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Inclusion and exclusion in South Asia: The Role of Religion

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Three values guide this paper as indeed they must inspire the very idea of human development: peace, freedom and equality. These values are also presupposed by the idea of an inclusive society. Surely part of what is meant by the term 'inclusive society' in the contemporary context is that it be a community of free and equal persons. In our discussions, it is not inclusion per se that is at issue but voluntary inclusion on fair and equal terms. Indeed we might even say that inclusion here is a term of art of which freedom and equality are constitutive features and peace its necessary precondition. Thus contemporary emancipatory movements do not aim to include people only in order to rank them in political, social or cultural hierarchy. Nor is their objective to bring people into an oppressive order. They are propelled by belief that freedom and equality for all can only be enhanced by inclusion.

Inclusion on fair and equal terms can be approached in two different ways, however. The naïve approach conceives equality in purely distributional terms and takes material resources as the unit of distributive equality. Freedom is conceived here as the absence of constraints on equal access to these resources or as the ability of individuals to use these resources to achieve their very own preferred projects. Without denying this, the sophisticated approach avoids the goods-fetishism which mars the naïve view. For the sophisticated approach, moral equality, the treatment of people as equals is an important human concern and is not reducible to economic equality. Each of us wishes to be equally respected for the ability to conceive or freely endorse meaningful projects and to live a life that we have reason to value.¹ People may possess identical material resources and yet be treated as unequal because of social stigma or due to the denigration of the world-view that informs their way of life and frames their identity. Our self-respect, self-worth and self-esteem is bound up with more than the sum total of goods in our possession or with what we are able to do with them. It is also linked to the recognition of the cultural and ethical framework(s) that help us orient to the world and enable us to gain self-understanding.

¹ The phrase is Amartya Sen's,

These frameworks may be religious or non-religious, thinly or thickly communitarian, with or without universalist aspirations, but they all have a constitutive link with culture and ethics. An important assumption of this paper is that a cultural/ethical framework plays an indispensable and extremely significant role in the lives of human beings. The second assumption of the paper is that no single framework gives overall meaning to the life of all human beings. If it is neither possible nor desirable to eliminate cultural and ethical pluralism, then, on the sophisticated view, there is an urgent need to articulate notions of freedom and equality that take into account or are compatible with a plurality of cultural identities and ethical orientations. The inclusion within the Human Development Report of culture, ethics and religion, is consistent with the rich and finely nuanced conceptions of freedom and equality that underlie the moral basis of the very conception of human development.

This paper consists of three main sections. The first theoretical section introduces the key terms and principle distinctions that frame the discussion of the paper and allows me to make my important evaluative claim. Here I outline different forms of religion-related exclusions and then try to establish that a certain kind of secular state is best able to remove all these exclusions. The second section provides a very brief history, relevant to our discussion, of modernizing religious communities in South Asia. In the third, more empirically oriented section, I give a brief account of laws pertaining to religion and religion-related practices in India, Pakistan and Bangladesh and the ground reality in these societies concerning religion-related exclusions. In the process, I hope also to substantiate the main claim of the first section: a South-Asian society with a secular state such as India is more likely to be inclusive or to have potential for inclusion. Conversely, a society without a secular state such as Pakistan or Bangladesh has much greater potential for exclusion.

I

Religion-Related Exclusions

Exclusion from Religion and Religion-based exclusion

In his paper for UNHDR, Will Kymlicka already draws attention to the distinction between cultural and political/economic exclusion. For him, cultural exclusion occurs when the culture of a group, including its language, religion or traditional customs, are denigrated or

suppressed by the state. Conversely, cultural inclusion refers to the public recognition, accommodation and support to the culture, language, religion, customs and life styles of a group. Distinct from cultural exclusion is the phenomenon of political exclusion – the denial of access to citizenship rights and economic exclusion – the denial of access to certain kinds of employment or professions. I agree that cultural exclusion is irreducible to economic and political exclusions. However, I do not restrict my understanding of inclusion and exclusion to practices of the state. For me, cultural exclusion also occurs either when one group in society persistently mis-recognises, denigrates, humiliates or suppresses another cultural group or when some members of a cultural group suppress, denigrate or mis-recognise members of a sub-culture of their own group. In particular, my own concern, both in earlier work and in this paper, is with religion-related inclusion and exclusion.² By religion-related exclusion I mean to broadly cover two forms of exclusions. First, the exclusion of people from the domain of religious liberty and equality. I shall call this exclusion from religion or more simply religious exclusion. Second, the exclusion of people from the wider, non-religious domain of liberty and equality (citizenship rights). I call this a religion-based exclusion and it occurs when a person's religion or religious identity is seen to be sufficient ground for excluding him/her from the legal, economic and political benefits/rights available more generally.

