benign.³ Newcomers to the high table of states and nations, these candidate-members must earn this privilege by subjecting their political conduct to the rules laid down by the members of the club who conveniently overlook the tortuous path they themselves have had to take to reach their current institutional forms. By the same logic, scholarly inquiries into riots, pogroms, insurgencies and other forms of political unrest in non-western societies must conform to a prescribed code of conduct by first condemning their subject before engaging in an analysis of the social process that has led to its outbreak. The liberal bias, often accompanied by the failure to situate the collective violence in its context, results in the blatant characterisation of these political acts as bizarre, perverse or simply as the proof of the cultural incapacity of the societies where they occur to sustain civilised norms in public life. Such a failure of imagination and empathy would, in an academic debate, be risible if its costs in terms of avoidable suffering were not so immense.

It is not my intention in this paper to engage in cultural one-upmanship, nor to exonerate human suffering in terms of cultural idiosyncrasy. Instead, the paper focuses on the origin and demise of collective violence, meted out by one group against another for the sheer reason of their difference. I maintain in this paper that the best chance for the creation of a civil society out of the wreckage of collective violence consists in grounding one's analysis of its origin firmly in the social and historical context, and keeping the scholarly inquiry as close to the actors as possible. Though India is the main empirical context for this paper, the analysis of Indian data undertaken here draws on European examples of collective violence partly to establish parameters for historical comparison, but also to generate analytical space for institutional arrangements that have led to the creation of civil societies in the West where much blood has been shed on account of religious differences.

² It must be added here that in the light of the America-Europe rift on Iraq, the western establishment - donor agencies, media, governments and public opinion - does not speak in one voice any more. The plurality of the 'North', howsoever weak on issues truly vital to its core interests, still holds an important room to manoeuvre for strategists of the 'South'.

³ This, *faute de mieux*, is possibly the most widely accepted expression for poor, non-Western, non-industrial countries, which, at the heyday of post war modernisation euphoria used to be referred to with optimistic euphemism as changing societies or developing countries.

THE INDIAN CONTEXT

The intriguing nature of the Indian example arises from the fact that while her politics provide plenty of examples of collective violence, the structure and process of her political system demonstrates an endogenous institutional capacity to cope with it. When compared to the majority of changing societies, India comes across as a case of successful transition from colonial rule and a stagnant economy, to a robust democracy, orderly rule and at least for the last decade, vigorous economic growth. This record has come under a shadow in recent times on account of sharp outbreaks of violent religious riots and their bitter aftermath. The decade that spans the destruction of the Babri Mosque of Ayodhya in 1992 by Hindu militants, and the Godhra massacre of Hindu pilgrims in 2002 attributed to a Muslim mob⁴ has brought into sharp focus the "mounting anxiety about the future of India".⁵ The inclusive character of the political system has appeared to be on the wane as public authorities are accused of being complicit in religious pogroms.⁶ Communal mobilisation, deftly blending historical memories and panoply of material grievances, is seen by many analysts as ascendant⁷. Policemen with long experience of violent mobs see the surge in communal antagonism the great scourge of the modern state and governance in India. (Rajgopal, 1987) The 'evil of communalism' is constantly present in the media.⁸ India, it is asserted in a series of ethnographic reports on the violent world of cultural nationalism, is fragmenting on communal lines.⁹

⁴ Uday Mahurka "Terror's Mask", *India Today*, February 24, 2003, p. 40. Televised images of the destruction of the Babri mosque and the post-Godhra communal riots have accelerated the incorporation of religious fury into everyday politics in India and reporting about it abroad.

⁵ Varshney, (1993), p. 227.

⁶ "How has the Gujarat massacre affected minority women: The survivors speak", in <http://www.imannet.com/articles/survivorspeak.html>. Indian Muslim Alert Network - a division of Indian Muslim Council (IMC-USA) www.ImanNet.com. See on April 16, 2002

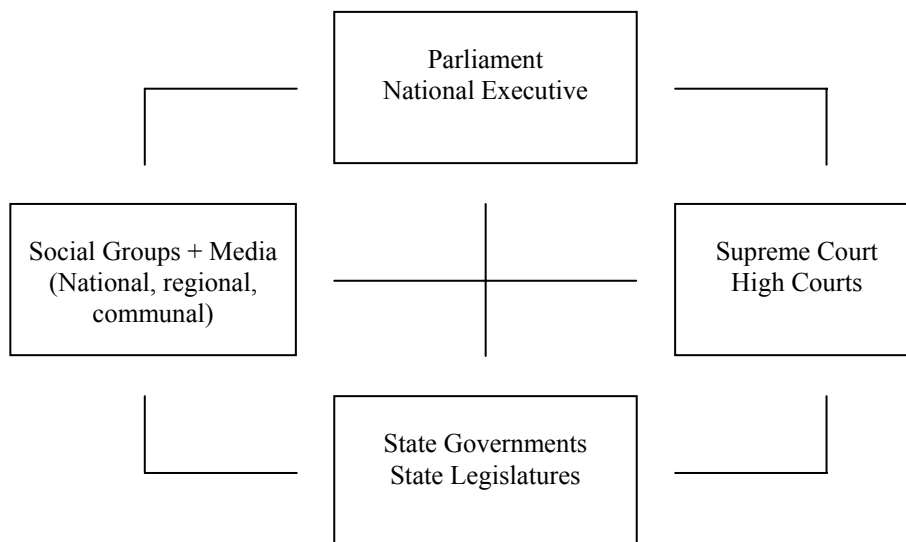
⁷ The concept 'communal' is used in a specifically Indian sense which differs from its lexical meaning of "someone who is altruistic and civic-minded". The media and agents of the state use it to identify people whose "exclusive attachment to his or her community is combined with an active hostility against other communities which share its geographical and political space." (Kakar 1995, p. 17) The antonym of communalists in Indian usage are 'secularists', who do not see any legitimate room for religious symbols in the public sphere or religious influences on social, economic and political rules. According to Kakar, the intractable character of communal riots derives from the fact that they become "imbued with religious ultimacy". Kakar (1995, p. 51) Wilkinson, (2000), presents ethnic mobilisation as the main cause of violence in India on the basis of content analysis of newspaper reporting.

⁸ Described as *danga* in the vernacular languages of India north of the Vindhyas, *sampradayikata* in the chaster Hindi, *communalism* in the English language press and police reports, conflict between communities is a constant presence in public as well as private conversations.

⁹ For ethnographic forays into the violent world of cultural nationalism see Cynthia Keppley Mahmood, *Fighting for Faith and Nation: Dialogues with Sikh Militants* (Philadelphia: University of Pennsylvania Press; 1997), Thomas Blom Hansen, *Wages of Violence: Naming and Identity in Postcolonial Bombay* (Princeton: Princeton University

In contrast to the chorus of negative prognosis of India's capacity to sustain democracy and governance, this paper argues that India's institutional arrangement remains basically stable and coherent, particularly with regard to sectarian violence based on language, religion, region, caste or class. This paper, whose basic logic derives from rational choice neo-institutionalism, asserts that the existence of countervailing forces, providing an institutional form for the articulation of competing interests, helps juxtapose the accommodative potential of liberalism with the power and decisive character of majoritarian democracy. The result is a form of security to those whose identities are contested, and to enhance trust in the political system, leading, in turn to higher governance. The model of countervailing forces active in the Indian political system helps explain the origin of power sharing through federalism, empowerment of difference through consociational democracy and the validation of individual rights as well as group rights through judicialisation to facilitate the accommodation of identities and the reinforcement of political trust.¹⁰

Figure: Countervailing Forces and the mediation of interests



The model is used as a framework of analysis for successful resolution of conflict over identity with reference to language and personal law and the current impasse on Ayodhya.

Press) and Paul Brass, *Theft of an Idol: Text and Context in the Representation of Collective Violence* (Princeton: Princeton University Press; 1997)

¹⁰ See Subrata Mitra and Alexander Fischer, "Sacred Laws and the Secular State: An Analytical Narrative of the Controversy over Personal Law in India", *India Review* 1(3), July 2002, pp. 99-130 for an application of the theory of countervailing powers to the analysis of the conflict over personal laws in India.

THE GORDON RIOTS: THE STATE AND COLLECTIVE VIOLENCE IN EUROPEAN PERSPECTIVE

Since India's problems of communal violence is sometimes seen as *sui generis*, it is useful to analyse the history of transition of societies that now boast of fully fledged effective, democratic governments. For an effective antidote to the alarmist view of the current state of India's democratic institutions we can look at the history of popular discontent and disorder, and social transformation of a structural kind in England during the eighteenth century. The general picture that we get from Sir Ian Gilmour's *Riots, Risings and Revolution: Governance and Violence in Eighteenth-century England*¹¹ would be familiar to students of contemporary Indian politics.

Rampaging crowds taking the law in their own hands, corrupt state machinery and ineffectual government at a scale that are familiar to parts of India were not altogether unknown in England two centuries ago.¹² While in many of the eighteenth century English riots one social group vented its anger against another, the state was often embroiled in them, sometimes directly. If the state itself was the target of civil violence, the other noteworthy feature of these riots was the outright inaction or lukewarm performance of the organs of law and order in putting them down. Thus, "Throughout the worst rioting, Justices had been careful to keep out of sight. When they were found, being afraid of the mob's displeasure, they could not be prevailed upon to read the Riot Act. The Lord Mayor, who had once been a waiter in a brothel, when urged to do his duty, replied evasively that the mob seemed "to have got hold of some people and furniture they did not like and were burning them, and where was the harm in that?"¹³

The English example helps us isolate 'righteous rage' as the key factor which gives the decisive edge to collective violence meted out by one section of the population against another, and institutional arrangements that aim at the restoration of social equilibrium through the accommodation of contested identities. The Gordon riots, (England, 1779), so-called after Lord George Gordon, Member of the Parliament and the main instigator of the collective violence to illustrate a quintessentially European example of a popular uprising on the grounds of religious difference. The violence was occasioned by Protestant zealots, incensed by an act of Parliament passed in 1778 to remove the restriction on Roman Catholics from buying, holding or inheriting land, though the act made such freedom conditional upon their taking a 'special oath of allegiance prescribed in the act'.¹⁴ In course of the riot, prisons and Roman Catholic chapels were burned to the ground; the houses of politicians and judges were attacked; distilleries and shops were plundered. One mob attacked Downing Street; another mounted an

¹¹ Gilmour, (1993). For European illustrations of the taming of the crowd and creation of order through the creation of the citizen, see Tilly (1975) and Schama, (1989), particularly the chapter on "The cultural construction of a citizen", pp 123-174

¹²Gilmour, op. cit. p. 16

¹³ The "Gordon Riots", see Gilmour, p. 356.

¹⁴ Gilmour (1993), p. 345

assault upon the Bank. King George III, on the Attorney-General's advice, eventually authorised army officers to open fire on the mob without the intervention of a magistrate. By nightfall on the last day of the violence, almost a thousand people had lost their lives.

The English case is interesting but not unique in the history of social dislocation, political conflict and state formation in Western Europe. Tilly (1975) and Hobsbawm (1959) inform us of food riots and other challenges to public order throughout early modern Europe. The historical hindsight should help us understand the political nature of these riots (as opposed to the view that riots and lawlessness are more likely to appear within specific cultures) which left a historical residue in the form of the legitimacy of popular protest and the combination of redistributive policies and law and order management with which the state sought to cope with them.

In a historical and comparative perspective, the analysis undertaken here asserts that a hiatus between values held as sacred by the society, and the core institutions of the state, creates the potential for communal conflict. When the state is seen as violating what ordinary people and their leaders consider sacred and non-negotiable, resistance, even at the cost of life and limb, appears as the only method to save one's dignity. Disaffected groups, as we see in the succinct analysis of religious violence in sixteenth century France by Natalie Davis (1973) seek to assert their identity by temporarily assuming the roles of the state and the church. Just as a deficit in legitimacy is the main cause of communal violence, the restoration of trust by institutional methods that provide security to contested identities, is an effective method to restore social peace and governance.

Though a radical decline of legitimacy is a necessary cause of communal violence, it is not sufficient by itself. Communal violence, like in all cases of collective action, requires a whole range of facilitating factors such as the reassuring weight of numbers, and divine blessing in the form of the support of dissident clergy. Violent resistance in the specific case of the defence of identity, culture and dignity, or to settle scores against outrages to the identity and modesty of one's kin are not easy to explain with conventional model of instrumental behaviour. The incentives in this case are endogenous, for the actor sees retaliatory action, which inevitably acquires the character of an affront to lawful authority, as an important goal in its own right.