Internal and External exclusion

More distinctions are in order before I proceed further. Religious exclusion can be of two kinds. First, when a religious group excludes its own members from the domain of religious liberty and equality. A religious group may exclude its own members from many of its important practices. In medieval Christendom, ordinary, lay persons had access to God only via the Clergy. Even potentially, salvation was not, therefore, available to everyone. For centuries in India a religious sanction has been granted to the horrendous practice of untouchability that excludes dalits from, say, entry into Hindu temples. I call these instances of *internal* religious exclusion. The suppression of internal religious differences or dissent is also a form of internal religious exclusion. This phenomenon is distinct from what I call *external* religious exclusion. Here the religion of a group is misrecognised, denigrated,

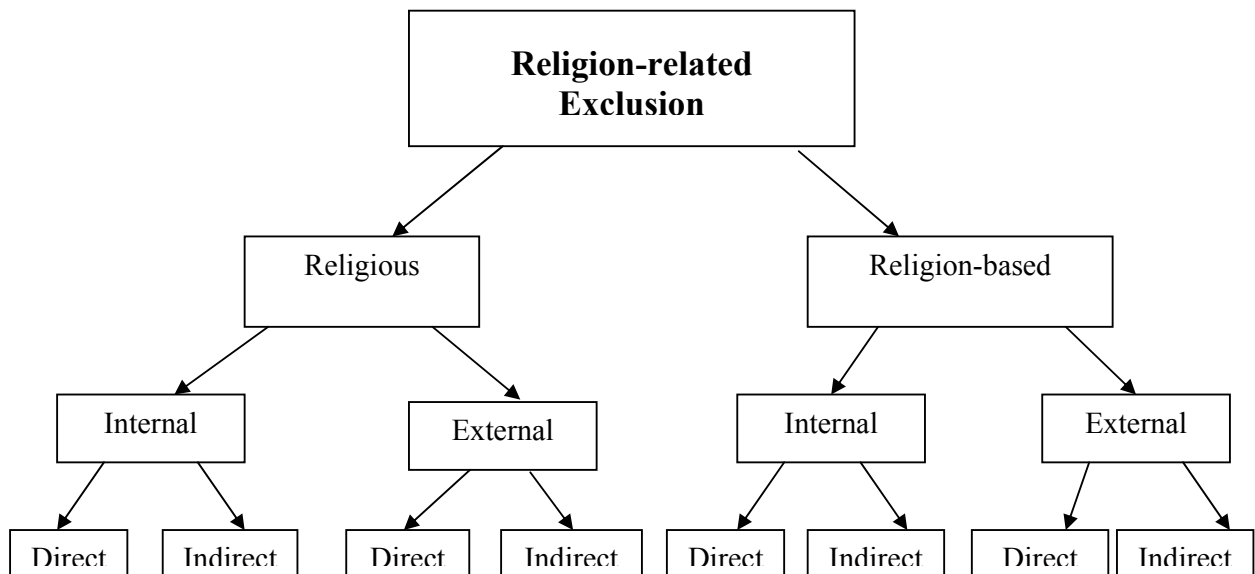
² It is difficult, particularly in South Asia, to make a distinction between religion and culture. If religion is seen as part of culture, then all religion-related exclusions are a form of cultural exclusion. If the two are entirely indistinguishable, then too, all religion-related and cultural exclusions are identical. I shall use the term 'religion' to cover both phenomenon that is plainly religious and to those aspects of culture that have a strong bearing on religion.

deliberately falsified, marginalized or suppressed by the state or by the dominant group in society. Any denial of religious liberty and equality by members of one religious group to another religious group is external religious exclusion. So, the practice of external religious exclusion is rampant wherever there is persecution of religious minorities. Historically, Jews have been victims of religious external exclusion in most Christian societies. For my purposes, a non-religious state that persecutes people of religious faith practices external religious exclusion. So does a religious state that denigrates or suppresses people who profess no religion but live life by principles flowing from non-religious ethical frameworks.