Institutional changes that incorporate the salient features of competing identities into the constitution, and in the process, puts them beyond political contention, can restore social equilibrium, and create conditions for social harmony and trust. These arguments are illustrated through brief references to the rise and decline of contentious issues like language and personal law. It also makes a reference to the competing claims on Ayodhya as a site of conflicting memories for Hindus and Muslims, and a battle for exclusive ownership and right to worship which has now spread beyond its epicentre where once the Babri mosque stood, as legend has it, on the top of a temple that marked the spot as the sacred birthplace of Rama. The narratives weave in and out of conflicts and looks, prompting the search for a meta-narrative of core values and a common institutional space, a fixed point

of reference, an implicit commanding height for the authoritative allocation of values among communities locked in battle. In Indian conditions, one is led to conclude, such efforts are best done *surreptitiously*, through the innovation of countervailing forces that juxtapose the government of the day with the opposition, independent commissions and the media, with the judiciary and posits judicialisation of conflicts over sacred beliefs as an effective complement to the forces of politics.

THE CASE AGAINST: ETHNICISATION OF COMMUNAL VIOLENCE IN INDIA

The applicability of a transactional model that recognises a potential for transforming deep cultural divisions into a civil society through the application of countervailing forces and institutional arrangements has had a distinguished history of contestation. Shortly after India's independence as the quickening of the pace of political participation started giving voice to cultural divisions and anxieties that underpinned Indian society, the scepticism that many had about India's capacity for self-governance came to the fore. Selig Harrison (1960) led the chorus. "India's struggle for national survival is a struggle against herself. As a civilization and as an integrated cultural whole, India has shown a power of survival rivalled only by China. But multilingual India's separate territories have failed as consistently as Europe's to hold together as a political unity."¹⁵ Harrison's prognosis was deeply pessimistic, "Deep-seated centrifugal forces on the one hand, and the quite contradictory urge for unified national power in the face of the unity of others, will act and interact too convulsively to leave India's present Constitution undisturbed. This interaction between extremes is characteristic of the most dangerous decades, those decades after an underdeveloped country has discovered progress, or the hope of progress, but before progress comes rapidly enough to satisfy rising aspirations."¹⁶

The scepticism of India's potential for self-governance and civil society that was occasioned by language riots have re-emerged after a gap of several decades in the form of a cluster of ethnographic narratives that find the same danger in the outbreak of communal violence.¹⁷ Focused on irreconcilable differences of faith leading to violent confrontations between exclusive, homogenous masses, ethnographic studies contest the capacity of normal political transaction, participation, redistributive policies and law and order management to deliver democratic governance. If, as the minority women's report on Gujarat riots point out, the agents of communalism-driven politics are psychopathic killers and not political actors, and lawmakers, administrators and policemen are complicit in criminality, then what confidence can one have in the ability of the state to

¹⁵ Harrison (1960), p. 3

¹⁶ *ibid.*, p. 5

¹⁷ See Hansen (19??), Mahmood (1997), Brass (1997), Jaffrelot (2003). These ethnographic narratives are contested by scholarship emerging from political science. See Kohli, (2001) Varshney, (2002) and Mitra, (1999).

maintain any degree of governance?¹⁸ The prospects of democratic governance are indeed grim when a general election, the cutting-edge of Indian democracy, as some have argued with regard to the assembly elections on 2002 in Gujarat, focuses not so much on the performance of candidates as on "fear and hatred".¹⁹ By this reckoning, though India has been relatively successful in terms of mitigating the extremes of class conflict through its imaginative institutional arrangement, the communal divisions in society have found their way into the institutional structure and process, rendering them impotent in the face of communal violence.

The very metaphors used in ethnographic narratives such as the 'virus of communalism', the 'cancer', the creeping fascism of the state, the criminalisation of the police and politicians, sustain the general image of a slide into anarchic, violent, politically fragmented society. My approach questions this sense of fatality that is the stock in trade of ethnographic studies. Our model offers an alternative explanation which conceptualises communal riots as collective political conflicts, amenable to political analysis. It presents communal politics not as an aberration and an exasperating descent into irrationality but as an extension of normal politics into areas previously considered unproblematic. Instead of taking a flight from politics, the approach adopted here formulates communal violence as the deepening of politics through the problematisation of deeper layers of politics locked into a state of suspended animation by the political status quo.²⁰ While drawing on the qualitative data that ethnographic accounts provide to the inner world of the actor, the neo-institutional approach of this paper seeks to string these micro-narratives into a macro framework capable of engendering political trust and social equilibrium, sustained by countervailing forces, and, capable of enhancing governance and civil society.

¹⁸ The team met Maya Kodnani, BJP MLA from Naroda Patia, one of the worst affected areas of Ahmadabad. She has been named as an accused in an FIR as having participated in the mayhem in Naroda Patia. She showed no remorse at the State's inability to prevent Naroda Patia. There was nothing the State could do, she says. There was a natural *ghrina* (hatred) and *aakrosh* (rage) in the heart of every Hindu and we could not control it. "It was impossible to stop. There were between 50,000 and 1,00,000 people out on the streets. How could the police have stopped them? It was impossible to move about in Ahmedabad that day", she says. She continues to justify "Hindu Aakrosh" by speaking at length about Godhra. When the train from Godhra came in to Ahmedabad carrying bodies of the victims, it was truly horrible", she says. And when these bodies were taken by relatives to their home towns and villages, naturally the anger spread across the state. People began to feel, *Terrorism ke khilaaf kuch to action hona chahiye. IDSI bhi involved thi. Aur phir Gujarat ki prakriti hi aisi hai. Jab bhi kuch communal hota hai, hamesha phailta hai.* (There has to be some action against terrorism. ISI was also involved. And Gujarat's essential nature is such that whenever there is communal tension it spreads.)" Annexure 2.1. Minority women: survivorspeak, op.cit.

¹⁹ Ashish Nandy, in Suman Jha, "Gujarati Primer", *The Times of India*, New Delhi 2 January, 2003.

²⁰ See the two essays by Bachrach and Baratz, (1962) and (1963) for the process through which dominant social groups succeed in keeping some issues off the agenda, at least for a while.

RIOTERS INTO STAKEHOLDERS: COUNTERVAILING FORCES, POLITICAL TRUST AND GOVERNANCE

Though I prefer to use the more neutral category of cultural nationalism to denote cultural and symbolic factors that deeply affect political choices, the paper remains focused on conflict relating to identity, the operational category through which the Indian society and state define it as communal. This corresponds to the definition of religious riots by Natalie Davis who defines religious riots as "any violent action with words or weapons, undertaken against religious targets by people who are not acting *officially and formally* as agents of political and ecclesiastical authority. As food rioters bring their moral indignation to bear upon the state or the gain market, so religious rioting bring(s?) their zeal to bear upon the state of men's relations to the sacred." (1973, p. 52. Emphasis in original) The outbreak of a communal riot, or even the rumour that one might be in the offing activates a conditioned reflex in the minds of individual citizens as well as in the agents of the state. Communal riots, as the psychoanalyst Sudhir Kakar writes, particularly those between Hindus and Muslims, invoke the subliminal trauma of the Partition of 1947 handed down from one generation to another. They bring back the historical memory of foreign invasions, suffering, humiliation, fear, anger and a sense of loss. The Republic of India started its career with the greatest communal carnage in recorded history - a horror that remains in the subconscious as a chosen trauma, for no public catharsis has been organised though truth commissions or symbolic elevation of the victims into survivors by giving their collective memories canonical status through public symbols of grief and repentance. Communal riots then remain as the reminders of unfinished business, the fragility of peace, the soft underbelly of outwardly strong and stable institutions of the modern state, of one's own vulnerability, or, symmetrically, a superhuman potency to set the historical wrongs right, that cannot and must not find free play in normal times.

A sense of *traison des clercs* - of having been let down by their superiors who should have known better - fuels the moral anger that goes into the making of the fury of the crowd in religious violence. However, we learn from historical evidence from Europe and current information from India that the little man, killing, maiming, raping, looting, and getting killed, maimed etc. is no anonymous face in a mass gone mad. The agents of moral violence and their victims are often ordinary family men, artisans, and peasants, working for a cause.²¹ These actors from

²¹ A working class Muslim family of four including two children has recently been taken into custody for their suspected role in two bomb blasts in Mumbai. Bigger: it should be India Today in italics! reports with typical abandon on their motives "Terrorists did not look like this, an ordinary family on an ordinary outing. Terrorists didn't have settled homes, jobs, neighbours, a life outside dogma. Terrorists carried guns, not little girls in their laps. They didn't have families. If they did, they never took them to work. After Mumbai's Black Monday, it is clear the old rules don't apply." The emphasis here is on the ordinariness of the actors of one of the most violent, cold blooded murder of a large number of civilians as an act of revenge. "The police say Fahmida shows no remorse for her actions. When asked about the innocent deaths she had caused, she allegedly said, 'It is

religious violence in Europe at the intersection of the medieval period and the modern age are recognised as such by their historians three centuries later. Their Indian counterparts have done less well at the hands of their historians, though one should have thought, thanks to the proximity in time and greater accessibility of the sources, their scholarly toil would have been more productive in terms of enlightening the reader of the motives that unleashed such passion and fury.

To put it bluntly, there is no other explanation for the difference in treatment of the western and non-western religious rioters except scholarly contempt for the capacity of the Hindu, Muslim, Sikh or Buddhist crowds to engage in rational action, and the failure to appreciate the powerful appeal of the religiosity of these religions on the minds of men and women, just like the French Catholics and Huguenots locked in mortal combat three centuries ago or in contemporary Northern Ireland. That some of these negative readings are actually provided by scholars from the same racial origin as the Indian rioters, who, despite their common origin fail to see what was obvious to their subjects, only goes to show how solid and secure the hold of orientalism continues to be on the imagination of otherwise intelligent men and women.

We learn from ethnographic accounts that when 'communal' riots break out, or riots are given a communal complexion, politics shifts gear. Riot mangers become riot-mongers and manipulate the reconstruction of the course of events to suit their hypotheses. In contrast, the analysis undertaken here conceptualises communal riots as sites of conflict, and shared, painful memories of loss; of conflicts among competing departments of the government and the media for ownership of the facts; and, bitter rivalry among academic specialists whose own legitimacy derives from competing paradigms of violent, collective behaviour. The mixed motives attributed to communal riots give free play to theoretical hobby horses by specialists, drawing on core concepts such as class antagonism, indifferent or inadequate policing, violence targeted at particular communities with the specific purpose of land or business-grabbing, violent outburst of a collective subconscious.²² Tales of savagery and perversity, lurid media accounts of violence against women make accounts of specific riots disappear and reappear as parts of larger problems. The statistics of communal riots are thus necessarily unreliable, nor can they form part of "any neat theory".²³ However, to argue that no 'neat'

nothing compared to the rape and murder of innocent, pregnant women in Gujarat.' Fahmida, say the police, echoes her husband's virulence and anger at the communal riots in Gujarat, using that emotion to fuel their rage against civil society." "New Faces of Terror", *India Today*, September 22, 2003, pp. 14-15

²² Gopal Krishna, (1985), p. 66, based on incidents of communal violence, 1961-70, recorded by the Home Ministry of India, describes the causes of communal violence as follows: Festivity or celebrations, 26.75%, private property disputes, 19.26%, quarrels over women, 16.89%, personal transactions or enmities, 16.53%, cow slaughter, 14.39%, desecration of religious places, 4.04% disputes over graveyards, 2.14%.

²³ "Above all, how the members of the respective communities perceive each other's conduct at the street level is what determines the eruption and the scale of communal violence. Thus considered, there is not much scope for formulating what in effect is an

theory is possible is not the same as to assert that communal violence, or more generally, cultural nationalism are out of bounds for political analysis. The issue is: to what extent can one extend the normal analytical tools of political science to the dissection of the violent rage and collective outburst to rational, action pursued by goal-oriented individuals rather than merely irrational, pathological behaviour by mobs driven by hatred, profit, lust and fun?

Beyond the fact that communal riots are "occasions for giving expression to the pent-up anger [of] individuals and groups ... against the system as a whole"²⁴ there is little consensus among scholars about their underlying causality. At one extreme is the welfarist position that conceptualises communal riots as "articulating secular needs of the community on communal lines" though the immediate targets are the visible symbols of authority and the system. The prime cause for this anger is lack of work, lack of decent housing and other civic amenities and the lack of hope that things would improved in the near future. Also belonging to this genre are arguments that attribute an instrumental character to community mobilisation by manipulative leaders who wish to further their own material goals through such efforts.²⁵ At the other extreme are those who see a communal riot as the tip of the iceberg of an underlying, irreconcilable disagreement, derived from historical memories which renders intercommunal bridge-building impossible, and in effect, renders territorial exclusiveness as the only solution. Indifferent or insufficient policing is a supplementary argument that acts as a multiplier in both hypotheses regarding the causality that underpins rival explanations of communal riots.²⁶ For an analytical and comparative understanding of communal violence, it is important to move beyond these polarised oppositions, and examine empirically grounded accounts that offer the potential for detailed, theoretical analysis.

irrational impulsive aggressiveness within the confines of a neat sociological theory."

Rajgopal (1987, p. 21)

²⁴ Rajgopal, 1987, p. 22

²⁵"According to the survey, the 1984 riots were largely the outcome of business rivalry, though the immediate provocation was provided by the Shivaji jayanti procession. The well-entrenched and the newly emerging traders came to perceive competition between them in trade along religious lines. When the competition happens to be between merchants belonging to two religious groups, communal motives are imputed for the success or the failure of the different groups. During the riots of 1965 and 1982 in Pune and 1970 in Bhiwandi it was the anti-social elements who provoked the riots. In the subsequent stages of the 1984 riots in Bhiwandi a section of builders used anti-social elements to get vacated their lands where powerloom workers had constructed jhuggis converting their properties into slums. Some of the loom owners incidentally also developed a vested interest in prolonging the communal riots so that they could buy looted beams of yarn from the anti-social elements. This also enhanced the duration in intensity of the riots. Some of these exemplars give one the impression that riots are becoming economic goal oriented." (Rajgopal, p. 81)

²⁶ "These elements, given time, will soon disappear into the sanctuaries from where they will continue to stoke the communal fire. Once the rioters get the initial impression that the authorities are weak or indecisive in the use of force, the riot spreads fast and wide, taking in its wake avoidable loss in terms of the innocent lives and property. This is exactly the message that went down in Ahmedabad in 1985, whether it was intended or not." (Rajgopla, p. 85)

Rajgopal, drawing on his long professional experience as a former police officer explains why rioters burn cars and loot shops in terms of potential rewards for communal entrepreneurship²⁷: low threats of sanctions²⁸, anonymity of rioters²⁹.

²⁷ "There are 14 districts with a Muslim majority and 114 districts where their share of the population is 15% and above, against the national figure of 12%. There has been an increase in the number of Muslim MPs in the Parliament in the 80s. There were 32 Muslim M P s in the 1977 Parliament, 45 Muslim M P s in 1980 and 42 in the 1984/1985 Parliament. There are 120 Parliamentary and 700 Assembly constituencies all over the country in which the voting pattern of Muslims could be a decisive factor in tipping the balance one way or the other. Hence the political parties make a special mention in the respective election manifestoes of what they want to do for the Muslims in the event of their getting elected. The considerations that go into the calculation of the average Muslim voter are the short-term rather than long-term interests and the extent to which the candidate himself is sympathetic to the cause of the Muslims. The Muslims are keenly conscious of the extent to which they can influence the composition of a state legislature and their leadership understandably has not been averse to advising them on the lines which will best suit the interest of the community. The nature and content of the advice thus has a lot to do with the communal outlook of the leaders themselves." (Rajgopal, 1987, pp. 69-71)

²⁸ "The total strength of the town police officers and men in Bhwandi in 1984 was about 250 distributed over three police stations. One company (99 men) of Special Reserve Police was attached to Bhwandi, Thane and Kalyan after the 1970 riots. At the time of the 1970 riots in Bhiwandi there was only one Police station which was increased to three after the riots. As a result of the 1984 riots there has been an increase by about 300 men as against the Police Department's estimated requirement of about 800 men. Many of the police personnel stay in the slums of Bhiwandi for want of official quarters. In the process the possibility of the police personnel absorbing a part of the slum culture cannot be ruled out. The effect that this would have when they are called upon to handle riots when these occur is not difficult to imagine. [...] The Centre for Research in Rural and Industrial Development, Chandigarh, did a study in August 1985 of the communal violence in Bhiwandi in 1894 and Pune in 1982 and its impact on development and national integration. According to this study, a majority of powerloom workers who happen to be Hindus in certain areas of Bhwandi complained about the lack of health care, education, sanitation and drinking water facilities in the localities. These workers considered the neglect of their localities to be an issue designed by the majority of the Muslims who dominated the Municipality, to make life miserable for the Hindu minority. The merchant manufactures who happen to be Ansari Muslims, residing in certain areas of Bhiwandi complained that Hindu traders delayed payment for cloth that they sold them and deduced illegitimate 'kardhas' or discounts as they are a helpless Muslim minority in India. These merchants wanted a new cloth market to be constructed in Bhiwandi and felt that only such a market could save the Muslims from Hindus. This demand for a new cloth market is opposed by the Hindus, as according to them, such a market in Bhiwandi will sound the death-knell of Hindu control over the cloth trade." (Rajgopal, 1987, pp. 80-81)

²⁹ "The fact remains that it is a very difficult to get to know the real offenders who commit these crimes unless they are caught on the spot by independent witnesses or by the authorities themselves. This is a very rare phenomenon, the result inevitably is that communal riot cases seldom end in conviction and therefore the criminal proceedings following the riots have seldom acted as a deterrent in the prevention and handling of subsequent communal riots. In this connection, the statement given in table 11 (detailed account of arrests and convictions) about the registered cases arising out of the Bhiwandi riots of 1984 and their disposal should set at rest doubts if any about the utter futility of all the police efforts that follow during and after the riots by way of arrests, investigations and prosecutions of those alleged to have participated in the riots. Out of the 611 cases

Not to be ignored, however, are the intrinsic psychological and material rewards for riotous behaviour. For at least a little while the rioter is someone. He and the fellow rioters have an identity. The police confront them and the leaders appeal to them for peace. The media swoop on them. For once, on such occasions, they get the satisfaction of being noticed as individuals in their own right.

POACHERS INTO GAMEKEEPERS: INSTITUTIONAL SOLUTIONS TO CONFLICT OVER LANGUAGE

Compared to the first years after independence, language³⁰ in India is no longer the burning issue that it once used to be. Though there continue to be from time to time frayed tempers and the odd demonstration, rarely does one come across the violent agitation that used to be routine in the 1950s on the issue of language as the key element of identity.³¹ The Indian achievement in this regard provides a contrast to more established democracies like Canada or Belgium where language continues to be a salient issue of everyday politics. Politics of the 1950s, following the high drama of the Partition, integration of the Princely States and nation-wide expansion of universal adult franchise was very much the decade of language conflict. Though the Indian National Congress had already accepted the centrality of language to Indian politics by organising its provincial units on the basis of the mother tongue in the early 1920s, and had shown considerable sympathy to the elevation of the mother tongue to the status of the official language of the region, once independence was achieved, the modernist Nehru, railed against the 'disease of nationalist', fervently believed that "that language loyalty, like other forms of tribal loyalty such as religion, caste, and class, could be placed in the museum of irrational beliefs and outmoded caprice" (King, 1998: 27).

Nehru finally gave in to the demand for linguistic States when Potti Sriramulu, the Telugu leader fasted unto death on the issue of the creation of a linguistic State for Telugu speakers. This led to the setting up of the States' Reorganisation Commission in 1957 whose recommendations led to the radical re-drawing of

registered only 185 cases i.e., 30.8 per cent of the cases were sent up to the court in May/June 1984. Of these, as many as 113 cases i.e., 61 percent were acquitted and only four cases, repeat only four cases had ended in conviction by January 1986, i.e. after a lapse of eighteen months. They are not likely to fare any better. That this would have been the result in a state like Maharashtra where the administration generally and police administration in particular still enjoy a degree of reputation for effectiveness and purposefulness is a matter of concern." (Rajgopal, 1987, p, 91)

³⁰ King refers to the political salience of language to its iconic role, one that "can serve either as a badge of membership in the community or as a means of exclusion and exile... an 'icon' that evokes murderous impulses in human beings, that even the written form of a language could goad people into murder and fury" (King 1998: 29).

³¹ See Hardgrave, (1993), pp. 81-91 for the specific case of language based communal riots and Selig Harrison's *India: The Most Dangerous Decades* for the general threat of identity conflict to the prospects for political order and stability in the nascent, post-colonial state. Communal riot between Hindus and Muslims broke out in Badaun on 28 September 1989 following the decision of the Uttar Pradesh government to make Urdu the second official language of for the regional administration. The battle for Urdu became a symbol and an icon of ethnic pride and religious self-respect. See King, (1998), p. X

India's internal boundaries, creating States primarily based on mother tongue. Some problems survived. Thus, Bombay continued to be based on a divided identity between Marathi and Gujarati speakers. Until 1961 Punjab remained India's only seriously bilingual state, with both Hindi and Punjabi spoken by almost equal proportions of the population. The difference between the Hindi and Punjabi spoken there was not great linguistically but enormously great symbolically – and iconicity, for Punjabi had rightly or wrongly a 'Sikh' identification, Hindi a 'Hindu' identification. Sikhism was in resurgence, and, moreover, to add to the problem of identity, Sikhs were moving more and more towards the Gurmukhi script for Punjabi in place of the Devanagari or Perso-Arabic script. Gurmukhi was the script of the sacred texts of the Sikh religion and thus of sublime iconic implication.

With the resolution, in 1956, of most of the linguistic province issues, language went into terminal decline as a marker of political identity and source of political mobilisation. Through subsequent creation of further federal units on the basis of language and cultural identity around a relatively stable core of current States, King believes, India might have found an effective and a dynamic solution to a vexed problem that has split Pakistan and continues to haunt the leaders of Sri Lanka.³² The sites of the battle for the mother tongue are now hallowed shrines in India's regional States, with statues of their leaders adorning state buildings and public parks. The political residue, enshrined into India's public law, is now the basis of linguistic rights and dignity for the speakers of minority languages.³³

INDIA'S PERSONAL LAW: FROM CONFLICT TO ACCOMMODATION

India's personal laws, covering matrimonial matters, guardianship, adoption, succession and religious institutions, have long been a source of political controversy. The 'modern, secular and progressive' opinion in the Constituent Assembly hoped that the controversy would soon die out under the impact of the new social legislation which would set the "spirit of a nation, long suppressed",

³² "In creating a system of essentially linguistic states, India has provided a local political milieu that is conducive to the flowering of many linguistically-rooted cultures and thereby evolved a system which greatly enriches the cultural life of the nation as a whole... It is the Indian Paradox: if you do not decentralise you will balkanise. If the many centres of which India consists have control at least of their culture and language, they fret less about the culture and language pretensions of the national centre. The linguistic states provide the means through which the regional cultures maintain their traditions and orient their citizenry towards their history." King, p. 212

³³A series of provisions have been incorporated into the Indian Constitution to ensure the rights of minority languages. (Art 19 (1), 29, 30, 350A, 350B). These articles form the basis of legislation by the Centre and State governments. The implementation of the constitutional intent is further reinforced with a wide range of case laws produced by the Supreme Court and State High Courts. Finally, there are semi-judicial measures like Executive Orders, Notifications and Memos which help meet specific needs and eventually find their way into the wider structure of the governance of culture.

free.³⁴ Those opposed to the social engineering efforts of an interventionist state, led by intellectuals and legislators hailing principally from the majority Hindu community, perceived a general threat to their dignity as well as identity in such endeavours. They used every method available to them to countermand or sabotage statutory changes, and to delay their implementation when attempts to resist legislation had been to no avail. It does not come as a surprise then, that fifty years after Independence the debate on personal laws is far from closed in India and the legal regimes governing Indian families still vary according to community, sect and region. Many have viewed the co-existence of diverging matrimonial laws for Hindus, Muslims, Parsis, Christians and Jews within a single polity as an obstacle to the 'progress of a modern nation'. As evidence of this line of thinking, one can see how explicit provision for a uniform civil code has found its way into the Directive Principles of State Policy – a non-binding part of the Indian Constitution. But the implementation of the principle of "one-territory-one-code" has been continuously contested. In the cut and thrust of India's robust and competitive democracy, the issue of a uniform civil code has emerged as a constant presence on the national political agenda, its intensity varying according to the context and the conjuncture.³⁵

As a general principle of politics, it can be suggested that the imposition of uniform rules from above by executive fiat, parliamentary legislation, or judicial rulings would be perceived as an illegitimate intrusion into the private domain in the eyes of communities subject to them. We learn this from the controversy surrounding the Hindu Code Bill in the 1950s as well as the more recent Shah Bano case, discussed below in detail. For instance, polygamy or polyandry, practised by some communities but not the population as a whole, contradict the principle of equality from a strictly formalistic, constitutional point of view. But, a different view might emerge if one looks at these institutions from the point of view of the actors concerned, i.e. the men and women who live them out on a day-to-day basis. The potential contradiction between individual right to equality and the collective right to identity is inescapable, if one is to take the democratic right to freedom of choice seriously. The analyst's dilemma, therefore, is to have to address the issue of personal laws simultaneously through the high politics of the state, legal institutions and the constitution, as well as at the level of the everyday issues of the politics of allocation, elections, coalitions and the sentiments of ordinary people. Correspondingly, the stance chosen by the Indian state is to approach the personal law system from above as well as below. A constellation of countervailing forces makes it possible for the post-colonial state to innovate new institutions which integrate modern and pre-modern values and rules of social

³⁴ The envisioned tone and design of the functioning of new Republic are emblematically brought to light in Jawaharlal Nehru's famous speech "Tryst with Destiny"; see Mitra (1990).

³⁵ The interaction between state law and religion easily takes the shape of a political crisis. Whether one deals with the prohibition of polygamous marriages, temple entry legislation or the abolition of animal sacrifice, the conflict between a "modern" constitutional discourse and the religious claims to "truth" seems to be unavoidable and inherent in the political context of post-colonial India.

transactions within a single constitutional set up rather than mechanically applying the framework of tradition versus modernity.