Direct and Indirect exclusion

The above mentioned forms of religion-related exclusions – religious or religion-based, internal or external may either be directly sanctioned by religion or be a consequence of religiously sanctioned exclusions. I shall call the first *direct* religion-related exclusion and the second *indirect* religion-related exclusion. The practice of untouchability is a direct internal, religious exclusion. But other kinds of exclusions exist not directly sanctioned by religion and these would not occur if the religiously sanctioned exclusion did not exist in the first place. This is precisely where the distinction between custom and religiously sanctioned practice begins to break down. Groups such as dalits and women suffer from waves of exclusion once they suffer from the first major exclusion.³ The practice of female infanticide is an indirect, internal religion-based exclusion. Strictly speaking female genital mutilation is not a religiously sanctioned practice, nor is scavenging which is the lot of many dalits in India. Yet both presuppose direct religious exclusions in the sense that neither would exist without the demeaning condition brought upon the victims by direct exclusions. The criminalisation of sections of minorities in both India and Pakistan is surely an indirect religion-based external exclusion. The distinctions I have made help me to recognize both the internal differences and the close relations between all forms of religion-related exclusionary practices. They help me identify exclusions and their specificities that might otherwise go undetected.

³ For a sensitive portrait of women's issues from a universalist rights-based perspective, see Martha C. Nussbaum, "Sex and Social Justice", Oxford University Press, Oxford, 1999.



A society ridden with so many different forms of religion-related exclusions but keen on becoming inclusive must imagine and devise multiple policies of inclusion. For example, making temples accessible to all members of a religious group is an important policy to fight direct internal religious exclusion. Granting every religious group a right to establish or maintain its own educational institutions also exemplifies a policy of religious inclusion. But in a society that has religion-based denigration of women, so is a government policy sensitive to the needs of pregnant women.

Which form of state builds a maximally inclusive society?

Given the framework outlined above, I make an important evaluative claim of this paper: that under contemporary conditions certain kinds of secular states are best able to enhance freedom and equality and maintain just peace. Societies with inclusion as their objective and keen to avoid all forms of religion-related exclusions must have secular states of the appropriate type. I cannot argue for this claim in detail. But to give this point some weight, I must at least provide a comparative description of states that relate to religion differently than secular states do. Comparisons are important because moral-evaluative reasoning is a form of practical reasoning that aims to establish ‘not that some position is correct absolutely, but rather that some position is superior to some others’ Therefore, ‘it is concerned covertly or openly, implicitly or explicitly, with comparative propositions’.⁴ To show the importance of

⁴ Charles Taylor, “Sources of the Self”, CUP, Cambridge, 1989, p. 72.

some kinds of secular states for inclusive societies, I must demonstrate that by inhibiting peace, freedom or quality, states that compete for the same space as secular states encourage exclusion rather than inclusion.

Theocracy, Establishment, Multiple Establishment

Take first the theocratic state which is governed by divine laws directly administered by a priestly order claiming a divine commission. Major historical examples of theocracies are ancient Israel, some Buddhist regimes of Japan and China, the Geneva of John Calvin and the Papal states.⁵ In our times, the Islamic republic of Iran run by Ayatullahs and the Afghanistan state run by the Taliban come closest to being theocratic states. These states fare poorly on a freedom and equality index. A state administered by a small clerical elite in accordance with divinely commissioned laws is unlikely to tolerate internal differences, leave alone dissent, and it is equally unlikely that it will extend freedoms to anyone of its own members outside a small elite, leave alone to members of other religious groups. Such states have scant reason to properly accommodate other religious groups or treat them equally.

Consider now states that establish religion. Such states grant official, legal recognition to religion. Here, religion benefits from a formal alliance with government. The sacerdotal order need not *govern* a state where religion is established. Establishment of religion takes two forms. On the classical European view, it means that ‘a *single* Church or religion enjoys formal, legal, official monopolistic privilege through a union with the government of the state’⁶. The principal motivation behind monopolistic establishment is obvious: to privilege a particular religious group over all others.⁷ Historical examples of established churches are the unreformed Anglican Church in England, the Anglican church in the state of Virginia prior to disestablishment, or the established Roman Catholic churches of Italy and Spain. Typically,

⁵ The Catholic Encyclopaedia of Religion defines Theocracy as a form of political government in which the deity directly rules the people or the rule of priestly caste. The rule of Brahmins in India in accordance with the Dharam Shastras would be theocratic. Volume 14, p 13.

⁶ Leonard W. Levy, “The Establishment Clause”, the University of North Carolina Press, 1994, p.7.