The State governments are, however, not totally bereft of influence. The whole area of the maintenance of Hindu religious property is governed by the State governments through their Devaswam Boards. States, through their right to legislate in the matters of education, and general responsibility for law and order which becomes salient with regard to rules governing religious processions, also play a role. But, if the State government acts in a manner which some communities consider deeply offensive, and express their resentment in a manner that disturbs the peace and makes lawful government impossible, then the Union Executive has the right to intervene, to the extent of declaring a state of Emergency and ruling the State directly. These institutional provisions for countervailing powers with regard to administrative and legislative competence in matters of personal law are further enriched by another set of institutional and quasi-institutional provisions, originating from a process of judicialisation³⁶ - the power of the Supreme Court and the High Courts to 'make laws' and to reform as well as create legal institutions through rulings and interpretations.

The model of judicialisation is, first and foremost, based upon a dyadic social structure, characterised by relations of direct exchange between individuals or social groups bound to each other by established principles of reciprocity; i.e. the legal and political actors that transact within the domain of family law. As "dyadic forms are inherently unstable [...] because each party faces powerful incentives to ignore normative obligations"³⁷ the triadic entity introduces the authority of a dispute solver as a third party. Finally, triadic dispute resolution usually functions within a normative structure which can be described as a set of institutions, laws, customs or simply the rules of the game. Thus, judicialisation describes a process that stabilises dispute settlement mechanisms by sustaining an interdependence of dyads, triad and rules; simultaneously, judicialisation techniques constantly adapt the normative structure to the demands of a dispute in the process of its resolution. The judicialisation of politics is the process by which triadic dispute resolution and lawmaking is shifting towards the sphere of judges and legalism. Applying this model to the controversies surrounding India's personal law system it is argued that judges have increasingly asserted their own authority in the governance of the Indian family while legislative politics, operating on the basis of majority rule has partly failed in finding a systematic solution to the democratic puzzle of personal laws as a minority problem.

In addition, there are independent commissions like the National Minorities Commission and Human Rights Commission, funded by the state to act as a watchdog of minority interests. What is more, the minorities themselves are also directly involved in the evolution of Indian family laws via their respective personal law boards and other religious or legal organisations.³⁸ In decreasing order

³⁶ See Sweet, (1999) (32: 2), pp. 147-184.

³⁷ Ibid., p.149.

³⁸ A case in point is the instrumental role the Parsi community in general, and the Bombay Parsi Panchayat in particular, played in the passing of the Parsi Marriage and Divorce

of formality, but no less effective for that matter, are radio, television, print media and the internet which reflect the diversity of opinions resulting from national, regional and local perspectives; views of different communities as well as interest groups.³⁹ Finally, the process of coalition building, made imperative by the first past the poll electoral laws of India lead to cross-regional and communal bargaining. These processes of federal and consociational arrangements and resulting accommodation of diversity⁴⁰ takes the form of countervailing forces.

Following independence and the installation of Congress governments both at the centre and in the provinces under the overall leadership of Pandit Nehru, the legislatures and courts got busy in the passing of legislation intended to standardise personal law.⁴¹ A quick perusal of these Acts makes it abundantly clear that whereas the state has been quite active in the matter of the reform of personal law with regard to Hindus, the same does not hold for comparable measures with regard to Muslims except some changes brought about as by-products of other

(Amendment) Act, 1988. Another example of the importance of social groups is the All India Muslim Personal Law Board which has consistently fallen short of consensus on "even the barest essentials for the codification of Muslim law" due to its fractionalisation. "Sunni, Shi'a Isma'ili, Ahl-e-Hadith, etc. regard each other's school of law as un-authentic"; see Tahir Mahmood, *Uniform Civil Code – Fictions and Facts* (India and Islam Research Council: New Delhi) 1995, p. 172.

³⁹ See Vimal Balasubrahmanyam, *In Search of Justice – Women, Law, Landmark Judgements and Media* (Shubhada Saraswat Prakashan: Pune) 1990. One of the most immediate issues arising in this discussion is the important Supreme Court decision in *Bai Tahira v. Ali Hussain Fissalli Chothia* All India Reporter (hereafter AIR), 1979 SC 362, which already had set a clear precedent in favour of the maintenance rights of a divorced Muslim woman a couple of years before the *Shah Bano* case. Although, the substantive legal reasoning of both cases runs parallel to all intents and purposes, *Bai Tahira* caught no attention of the media while *Shah Bano* not only made it to the headlines but eventually triggered rioting (ibid. pp. 40-1). The absence of media coverage in one case and extensive, politicised publicity of the other, then, makes for one of the many indicators that point to the multitude of countervailing factors which inform the personal law controversy.

⁴⁰ Lijphart, (1996) (90: 2), pp. 258-68.

⁴¹ A few examples would suffice. The first legislative activity of India's independent Parliament resulted in the new Special Marriage Act, 1954, a secular code that was not mandatory but allowed Indian citizens to opt for a civil marriage. In quick succession, there followed, after 18 years of committee work and debate, four major fragments of the Hindu Code: Hindu Marriage Act, 1955; Hindu Succession Act, 1956; Hindu Minority and Guardianship Act, 1956; Hindu Adoptions and Maintenance Act, 1956. A second important reform of Hindu law was initiated in 1976, based on the 59th Report of the Law Commission, when Parliament passed the Marriage Laws (Amendment) Act, 1976 modifying the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. What is more, there have been very important modifications of Hindu law by local legislators, executing their jurisdiction to alter, repeal and amend the personal laws and customs in terms of article 372 of the Constitution as this jurisdiction has been shared by the Centre and states in accordance with article 246 (read with Entry 5 of List III in the Seventh Schedule). The most important local Acts are the Jammu & Kashmir Hindu Marriage Act, 1980; Madras Hindu Marriage (Amendment) Act, 1967; Kerala Hindu Succession (Amendment) Act, 1958. Further, the central state, by means of changes in the criminal law, has rewritten the traditional laws relating to dowry, age of marriage and maintenance for all citizens (Dowry Prohibition Act, 1961; Child Marriage Restraint (Amendment) Act, 1978; Criminal Procedure Code, 1973, sections 125-127).

legislation. These changes triggered the Shah Bano Decision by the Supreme Court and the subsequent enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986 – the only direct legislative interference with Muslim law in independent India.⁴²

The founding years of the Indian Republic were presided over by Jawaharlal Nehru and his Indian National Congress. Both the leader and party drew on a hybrid ideology of nation building through accommodation of the multiple values that underpinned Indian civilisation. But most of all, good Congressmen knew that political power in a democracy flew out of the ballot box; so, complex electoral moves determined all major policy initiatives. But the Hindu Code Bill was an exception, for enraging conservative Hindu opinion was no obvious vote-winner. For Nehru, the religious policy of the state was essentially a means to move towards the larger objectives of nation-building and economic development. The Constitution of India itself bore ample evidence of Nehru's thinking on religious and moral matters. Nehru of course was not alone in advocating a rational modern worldview in which religion would play an increasingly residual role, preferring to have it retreat to the domain of personal faith in the Indian society of the future. This secular policy of the Congress came under a momentary eclipse during the extremist period when Hindu concepts and idioms crowded the Congress agenda and political strategy. But the rise of the Hindu Mahasabha in the 1920s drew away the more extreme advocates of Hindu dominated politics from the fold of the Congress just as Gandhi's unique blend of private religiosity with public secularism came to be the established policy of the party. Nehru's agnosticism gave his policy its final twist during the late 1930s, when nationalism became the major battle cry of the Congress against the communalism of the League.

Despite his success on the floor of the Constituent Assembly, Nehru, at India's independence, already possessed enough administrative experience to realise the distinction between wishful thinking (that is, implementation of a uniform civil code as he would have liked to, through executive fiat) and hard political realities of potential opposition from conservative Hindus and minorities. The paradoxical position of the law was obvious, for the commitment to equal protection of law was intended to empower all men and women in equal measure with regard to their personal rights, regardless of religion. Thus, the laws of the state, which were committed to equality and individual rights, flagrantly contradicted the custom of the land, whose origins were traced back to sacred texts. The result was the dilemma for Nehru and the Congress: How could the state use the power that it received from accommodating prevailing social interests to destroy at least some of those interests in fulfilling the intentions of the Constitution?

In the event, Nehru devised a strategy which consisted of an effective combination of political transaction with those opposed to his goals, and periodic reassessment of the capacity of the political system to take the load. Thus, on problems such as land reforms, the pace of planning and co-operative farming, industrialisation, and the creation of linguistic states, Nehru the idealist suggested the objectives, but Nehru the pragmatic prime minister of India identified the room

⁴² See Pearl and Menski, (1998), pp. 201-226.

for compromise. The consensus crucial to the system promoted by Nehru's Congress party was reached after intense bargaining between interested parties. The solution gave some satisfaction to socially dominant interests, which in turn extended support to the government. On some other issues, particularly those dealing with the secular character of the state, the idealist leader and the pragmatic prime minister spoke with the same voice, categorically refusing to yield any ground to the interested parties. In the process, Nehru reformulated the agenda of the state and restructured the alignment of political forces.

The Hindu Code Bill was designed to be part of a general attempt to produce a uniform civil code for the country, an intention declared in the Constitution. However, in the face of growing resistance from within the Congress party, the Bill was withdrawn, thus provoking the resignation of Ambedkar, its most ardent advocate. It was reintroduced in piecemeal form after the convincing victory of that party in the first general election. In the course of the long debate on the Bill, the party ran out of steam and abandoned attempts to draw up a uniform civil code for the country.

The manner of the passage of the Hindu Code Bills and Nehru's inability to extend similar legislation to other communities has been seen as a failure to lead the modern state the full length of its secular obligations. However, in terms of a different paradigm which casts the state in the image of the classical ruler in India, the same episode could be seen as an evidence of the validity of the syncretic legal tradition and the accommodation of competing identities as the only basis of legitimacy in the Indian context. Nehru as law-upholder, not lawgiver. The decisive factor here is the kind of interpretation one makes, and the policy that it gives rise to. The crucial argument used to justify intervention by the state in social and moral matters in this case remained indeterminate. Where did Nehru's state derive its moral authority to reform Hindu personal law? In defending his position, Nehru allowed his personal agnosticism to surface in the form of a statesmanlike argument for tolerant pluralism, cultural diversity, egalitarianism and a scientific outlook. One looks in vain for the arguments that the state should assist Hinduism in coming to terms with changed circumstances because Hindu religion is institutionally unequipped to do so on its own or that the state, in reformulating the Hindu personal law was only discharging its traditional function of articulating "righteousness in terms of law and law in terms of righteousness".⁴³ (Derrett, 1968: 29).

The uneasy truce between the state and society on the issue of a uniform civil code, struck on the occasion of the passage of the Hindu Code Bill and sustained through the complex mechanism of check and balance, and compromise, institutionalised in the form of the Congress 'system' gradually lost its holding power as the leaders of the first generation after independence passed away, Hindu upper castes moved away from the Congress and the hiatus between Hindu personal law and that of Muslims began to gain salience in the political market place. This was given sudden visibility by the celebrated case of Shah Bano, where a divorced Muslim woman asserted her right to alimony under the constitution and

⁴³ Derrett, (1968, reprinted 1999), pp. 29-30.

was granted redress at the first instance by the judiciary. A Supreme Court bench of two judges took the view that the law was not clear. Therefore, they referred the matter to a bench of five judges, headed by Chief Justice Chandrachud, which dismissed the husband's appeal and confirmed the decision of the High Court. The fact that these five judges were Hindus and the fact that non-Muslims interpreted the Qu'ran became the political basis of the controversy that followed.⁴⁴ Numerous demonstrations and riots led to political considerations which in turn contributed the rapid passing of the Muslim Women (Protection of Rights on Divorce) Act 1986, which was widely understood at the time to prohibit a Muslim woman from going to court to seek a maintenance payment from the man who divorced her.

However, we learn from the recent case law, the Muslim Women (Protection of Rights on Divorce) 1986 has done precisely what its name suggests and has proved rather beneficial to divorced Muslim wives who were unable to maintain themselves appropriately after the *iddat* period. The 1986 Act has not taken away the divorced Muslim woman's right to claim maintenance from the former husband but has in fact strengthened it. The 1986 Act offers a more or less instant remedy today to any divorced Muslim wife in India who, at the end of the *iddat* period, finds that her ex-husband has not made reasonable provisions for her future maintenance.⁴⁵

In terms of Muslim personal law, our conclusion about the current legal position in India must be that a Muslim ex-husband is undoubtedly expected to maintain his wife during the *iddat* period and is in addition required to make reasonable provisions for his former wife for the period beyond the *iddat* period to the best of his abilities. We have seen in a number of cases that if such provisions have not been put into place by the end of the *iddat* period, the wife may have a claim under section 3.1(a) of the 1986 Act.⁴⁶ It remains a sociological reality, and will remain a problem of growing dimensions in South Asia, that many poor women can expect precious little support from a former poor husband. It is,

⁴⁴ The following draws largely on Menski (2001) and Pearl and Menski, (1998); see also Mahmood, (1985), pp. 110-120.

⁴⁵ Menski, (2001), pp. 236-246, Derrett, (1968) reprinted (1999), pp. 29-30, Pearl and Menski, (1998), pp. 201-226.

⁴⁶ The judicialisation of section 3 of the 1986 Act can be found in a number of High Court cases. The Kerala High Court's detailed verdict in *Ali v. Sufaira* 1988 (2) KLT 92, not the first but an influential decision, arrived at the conclusion that 'provision' and 'maintenance' are not the same thing and that under section 3(1)(a) "a divorced woman is not only entitled to maintenance for the period of *iddat* from the former husband but also to a reasonable and fair provision for her future" to be made and paid to her within the *iddat* period. The judges rationale in *Ali v. Sufaira* is not only crystal-clear but, what is more, it has been endorsed in other decisions and by other Indian High Courts, e.g. *Aliyar v. Pathu* 1988 (2) KLT 446; *Arab Ahemadhia Abdalla v. Arab Bail Mohmuna Saiyadbhai* AIR 1988 Guj 141; *Ahammed v. Aysha* 1990(1) KLT 172. While the women-friendly interpretation of the statutory language has also been rejected (for instance, in *Usman Khan Bahamani v. Fathimunnisa* AIR 1990 AP 225) a recent Indian Supreme Court judgement, namely *Noor Saba Khatoon v. Mohd. Quasim* (1997) 6 SCC 233, seems to endorse silently the interpretation exposed by the Kerala High Courts. These issues, and the widespread misconception of the Muslim Women (Protection of Rights on Divorce) Act, 1986, are discussed in detail by Menski, *Modern Indian Family Law*, pp. 231-294.

however, no longer possible to claim that divorcing Muslim husbands have no such responsibility. Thus, the enactment of the Muslim Women (Protection of Rights on Divorce) Act 1986 has been from the very beginning, and remains caught in certain popular misconceptions and misgivings. The Act is unjustifiably characterised as contravening the Constitutional ideals of secularism, legal equality and respect for women's dignity. Generally, the Act is presented as reflective of the Muslim community's alleged refusal to be governed by the 'law of the land' and symbolic of their 'separatist' tendencies. However, recent case law shows that on the contrary, under the 1986 Act the entire jurisdiction in respect of Muslim divorcees has been transferred to the criminal courts, who assess all the dues of the divorced women under Muslim law and thus save divorced women the risk of tedious civil proceedings.

The new statute law has tried to find a compromise between social welfare concerns and respect for the Muslim personal law. It triggered a re-assessment of the basic principles of Muslim law in this respect and established a compromise between sacred Qu'ranic and modern law. The Indian state has accommodated the sacred and the profane by making creative use of the Qu'ranic foundations about a husband's sacred obligations to his former wife to establish a tightly framed and time-bound system for identifying and implementing the divorcing husband's liabilities.

The empirical evidence of the social recognition of the new 'equilibrium' with regard to personal law in India, resulting from the Muslim Women Protection Act can be evaluated on the basis of survey data on the personal law itself, trust in the institutions most responsible for the new institutional arrangement, and indirectly, in terms of the sense of legitimacy and empowerment of the minorities one notices from survey data, and finally, from media reports with regard to the attitudes of politicians speaking for the majority community. In order to measure attitudes towards personal law, the survey asked: "*Every community should be allowed to have its own laws to govern marriage and property rights. Do you agree or disagree?*"⁴⁷ One can infer from this data that there is considerable support within the electorate for the existing institutional arrangement with regard to the simultaneous existence of multiple personal laws. Very significantly, on the whole, more people agree with the existence of multiple laws (44%) than disagree (30%). The percentages reverse in the case of the voters of the BJP, but only just; the tendency to support the current arrangements is very strong in all other parties.

Finally, no institutional arrangement can claim legitimacy if it does not have the basic support of the main political forces active in a society. It should be noted in this context that despite the rhetorical exchanges between the religious extremists on the two sides of the communal divide on the issue of the destruction of the Babri mosque of Ayodhya, the main difference between the BJP and the Babri Masjid Action Committee lies over the interpretation of the events rather than the judicial and legislative competence of the main institutions involved. In a recent media report, the BJP leaders and Home Minister Mr. Advani "categorically committed before the Liberhan Commission that the court verdict on the Ayodhya

⁴⁷. See Mitra and Singh, (1999), pp. 149-150.

issue will be binding on the BJP".⁴⁸ Under the benign regime of a network of constitutional and parliamentary acts, judicial legislation and independent commissions, the contentious issues of marriage, family and succession for religious groups in India have been taken off the streets and put into the safe custody of public institutions.⁴⁹

AYODHYA: SACRED PLACES AS 'REALMS OF MEMORY'

Our empirical analysis to this point has concentrated on conflict over language and personal law, both of which, while important points of division in their heyday, have now, thanks to appropriate institutional arrangements, made possible because of countervailing powers, have become part of the political foundation of civil society in India. However, the conflict over the 'disputed territory' in Ayodhya has so far eluded such institutional solutions. The unresolved nature of the Ayodhya issue helps bring the issue of collective memory as yet another dimension that deeply seated conflicts encompass, making enduring solutions conditional upon the symbolic healing of remembered violence to dignity, meted out in the form of defiling of women, gods and sacred property.

Hard-nosed political scientists have every reason to be wary of memory as a variable because of the scope for manipulation that so subjective and imprecise a factor introduces into rational analysis. Here, the French example is important because it helps relativise the Indian case, ever in the danger of being considered

⁴⁸ 'BJP to abide by court verdict on Ayodhya', *The Statesman Weekly*, 19 May 2001, p. 7. Interestingly, the same article reports: "The setting up of the Liberhan Commission was 'motivated' and it should be disbanded immediately, VHP senior vice-president, Acharya Giriraj Kishore said today".

⁴⁹ See Mahmood, (1986), pp. 5-6, Menski, (2001), pp. 236-246, Derrett, (1968), reprinted in (1999), pp. 29-30 and Pearl and Menski, (1998), pp. 201-226. Articles 15, 25(1), 25(2), 26(b), 29(1), 38, 44, 246 and 372 of the Indian Constitution provide the judicial basis for conflict resolution to the issue of personal law. The case laws and legal precedents are particularly rich and can be cited only briefly. The first legislative activity of India's independent Parliament resulted in the new Special Marriage Act, 1954, a secular code that was not mandatory but allowed Indian citizens to opt for a civil marriage. In quick succession, there followed, after 18 years of committee work and debate, four major fragments of the Hindu Code: Hindu Marriage Act, 1955; Hindu Succession Act, 1956; Hindu Minority and Guardianship Act, 1956; Hindu Adoptions and Maintenance Act, 1956. A second important reform of Hindu law was initiated in 1976, based on the 59th Report of the Law Commission, when Parliament passed the Marriage Laws (Amendment) Act, 1976 modifying the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. What is more, there have been very important modifications of Hindu law by local legislators, executing their jurisdiction to alter, repeal and amend the personal laws and customs in terms of article 372 of the Constitution as this jurisdiction has been shared by the Centre and states in accordance with article 246 (read with Entry 5 of List III in the Seventh Schedule). The most important local Acts are the Jammu & Kashmir Hindu Marriage Act, 1980; Madras Hindu Marriage (Amendment) Act, 1967; Kerala Hindu Succession (Amendment) Act, 1958. Further, the central state, by means of changes in the criminal law, has rewritten the traditional laws relating to dowry, age of marriage and maintenance for all citizens (Dowry Prohibition Act, 1961; Child Marriage Restraint (Amendment) Act, 1978; Criminal Procedure Code, 1973, sections 125-127).

sui generis. The concept is used by Pierre Nora and his co-authors in describing the major monuments of France which are constitutive of French identity. The 'realms of memory' "... produce a multiplicity of interpretations that give new meanings to history through what might be termed a form of genealogical revisionism. If a 'realm of memory' is to exist it must have a capacity for metamorphosis: the recycling of knowledge through associations and new symbolic representations. In becoming a synonym for national identity, a 'realm of memory' enables successive generations to mediate their cultural myths by inculcating them with their desires."⁵⁰ The memory of past humiliation, of defilement of gods and women, of lost property play a crucial role in enduring disputes in the Middle East as much as in Ayodhya. No interpersonal trust, the indispensable basis of legitimate and effective institutions is possible in a society divided by deeply held, wounded memories of one group against another.

Governance in a morally divided society requires institutions that inspire inter-communal trust, and can accommodate forces ranged across a cultural divide. Institutions can be effective and legitimate only if they are understood and respected by both rioters and their victims. In the uncertain moral universe of communal politics, tales of torture, rape and violent death are constantly told and re-told, and constrain the preferences and strategies of actors depending on the context. Sudhir Kakar (1995, pp. 34-35) illustrates his concept of the formation of cultural memory with two narratives, related, embellished at every re-telling and taken-for-true by the subsequent users of the narratives of the Partition of 1947.

The Story of a Cousin Told by His Elder Brother

Sohan Lal killed himself on the way to Rohtak. He threw himself in front of a train. I could not stop him. We had made all the arrangements for the escape from Lyallpur. A Muslim truck driver was ready to drive the three hundred miles to the border for six hundred rupees. Sohan Lal had been married for only five months. He had a very pretty wife.

On the day of our departure we went out to make the final arrangements with the truck driver. The house was attacked in our absence. When we came back we hid on the roof of a Hindu neighbour's vacant house. We watched five husky Muslims in our courtyard. They had long butcher's knives stuck in their lungs. They were methodically looting the house. The corpse of our youngest brother - we were three - lay in the courtyard, the head completely severed from the trunk. One of the Muslims sat on a chair in front of the corpse directing the looters. They were bringing out the packed trunks from inside the house and throwing them in front of him on the ground. The ground was cluttered with wedding sarees and coloured silk blouses. I can still see the shining brass pots lying on their side reflecting the rays of the afternoon sun. We could not move. I was transfixed by the sight of the leader's hairy torso of which every inch was covered by a thick black fur. Then two of the Muslims went inside the house and brought out Sohan Lal's wife and the

⁵⁰ Lawrence Kritzman in his foreword to Nora, (1989), p. XIII.

leader pulled her to him. She sat on the man's lap, naked to the waist, her petticoat ripped open, and the Muslim's hairy hand, like a giant back spider, covered thigh. After laying her on the ground next to our brother's corpse, where drops of blood still oozed from the severed neck, raped her in turn. I was holding Sohan Lal fast, my palm covering his mouth. If he had made the slightest sound the Muslims would have discovered us. But I do not think Sohan Lal would have done anything. His legs were buckling under him and I had to hold him up. After they finished, they ripped open her belly. Sohan Lal never said a word after it was all over and the Muslims had gone. In the days it took us to cross the border he remained mute. I tried my best to make him talk, to make him shed some of his grief in tears but his soul remained far away. He killed himself just before we reached Rohtak."

Kakar explains how, if the previous narrative is one of desperate and impotent rage, the one following is the type to send a rush of blood through the veins, and a surge of potency in the tiny groups of refugees, fleeing the violent pogroms of West Pakistan, huddled in cramped circumstances, desperately seeking to move from humiliating victimhood into the dignity of survivors.

The cousin from Lahore

"We did try to retaliate, at least the younger Sangh [Rashtriya Swayamsevak Sangh] members like me. And of course the Sikhs. A police inspector told me of going to a Sikh village where there was a reported massacre of the Muslims. As the police entered the village they passed under a kind of welcoming arch which was a rope strung out between the poles. To this rope, attached with short pieces of string, were the circumcised penises of all the Muslim men who had lived in the village, hanging there as if they were small eels drying in the sun."

Rape (or *gang-rape*, in the brutally precise words with which the police and media often report it) is the last argument in the violent discourse of communal conflict. Presented as factual accounts, these anecdotes are no doubt constructed by each narrator to suit the specific context and purpose. The latter can be simply a cathartic expiation of guilt, sublimation of anger, or simply an act of self-redemption for the lone individual, located away from his organic, primordial group. For the entrepreneurial ethnic leader ensconced within his kin group, the narration can be a means of political mobilisation. Facilitating conditions like a pre-existing dispute on ownership of a religious site, religious practices considered offensive or provocative, or a drastic change in the macro-political environment that affect the relative power of communities account for the relative success or failure of such attempts.

In the face of communal riots, a knee-jerk response of the secular academic and the functionaries of the modern state has been, speaking from the commanding heights of the state as a fixed point, to counsel the actors to behave otherwise. The (Justice) Raghbir Dayal Commission on the Ranchi-Hatia riots in 1967 observed: "The political parties should change their attitude in approaching the people for

their gain, especially in elections. They should not exploit communal and caste feelings for their purposes. No political, economic or and caste-feelings for their purposes. No political, economic or cultural issues would be discussed or agitated from a purely communal angle. Communal harmony should be taken to be too sacred to be tampered with for mere political gain." (cited in Rajgopal, 1987, p. 72)

Kakar and Davis remind us that conflict over identity and exclusive space is at the core of inter-community violence. We need to understand sixteenth century France to be able to restore to rioters their sense of agency and then think about neo-institutional solutions. Collective rage is about the denial of legitimacy by the authorities (the state and the church) to what the 'saint-soldier' (in the evocative phrase of Mahmood) considers morally right, about the denial of dignity to symbols one holds as sacred, about the chance to wrest back control over a designated territory or area where one can see one's sacred symbols safely ensconced. Not surprisingly, the longing for an exclusive territory is the main object of communal conflict.⁵¹

Every riot sharpens the separate identity of communal groups and particularly the identity of the minority groups. The process by itself whether it is intended or not, promotes the role of communal leadership and gives it an extra dimension. Thus over a period of time, communal leadership develops a vested interest in communal riots, as with every successive riot the demands and reliance on the communal leaders increase.

However, if the Kakar's accounts of cultural memories and chosen traumas are seen as key to the sadistic and sexual violence that characterises communal riots, this kind of moral exhortation is likely to make little impression. We need therefore to look closely at political conflicts that in the past have sparked off violent communal riots but have over time, ceased to have the same political and moral significance in order to understand how this transformation has come about.

The protracted political and legal controversy over the exclusive right of ownership and worship over a site of 2.77 acres in Ayodhya is the third of our empirical examples of contested identities as challenges to governance. The primary actors in this case are the Ramjanambhoomi Trust of Ayodhya who claim this spot as the sacred birthplace of Rama, and the Babri Masjid Action Committee which wants to re-establish its right as the sole owners of the land where the Babri Masjid once stood. Over the past ten years the specific conflict had assumed the dimensions of an iconic symbol far beyond the original claimants. Thanks to the electronic media and the enduring presence of the articulate protagonists in political and electoral discourse, for many Hindus beyond the immediate vicinity, in fact, even beyond the North Indian heartland of the cult of Rama, Ayodhya has now become a site of cultural memory, of centuries of abiding faith in the face of political defeat and desecration. For the Muslim defenders of the claim, it is test of the ability of the political system to protect their dignity and cultural identity, an

⁵¹ "As a general proposition, communal riots occur in places where neither of the communities has a preponderance in numbers. More riots occur in districts which have a Muslim population varying between 15 percent and 59.3%." Rajgopal (1987, p. 19)

ever-present chosen trauma which has increasingly assumed the proportions of a meta-narrative of the Islamic identity and majority communalism.

It is not difficult to see why Ayodhya has emerged as the most important communal divide of India after independence. Its impact is felt more widely and keen than language or personal law in their times. The electronic media and the globalisation of Indian politics surely account for part of the difference in the salience attached to it. But the decisive roles are played by the cultural memory of Hindu-Muslim conflict into which it has been firmly locked, and the coalition structure of Indian politics which causes most of the debate to be held in the public arena rather than within the entrails of the Congress party as in the case of language or personal law.

Ayodhya questions the post-independence resolve of the Congress party to deflect attention away from the location of cultural values and historical memories in the public arena. It located the search for legitimacy in the twin principle of individual rights and protection of minorities. This entailed a constitutional design committed to denying hegemony to any religion. Political mobilisation on Ayodhya shows how, as the message of democracy spread, the issue of acculturating India's public arena has become increasingly trenchant. Ethnic and national minorities now challenge the state and its capacity to accommodate conflicting identities by demanding neutrality *vis à vis* the majority community as well as genuine recognition and active support for their cultural and religious identity. This is resisted by those who speak in the name of the majority community, demanding the recognition of their core values in the public sphere.

How does a society segmented on the basis of tribe, caste, religion, language and a number of other considerations institutionalise itself into a multicultural state? In the wake of the rise of the Bharatiya Janata Party to power in the central government at the head of a coalition, and its recent attempts to 'Indianise' education, few questions polarise Indians as much as the iconic issue of Ayodhya. Unlike economic development which became the main issue of public debate immediately after the achievement of independence, the issue of nationhood in post-colonial India came into the mainstream of national politics only in the 1980s. Compared to her South Asian neighbours India is very much a case apart in terms of the comparative lateness of the public debate on nationhood. Unlike neighbouring Pakistan, Bangladesh or Sri Lanka, right from the outset the Constitution of India did not go far enough in defining the core beliefs of the nation.⁵² (this sounds like a value judgement, would it be better to eliminate "did not go far enough" and replace it by "did not go as far as"?) Though, as mentioned before, the supreme law of the land spoke *both* of the rights of individuals and primordial groups but provided no consistent guide lines as to why the state should support one or the other in a specific context.⁵³ However, five decades of full, free

⁵² The basic values of the Constitution are defined in the Preamble. The word 'secular' was added subsequent to the formation of the Constitution, through an amendment in 1976.

⁵³ Thus, while the rights of the individual to equality were to be seen as a fundamental value, milk cattle were to be protected in the interest of the agrarian economy and the tradition of devadasis to be suppressed for the sake of morality and religious minorities were to be provided for with regard to their separate educational establishments.

and uninhibited competitive politics following independence has succeeded in putting the ambiguity implicit in this fuzzy definition of multiculturalism to test, forcing an alternative in the form of a nation based on *Hindutva*.⁵⁴ That alternative is the source of great anxiety to 'secularists' who see in such arguments a dangerous portent towards the rise of 'Hindu fascism'. But, this secularist argument on its own does not advance a theory of a multicultural state in India. For, besides mechanically repeating that India is a secular state and should remain so, the secularist lobby offers no satisfactory theory of the nature of the Indian nation and its relation to India's culture and religions.

The relevance and urgency of the issue for contemporary India can hardly be over emphasised. From the nineteen eighties Indian politics has polarised dangerously on the issue of religion and politics. Fuzzy concepts like 'unity in diversity' as the cultural basis of a tolerant pluralism in India, or the *Congress System*, based on consensus and accommodation are no longer seen as acceptable and sufficient guarantees of India's national unity and integrity as a state.⁵⁵ At heart of the issue today is: what kind of nation underpins the state in India, and, what resources do the post-colonial state and society in India possess in order to sustain multicultural nationhood in India?

The nascent Indian state, with fresh memories of the Hindu-Muslim riots that marked independence and the partition of India, attempted to find an institutional solution for the problem of the accommodation of religious differences within the institutions of the modern state through the twin concepts of *sarva dharma samabhava* (equal attitudes towards all religions) and *dharma nirapekshata* (religious neutrality). Secondly, it made every effort to acknowledge the salience of individual rights to freedom of religion and equality before the law, and group rights to cultural and religious practices in its charter of fundamental rights. The post-colonial state thus made attempts to accommodate both the fact of the existence of several religions which played a salient role in the social life of her citizens and to assuage the apprehension of non-Hindus of a possible Hindu majoritarian dominance. This created what can be termed a *fuzzy* notion of multiculturalism, to distinguish it from radical multiculturalism which required the state to explicitly acknowledge the existence of plural identities in the public sphere, and from various forms of mono-culturalism which promotes the culture of one social group to the detriment of others by putting its language, religion and status to a hegemonic position within the structure of law and administration.

In retrospect, however, underneath the superficial consensus on the meaning and applicability of the concept of 'secularism' to Indian conditions, controversy raged from the outset. The inconclusive nature of the 'cow slaughter' issue during

⁵⁴ This is defined as the common denominator of Indian culture by its proponents who insist on adherence to its values as the basis of citizenship in India. The Indian Supreme Court has accepted *Hindutva* as a manifestation of Indian culture rather than being synonymous with the Hindu religion.

⁵⁵ Of the two mainstays of the fuzzy Indian nationalism, 'unity in diversity', the main ideological device, lies in the rubble of the Babri mosque and the second, the 'Congress System', which served as its institutional base, after successive electoral defeats, now firmly belongs to Indian history.

the 1950s, the incomplete character of the project of a unified personal law for India, the 'text book' controversy of the first Janata Party governments and the celebrated Ram Janambhoomi issue from the nineteen eighties which ultimately led to the violent clash of Ayodhya all bear testimony to this deeply embedded problem (Mitra 1991).⁵⁶ At issue is the inconclusive nature of the solution to the problem of incorporating multiple religious identities within the structure of the state. While short term calculations of political opportunists certainly play a role in giving particular salience and virulence to each of these issues, their consistent appearance in time and space point towards factors that go beyond the exigencies of everyday politics. Advocates of modernity like Nehru sought to reduce the salience of this problem on the national political agenda by making a non-issue out of it, or by promoting the spread of 'rational thinking' through science and technology and social reform which they fondly hoped would make these traditionalist opposition to modernity disappear. But, looking back to the fifties and considering from that vantage point all that has happened since in this specific area, one is inescapably driven to the conclusion that in terms of its political significance and philosophical basis, the issue multiculturalism rightfully belongs to the agenda of the high politics of values and institutions of the post-colonial state in India.

JUDICIALISATION: SURREPTITIOUS ACCULTURATION OF THE PUBLIC SPHERE

The political discourse on Ayodhya entered a new phase with the instruction of the Lucknow bench of the Allahabad High Court to the Archaeological Survey of India to "excavate the disputed Ram Janambhoomi-Babri Masjid site" in order to establish, on the basis of archaeological evidence, "whether there was a Ram temple at the site, and if the mosque was constructed after its demolition."⁵⁷ Reactions to the court order were predictably diverse. The Muslim Law Board held that "the [archaeological] evidence would not be of much value". The Ramjanambhoomi nyas held the excavation as unnecessary because the recently concluded radar survey had thrown up "evidence of Ram temple". The Viswa Hindu Parishad, while welcoming the court order suggested that "similar directions should be passed in respect of other shrines destroyed by invaders." The Congress party saw the order as "part of the judicial process for the final adjudication of the

⁵⁶ For a discussion of the debate surrounding cow slaughter and the Hindu Code Bill, Lloyd and Susanne Rudolph, 'Cultural Policy, the Textbook Controversy and Indian Identity' (1982); for the textbook controversy Arun Shourie, *Indian Controversies: Essays on Religion in Politics* (1993) and K.R. Malkani, *The Politics of Ayodhya and Hindu-Muslim Relations* (1993) for the conflict surrounding the birthplace of Rama and its implications for Indian politics.

⁵⁷ "Ayodhya site to be excavated: Court gives ASI a month to finish job2, in Hindustan Times, (New Delhi), March 6, 2003, p. 1. The three-member bench consisting of justice Sudhir Narain, Justice Rafat Alam and Justice Bhanwar Singh issued the order on the basis of evidence of the likely existence of a structure under the demolished mosque on the basis of a radar survey. The court order, while seeking factual evidence behind the myth of the Ram Temple was particular about making sure that the status quo with regard to worship and ownership are not any way affected by the process of excavation.

dispute."⁵⁸ Despite their differences, however, no voice of disagreement was raised questioning the institutional framework within which the Ayodhya dispute is ensconced, though at least one dissident voice in the media suggested a political compromise between the parties in conflict as a better solution than judicialisation.⁵⁹ The wheels of countervailing forces have been set in motion again, giving credence to the Indian 'model' in matters of contested identities.

The involvement of the judicial process with the issue of identities and governance should be seen the context of a landmark judgement on the issue of the status of Hindutva as a part of Indian culture.⁶⁰ The important point to note is that the Supreme Court acknowledges the tolerant pluralism and syncretism of classical Hinduism; is willing to concede the imperative of a common culture for the public sphere of the state; and is unconditional about very specific and context bound interpretations of the references to religion. Thus, the mention of religion by itself is not taboo, but the use of religion for the purposes of discrimination, incitement to hatred or disharmony (referring to Muslims as snakes or *lande*) bring the matter under the provision of Indian penal code. The court's understanding of culture and context appears to have evolved way beyond the early years after independence when an invocation of modernity was considered enough.

The Court came to this conclusion in a circuitous way. "Any speech wherein expression 'Hindutva' or 'Hinduism' are used, irrespective of their meaning, cannot by itself fall within the ambit of sub-sec 3 of section 123, unless the speech can be construed as an appeal to vote for a candidate on the ground that he is a Hindu or to refrain from voting for a candidate on the ground of his religion, i.e., he is not being a Hindu, mere reference to any religion in an election speech does not bring it within the net of sub-sec 3... since reference can be made to any religion in the context of secularism or to criticise any political party for practising discrimination against any religious group or generally for preservation of Indian culture." (paras 34-35) The justices were however very particular about stating the secular character of the state as part of India's core values.

"When it is said that politics and religion do not mix, it merely means that the religion of a candidate cannot be used for gaining political mileage by seeking votes on the ground of the candidate's religion or alienating the electorate against another candidate on the ground of the other candidate's religion. It also means that

⁵⁸ Ibid.

⁵⁹ "This is the time for sensible politicians to step in, before the courts are forced to intervene with a sub-optimal solution", for a court imposed order which would inevitably create winners and losers would leave a trail of bitterness on the part of those who would "lose face" in consequence. R Jagannathan, "Ayodhya - courts aren't the answer," *Business Standard* (Delhi), 11 March, 2003, p. 7

⁶⁰ AIR 1996 Supreme Court 1113 (from Bombay) J.S. Verma, N.P. Singh and K Veknatasami, JJ. Civil Appeal N. 2836 of 1989, D/- 11-12-1995. Dr Ramesh Yeshwant Prabhoo, Appellant v. Prabhakar Kashinath Kunte and others, Respondents, WITH (capitals?) Bal Thackeray, Appellant v. Prabhakar Kashinath Kunte and others. Respondents.

the State has no religion and the State practises the policy of neutrality in the matter of religion." (Para. 16)

The following paragraphs reinforce these arguments.

In secular polity, the requirement of correct behaviour or propriety is that an appeal for votes should not be made on the ground of the candidate's religion which by itself is no index of the suitability of a candidate for membership of the House. Thus, seeking votes at an election on the ground of the candidate's religion is a secular State, is against the norms of decency and propriety of the society. The fact that the scheme of separate electorates was rejected in framing the Constitution and secularism is the creed adopted in the constitutional scheme, are relevant considerations to treat this as a reasonable restriction on the freedom of speech and expression, for maintaining the standard of behaviour required in conformity with the decency and propriety of the societal norms. The words 'decency and morality' in Art 19(2) cannot be restricted to sexual morality alone." (Para 28,29,30, 31,32)

HARMONY, ACCOMMODATION, TRUST AND GOVERNANCE: SOME CONDITIONS OF CIVIL SOCIETY

Evidence from elite discourse and public opinion in India help us identify the empirical conditions for civil society in the context of deep divisions. A narrative from an elite interview⁶¹, (fortuitously conducted in Godhra, in 1999, before it achieved its current reputation as a salient landmark on the landscape of Hindu-Muslim conflict) gives an idea of the nature of the ground reality with regard to communal violence. When asked to name a specific incident from experience which had an implication for governance and how he had coped with it, the respondent narrated the following:

Curfew was imposed in Godhra for three months. On Jan 3, 1991, 10,000 women gathered on the main road and created a traffic jam for six hours. They were agitating about [alleged] third degree [treatment] by the police on the private [parts] of some Muslim in communal connection. The accused was brought before the magistrate the previous evening and asked about the third degree treatment. He had said no. But the women were blackmailing the police, making useless allegations against them. The DSP, SRP group commander and Home Minister were to arrive. The women wanted to create a scene, jumped on the jeep of the DSP, wanted to videograph the scene, to distort the lawful action of the police. When they did not yield to persuasion, action was taken with [tear] gas, and after warning, a lathi charge was made when police were stoned. The police took decisive action, without consulting

⁶¹ Baroda (Gujarat), 1999. The interviewee was a male Hindu (Brahmin), with an MA in Politics, who held a senior position in the police.

higher-ups. The lathi charge on women was a very painful decision but very effective which was the need of the hour. Next day, the police deployment was decreased, peace returned, the situation became normal and curfew was ended.

Firm policing, our interlocutor holds, saved the day for governance. How confident can one be, however, to construct an enduring image of law and order from this fortuitous turn of events? The insights one can glean from the rest of this interview, and inferentially, from others with managers of law and order do not indicate a firm basis for governance in conflicts of this genre.⁶² The respondent considers "the law and order situation in the country as a whole", to have deteriorated over the past five years and agrees to the statement that "compared to five years ago, life and property are less safe than before." He is slightly more optimistic about the situation in his own State where he holds "governance over the past five years" to have been medium. The most pressing problem of governance in his State is that "bureaucrats have no control over politicians." The latter, "not properly trained", in his opinion, should carry the larger part of the blame for their failure to play an "integrative role in society", for the continuation of problems such as drinking water which obliges "women in Kutch and Saurashtra where women have to walk for 2-3 KM to get water", and for the "law and order situation which is not as good as it is made out to be, [with the continuation of] atrocities on women and communal riots." The respondent's general opinion of political parties, the key agent of governance in India, leaves no doubt for the reasons of his pessimism. The activities of the Bharatiya Janata Party and the Bajrang Dal have "caused governance to decrease", "the Congress is thoroughly corrupt, not able to address the youth" and "Muslims have lost faith [in the political system] on account of the Ayodhya problem".

Governance in Indian context, as the previous chapters have argued, assumes a key role for the politician to set the agenda and hold the bureaucracy and police accountable to the society for its implementation. As such, when the agent of law and order management casts a vote of no confidence in politicians and the political system, the result is a bleak prognosis for democratic governance.

Godhra, even before it acquired the national prominence that it did after the incident of 2002 has prior history of communal tension and the inference one might make from a particular interview in this context needs to be relativised with reference to the larger picture. We shall attempt to do so in relation to a few questions from the National Election Survey of 1996.

The first questions selected from the 1996 national survey for this purpose refer to the illegitimacy of violent action as a part of everyday politics, and, the commitment of the state to defend the plural character of the country through the protection of minorities. *Is struggle leading to violence proper or not a proper*

⁶² This substantiates similar inferences by Rajgopal and Wilkinson. The involvement of militating Muslim women in defence of human rights gives a particular piquancy to the larger theme of the empowerment of social margins and governance, which will be treated at length in the next chapter.

method for fulfilling people's demands? refers to the legitimacy of violence itself. Only 13% of respondents see violence as a "proper method for the people to fulfil their demands" whereas 65% hold that "struggle is not a proper method if it leads to violence". Since law and order is the primary responsibility of the regional government, variation on regional lines is interesting. Among the study regions, Bihar and Tamil Nadu, each with 22% approval of the legitimacy of violence, are well above the national average. At the next level are Maharashtra and Gujarat, each at 17%, not as high as Bihar and Tamil Nadu, but still above the national average. Punjab at 8% and West Bengal at 9% are two States with a violent history but at the moment of study, well below the national average.⁶³

State or society, whom do Indians hold as primarily responsible for the defence of the minority communities? A strong majority of 63% of all respondents support the statement - *It is the responsibility of the government to protect the interests of the minority communities. Do you agree this or disagree?* with no great variation at the regional level, though Punjab at 49% and Haryana at 23% remain ominously below the national level.

The next battery of questions selected for attitudinal evidence of support for tolerant pluralism concern intercommunal accommodation on a number of important issues with regard to India's communal cleavages. The first of these concerns Ayodhya. *Some people say that the demolition [of the Babri Masjid] was justified while others say it was not justified. What would you say -was it justified or not justified?* The results reveal a picture that one does not come across in the media. For the respondents as a whole, those taking the position that the demolition of the mosque was unjustified (38%) largely outnumber those justifying it (23%), but those who do not have an opinion (39%) are actually the largest group. Left-leaning West Bengal has the largest number of respondents (58%) asserting that the demolition was unjustified. Only in Bihar, (a Hindu-Hindi-heartland region though with no significant support for the BJP) do the 'justified' (41%) outnumber the 'unjustified' (32%).

Despite the attempts of the religious right, both Hindu and Muslim, to give a communal complexion to the violent separatist movement of Kashmir, the survey results reveal considerable support for its resolution through negotiation (35%) rather than through the use of military force (11%). Similarly, on the communally emotive issue of *efforts to develop friendly relations with Pakistan* by India, 45% of the respondents agree with the proposition compared to 17% who disagree. On the issue of the issue of discrimination against India's Muslims, posed in a neutral manner (*The needs and problems of Muslims have been neglected in India*), there is far more disagreement (43%) as compared to agreement (19%). Finally, on the issue of *every community being allowed to have its own laws to govern marriage and property rights*, agreement (44%) exceeds disagreement (31%), with Gujarat (74%) and Punjab (59%) appearing with support well above the national average. In addition to institutional arrangements at the national and regional levels and attitudes of communal accommodation or polarisation on communally sensitive

⁶³ The space available here precludes a more detailed analysis of the regional variation but we shall come back to this theme in the next chapter.

issues, the perception of group relations at the local level provide yet another window into the communal situation in the country. A battery of items, posed to the national electorate in terms of specific questions help locate variation in social harmony across different cleavages (Table 1).

**Table 1: Perception of social harmony and conflict at the local level
National Election Study, 1996 (% agree)**

Theme	Agree	D.K.	Disagree
Relationship between different castes has become more harmonious.	62	19	19
Tension between tribal and non-tribals has increased.	19	56	25
Tension between different religious communities has decreased.	43	31	26
Tension between dalit and non-dalits (Harijan and non-Harijan) has increased.	27	37	36
Tension between landowners and landless has decreased.	33	40	27
Now there is more tension between rich and poor.	37	25	38
The poor and deprived enjoy better social status now than before.	48	22	30
Condition of the poor has improved during last five years.	48	12	40

Noticeably, while there is a general recognition that the basic cleavages of caste, class and religion continue to be effective in polarising opinion, the cumulative effect of legislation, policies of the welfare state and political competition have helped to dent the bitter edges of antagonism. These results have been achieved through firm and imaginative intervention from civil servants in sensitive and volatile context, occasionally at considerable personal risk. The elite interviews have yielded a rich harvest of examples. In one case⁶⁴ the ability of the

⁶⁴ The respondent - Jagadip Narayan Singh - aged 38, is a male Rajput Hindu. He has a M.A. in International Studies. He is IAS Officer and was Secretary to CM, 1997 (for 8 months). Currently, he is MD in Gujarat Industries Power Company Limited. In 1991, when respondent was DM of Junagarh, he averted a major communal conflagration through persuasion and negotiation tactics with the Muslims (see attached sheet for details). This success gave respondent tremendous confidence and he was also given the Best Collector award in 1991, 1993 by the State Government.

district magistrate to negotiate rather react with overwhelming force made the difference. In the second case⁶⁵, firm handling of a potentially violent clash with Patels, an affluent community won the day for governance. The respondent reports:

During 1986-87, Bharatiya Kisan Sangh (BKS)... wanted to capture power in Gujarat through apolitical, violent means. The method(s?) adopted were (a) stop supplying mild and vegetables (b) road blockage. Though defiant of the above, violet attacks from BKS who also gave a call for "gamra bandh" and burnt all village buses where upon hundreds died. At that time the respondent was collector, Sabarkantha, which was dominated by rich patels who were also political leaders and who brought the popular theme of free electricity to the people. Due to the road blocks and Ram Janaki Rath Yatra, large levels of violence were experienced, involving the masses, and paralysing the state. The activists of the BKS gheraoed the Assembly, government machinery was helpless as shooting orders couldn't be given. Political leaders like Jinabhai Darji and Madhav Singh Solanki were attacked in Dhansura and near Chi,ora in Saharkanta. The tense situation was difficult to tackle; so, 'silent measures' were adopted by the respondent, like arresting the Zilla Panchayat Presidents and Taluka Panchayat Presidents and relatives of MLAs who were responsible for creating tension and violence in the district. The telephone calls from dominant politicians of Gujarat were not succumbed to. On 10th February 1987 and later again in June, the Assembly was ghearaoed and some MLAs were attacked which resulted in a major showdown between the BKS activists and the administration. In Saharkantha, 5 leaders of BKS, mostly Patels, were arrested (the respondent called the now released leaders and invited them to have an informal chat with him on Friday. Four out of five came - they were told that "they should do their jobs and he would do his", i.e., protecting the people of the state and that his information is that all violence in the state is created by them. He went on to say that they would be shot (believing in 'one bullet, one body theory') if any further single incident of violence took place within the borders of Saharkantha. At that time they took his words seriously but when they went back home they found their villages cordoned off by the police. So they went to Gandhinagar, joining lakhs of BKS followers where full police firing took place. 22 died from Saharkantha including some young Patel boys aged 18-19. The situation was tense with the deaths. Orders to the SDM were given by the respondent that as soon as the dead bodies arrived they were not to be handed over to the relatives but had to be cremated immediately, as the sight of them might result in heightened emotions and continuous violence. Cremation of all, except the son of a big mill owner had taken place (between mid-night and 2 AM - to avoid the crowd) when the SDM was attacked (his eye was damaged) yet the body was not handed over to the relatives but cremated later by the administration.

⁶⁵ Gujarat #3, Gujarat, 2003. The respondent, aged 43 is a male Hindu, scheduled caste, with a wide range of administrative experiences.

The above experience was a great challenge to governance in the respondent's opinion, as he was successfully averting violence and 'gamra bandh' largely in his district within the laid down rules. Many a times it meant a direct confrontation with the political big wigs. He attributes his success to having excellent relations with the police and also his strong belief in doing one's job well and "meaning business." he says, if one means business, the other side checks its powers."

Earlier in the interview, the respondent (a double outsider to Gujarati society and its high politics being originally from South India and, additionally, of scheduled caste origin) had described the "deterioration of law and order, communal violence and the loss of harmony, and too many socialistic and populist schemes imbalancing growth" as the main problems of governance in Gujarat. There is certainly an element of a personal project, of one man doing his job well by exercising authority when and where it is needed in his narrative of governance. It is the presence of such able and alert cogs in the gigantic wheel that Indian administration has become that sets the pace for governance in the regional arena. The causal nexus between these factors, as perceived by the electorate at large can be seen from the following multivariate analysis (table 2).

The variables used for this correlation are based on the questions about the legitimacy of violence, the perception of the protection of minorities as a responsibility of the government, social harmony and accommodative attitude towards social pluralities (calculated through the summation of attitudes towards the salient, communally divisive issues) and trust which represents the average of all the trust questions, already discussed in the previous chapters. These variables have been correlated with another, as well as with the perception of law and order over the past five years.

Table 2: Multiple correlation of culture variables with law and order improved

variables	Law and order	Harmony	Violence	Minority	Accommodation	Trust
Law and Order	1					
Harmony	.17**	1				
Violence	NS	.06**	1			
Minority	NS	.08**	.07**	1		
Accommodation	.04**	.05**	.01**	.25**	1	
Trust	.18**	.15**	.11**	.13**	.14**	1

* significant at .05

** significant at .01 or less

The positive and significant correlation of these variables provide a popular echo of elite attitudes and strategic choices with regard to governance. But the story is not

one of uniform good faith or goodwill. A Punjab narrative⁶⁶ shows the other face of mechanical and damaging police brutality. The respondent, aged 58, is a female Sikh belonging to the Jats. She has a Jsc Medial and a BA in English. She was born in a big landlord family. Her father had very closer relations with Nehru via philanthropic work for the Dalits. She was a member of the Consumer Court in Punjab, the Central Social Board, the Public Women and Child Development Corporation, the Governing Body of the State Red Cross, the State Child Welfare Council, the Bharatiya Gramin Mahila Sangh at the State level and was, at the time of the interview, the Chairperson of the Public State Women's Commission. She narrated the following as her personal experience of challenges to governance.

I had a driver named Amrik Singh Kauli. He was with me since he was only 11 years old. I brought him up. he was a very innocent and honest boy. During the period militancy in the Punjab (1991-94) the police on the behest of opposition politicians levelled false charges against him and he was declared a militant. He was brutally beaten by the police. This made him a real militant. He killed a number of people including Mr Balwant Singh, former Finance Minister of Punjab. Later he was killed by the Punjab police by staging a false encounter.

I found the detached undertone of the interview, its clinical precision with regard to the analysis of a personally painful incident and locating the responsibility for governance failure at the lower level of the administration (in this case, the thana), fascinating. She returns to politics as the source of possible solutions to the problems of governance. One can see in her positive evaluation of the role of political parties more than the bureaucracy or the police the explanation for her continued commitment to the institutional core of the political system.

CONCLUSION

The lone assassin, stalking his celebrity prey, remains a by-line in the history of political violence. Participants in collective violence in most situations are ordinary people, engaged in extra-ordinary behaviour for the duration of the riot, pogrom, uprising, insurgency or individual acts of terrorism, retreating into the safety of their homes and collective memory after the event. Of course, peer pressure, fun, profit, the temptation of easy pickings or fear of reprisal are relevant factors that help explain the behaviour of many of the participants. At the core, however, there remains, as Natalie Davis reminds us, the issue of a 'legitimacy deficit', a sense of moral outrage where ordinary people have a sense of a profound wrong, and having been let down by those who have the power to do something about this which makes them take the law into their own hands.⁶⁷ The outraged become rioters and

⁶⁶ Punjab, interview #6, 1999.

⁶⁷ "Was the destruction merely the outcome of senseless mob violence or did the rioters have a serious religious or political objective?" Based on the findings of Rude with regard to who was responsible for the Gordon riots, Gilmour shows evidence of careful targeting of Roman Catholic places of worship and properties. The fact that "it was not the Catholic

the riot definitively subsides once the root cause of the outrage has been satisfactorily removed through symbolic and substantive action in terms of new institutional arrangements and an authoritative re-allocation of values. The survivors become citizens all over again, living cheek-by-jowl with their neighbours, connected through institutional links across cultural or religious chasms.

The coexistence of institutional stability at the national level with vigorous challenges to lawful authority at regional and local levels is a salient feature of Indian democracy. Paradoxical as it might seem, the more the system has been challenged, the stronger it seems to have become. Robust, even contentious political participation eventually turns adversaries into stakeholders.⁶⁸ While this is generally true of conflict based on caste, class and language, communalism, particularly in the extreme form of communal riots question this transactional view of Indian politics.

Scholarly writing on communalism often concedes too easily to anxiety and resignation instead of taking the tools of historical and comparative analysis as far as they would go. Our findings, particularly from the narratives from semi-structured interviews with the regional elites show how legitimacy deficit is the main explanation of the fury of the crowd in communal violence. Seen in this light, the Indian actors of communal violence join their counterparts from religious violence in history. But, though, as we have seen in the study of Natalie David, whereas the French religious mobs are recognised as political actors by their historians three centuries later, the Indian counterparts of the French religious crowds have done less well at the hands of their historians, both the indigenous and the expatriate. The contrast is remarkable, for one would have thought, thanks to the proximity in time and greater accessibility of the sources, the scholarly toil of the historians of communal conflict in contemporary India would have been more enlightening of the motives that unleashed such passion and fury rather than mere platitudes and moral condemnation.⁶⁹

population as a whole that was singled out but Catholics of substance" shows a combination of religion and class antagonism to be the dominant motive. Gilmour, op.cit., pp 359-360

⁶⁸ Naipaul's *Million Mutinies Now* is the most celebratory expression of this theme. Elsewhere, I have attributed the resilience of Indian democracy to the dynamic character of the post-colonial state (Mitra, 1991), the tradition of rational protest (Power, Protest participation) and federalisation as a method of state formation in India. (Subnational Movements in India).

⁶⁹ Ironically, this orientalist contempt for the subject, evocative of Said, is homegrown rather than occidental in origin. In the final analysis, there is no other explanation for the difference in treatment of the western and non-western religious rioters except scholarly contempt for the capacity of the Hindu, Muslim, Sikh or Buddhist crowds to engage in rational action, and the failure to appreciate the powerful appeal of the religiosity of these religions on the minds of men and women, just like the Catholics and Protestants locked in mortal combat three centuries ago. That some of these negative readings are actually provided by scholars from the same racial origin as the rioters, who, despite their common origin fail to see what was obvious to their subjects, only goes to show how solid and secure the hold of orientalism on the imagination of otherwise intelligent men and women.

Drawing on the Indian experience with the rise and resolution of problems of identity based on language and personal law, this paper has argued that communal conflict is not natural, necessary, inevitable or inexorably destructive of governance and civil society but is capable of accommodation through new institutional arrangements. The recognition of the problem and its comprehension through the discourse of the actors, and the transformation of this knowledge into effective policy through countervailing forces hold the potential for an orderly solution. With regard to the applicability of these solutions in the context of liberal democratic societies operating within the core values of capitalism and globalisation, there are two caveats. In the first place, the successful accommodation of contested identities entails a shift of focus from a culture of ownership to the ownership of culture on the part of the actors themselves. In the second place, it is best to be weary of the 'healing touch' of vote and attention grabbing politicians, susceptible only to the creation of greater pessimism and cynicism because such attention usually fades away once the glare of publicity and media attention move away to greener pastures. It is more important to innovate institutional measure that can make survivors out of victims. The world will not be same again for the victims of gang rape, but the construction of the narrative might vary depending upon the symbolic and substantive measures taken by the state. The objective of state policy in this case should be to juxtapose the present and the past through a meticulous reconstruction of events leading the one to the other and reconcile subterranean wounds through symbolic acts (as in the Truth Commission of South Africa) and institutional arrangements (as in France and England).

The achievement of this modest target in India is far more complicated than one thinks. The difficulty of bringing citizenship into a model of governance are to be traced partly to the origin of many of its institutional apparatus in utilitarian thinking which could accommodate concerns for security, welfare and participation but not for issues of identity.⁷⁰ On the specific issue of symbolic action intended to make survivors out of victims, Indian record has been abysmal. No attempts have been made in India to institutionalise symbols or methods that would elevate the victims of communal violence into dignified citizens secure in their identity. There have been no South African style Truth Commission, the Holocaust Museum, the elaborate trials of the authors of atrocities and other symbolic acts by the state that transform the victims of violence (The authors of the 1984 anti-Sikh pogroms in Delhi are still to be brought to justice). The shame, anger and rage of the victims have thus remained trapped in a collective memory of defeat and humiliation, a timeless myth evocative of a longing for vengeance and heroic self-sacrifice for the 'cause'.

With hindsight, the startling conclusion one comes up with is how little public debate there was in India after independence about the lack of fit between acquired

⁷⁰ Commenting on the discourse of legitimacy and order in such cases, Susanne Rudolph says, "...as we address the state in Asia [as indeed the state per se] we must treat the symbolic as a phenomenon. We must try to create theoretical frameworks that combine a demystified, rationalist worldview with an understanding of the phenomenology in societies where the gods have not yet died." Rudolph, (****), p 742

colonial institutions and the cultural values of society. No consistent attempt was made to derive or to adopt the principles of government to local and regional cultural and political traditions. Ronald Inden has criticised this essentialized view of the modern state in South Asia as a "nation-state that remains ontologically and politically inaccessible to its own citizens" (1990: 197-198), a sentiment whose echo one finds every so often in the narratives of policemen and administrators. From the point of view of scholars and statesmen for whom a strong, modern state in India, reinforced by institutions like the separation of religion from the state is a fixed point of analysis, all outbreaks of public disorder and violent secessionist movements are seen as 'misguided', and, possibly, as 'acts of the foreign hand'.⁷¹ However, seen from the perspective of the political actors, who see themselves as a wronged people, anti-state violence is a necessary step in the direction of a preferred future. (Juergensmeyer 1994) A theory that takes the actor seriously must incorporate the actor's perception of reality as an endogenous variable in its operational model.

One can, however, discern the winds of change in India with a degree of optimism. India still lacks her equivalent of the German *Verfassungsgericht* or the French *Conseil Constitutionnel*, but the Supreme Court, as we have seen in the hindutva judgement, has begun moving in the direction of the recognition of the dangers of a hiatus between state and society with regard to the core values of the political system. The analytical focus has begun shifting from the state and its decision-making elite in the direction of the sense of collective identity of the ordinary citizens and the trust they have in the authority of the institutions of the state. A convergence between the individual's sense of the sacred and his notion of the core values of the state enhances governance: a hiatus between the two spells disaster. High sense of trust by the individual in public institutions endows the state with high legitimacy and generates governance: the opposite reduces actors into criminals and the state into a hollow shell.

Far more abstract than the policeman on the beat or the canvassing candidate at the door, the deceptively simple variable of common citizenship, is crucially indispensable for governance. State planners keen on enhancing governance through security and welfare need to take note of the bond of common citizenship that binds the individual with the state, and link public authority with the sense of identity and morality of the ordinary citizen, and ties present reality with memories of the past. Citizenship in a deeply divided society is a product of the accommodation of identities. As such, it is more a process than a product for it is not easy to isolate its active core from substantive issues like language, religion and shared history once and for all.

Nehru's predicaments, discussed earlier in this paper, hold a lesson for students of governance. The Indian state, successor to the utilitarian origin of British law, aimed at the creation of a network of public institutions for the enhancement of the

⁷¹ The point is made by Saberwal (1986). For the allegation of a conspiracy to destabilize India with the collusion of foreign powers dominated the political rhetoric of Indira Gandhi in the 1970s, see Bharat Wariavwala, 'Security Issues in Domestic Politics', in: Mitra and Chiriyankandath (1992), pp. 125-136

common good. Like their British predecessors, India's rulers were aware that culture was the Achilles' Heel of the state. By nature it was beyond the scope of the state and yet, the failure to govern culture would be to open a chink in its legal armour. The colonial policy of honouring local custom but keeping high culture off the agenda is not an option available to the modern Indian state. But such acculturation, it has been argued in this paper, can only be done surreptitiously, or in the bland language of the constitution.

A common civic culture has been promoted by the state, to the tune of even adding a clause regarding fundamental Duty Regarding Language – Art. 51 A(e) to the Constitution. The 42nd Amendment Act 1976 introduced under the new part IV-A the Article 51 A(e) which specifies that it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities. The 'constitutionalisation' of this salient political issue, and consequently, its 'depoliticisation' is the general argument that underpins the empirical analysis of the empirical evidence drawn from opinion data and elite discourse. The cycle of judicialisation-constitutionalisation-depoliticisation that followed the articulation of the language conflict and personal law offers precedents to a similar attempt at the judicialisation of the role of religion within the framework of a multi-cultural society in India. Through the successful attempt to institute language both as the basis of identity through a combination of constitutional, legal and administrative provisions, India's lawmakers have shown the way to the solution of problems considered not amenable to rational discourse. Identity thus joins security and agency as the three foundations of governance and civil society in India.

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