⁷ This is perhaps an obvious point but may be obscured by the present, benign form of established states. However, it comes out sharply when nineteenth century debates on church-state systems are examined. Consider the following powerful statement in the House of Commons in 1871 by Edward Mial, Congregational minister and M.P from Bradford, ‘ Take a survey of the operation of this State-Church policy...what does it show? It shows you a nation sharply divided by law in regard to their religion into two great sections- the ones privileged, the other tolerated. It shows you one half, or thereabouts, of the people of this kingdom condemned by law to occupy before the law an inferior position as compared to the other half-to be tolerated, endured, humiliated in what they regard as their most incontestable right and in the discharge of their most sacred obligations’. See David Nichols, “Church and State in Britain since 1820”, Routledge and Kegan Paul. London and New York, 1967, p. 85-6.

where religion is strongly established, the state recognizes a particular religion as the official religion, compels individuals to congregate for only one religion, punishes them for failing to profess a particular set of religious beliefs, levies taxes in support of one particular religion or makes instruction in one religion mandatory in educational institutions. Here equality among religions is non-existent while members of the established religion may enjoy a modicum of religious liberty, those belonging to un-established religions are unlikely to enjoy even legally guaranteed freedoms.

This classical European view of establishment must be distinguished from one where the state respects more than one religion, recognizes and perhaps nurtures, if that is indeed possible, all religions without any preference of one over the other. This might be termed ‘multiple establishment’⁸. Such states levy a religious tax on every citizen and yet grant them the freedom to remit the tax money to a religious organisation of their choice. It may financially aid schools run by religious institutions but on a non-discriminatory basis. It may punish people for disavowing or disrespecting religion but not compel them to profess the beliefs of a particular religion. A state that respects multiple establishment treats all religions non-preferentially. Each group is given the liberty to conduct its religious affairs but the state is likely to be indifferent to the freedom of members within the group. In the mid 17th century the state of New York allowed every Church of the Protestant faith to be established furnishes perhaps the earliest example of ‘multiple establishment’. The colonies of Massachusetts, Connecticut and New Hampshire show a similar pattern.⁹ Related examples are also found in India: the 14th century Vijayanagar kingdom appears to have granted official recognition to the Shaivites, the Vaishnavites and perhaps even the Jains. Arguably, the British Empire accorded de facto legitimacy to something akin to multiple establishment in India.

A further useful distinction particularly in contemporary settings is between states that only formally establish one or more religions and those that establish them substantively. Many contemporary states have establishments only in name. For example England and Sweden. They have substantively disestablished religion which is why these states are virtually secular.

⁸ Ibid., p.12

⁹ Ibid., p.11

Secular State

A secular state is not only different from theocracy but distinguished from a state where religion is established. It is a state in which either no religion is established or if it had previously established religion, it has now been disestablished. Thus a secular state follows what I call the principle of non-establishment. This principle entails the separation of state from not merely one but all religions. (feature-a). But the term 'separation' is only a metaphor which must be unpacked to properly grasp all its possible meanings. For a start, separation can mean exclusion of religion from state. This exclusion itself is of two types: it can be mutual or one-sided. One-sided exclusion means that religion has been excluded from the activities of the state but that state is not excluded from religion. Such a state can easily turn anti-religious. It may arbitrarily interfere in the affairs of the state without allowing religion to dictate any terms to it. Let me call this an authoritarian secular state. An authoritarian secular state may or may not allow religious liberty. No religious person in such a state may have the right to religious freedoms. Authoritarian secular states are very similar in structure to theocracies or to states that establish religion.

However, separation can also mean mutual exclusion. In these conditions, religion and the state exclude each other from the domain of the other. They do it both to enhance the efficiency and efficacy of states and to protect religious liberty. Separation can also mean strict neutrality, where neutrality is understood to mean that the agent professing it helps or hinders the parties in question to an equal degree. Neutrality may or may not mean exclusion of the state from religion. It is entirely possible that the state interferes in the affairs of the religion but if it is to be neutral, it must do so non-preferentially, to an equal degree.

Finally, separation can also mean what I call principled distance. In the strategy of principled distance, whether or not the state intervenes or refrains from action depends on what really strengthens religious liberty and equality of citizenship for all. If this is so, the state may not relate to every religion in exactly the same way, intervene to the same degree or in the same manner. All it must ensure is that the relation between religious and political institutions be guided by non-sectarian principles that remain consistent with a set of values constitutive of a life of equal dignity for all. what I have elsewhere called principled-distance¹⁰. Principled-distance builds upon two ideas, at least one of which derives from a distinction drawn by the

¹⁰ Rajeev Bhargava, *Ibid.*, .

American philosopher, Ronald Dworkin¹¹ between equal treatment and treating everyone as an equal. The principle of equal treatment, in the relevant political sense, requires that the state treat all its citizens equally in relevant respect, for example in the distribution of a resource of opportunity. The principle of treating people as equals entails that every person is treated with equal concern and respect. This second principle may sometimes require equal treatment, say equal distribution of resources but it may also occasionally dictate unequal treatment. Treating people as equals is entirely consistent with differential treatment. This idea is the second ingredient in what I have called principled distance. To say that a state keeps principled distance from religion is to claim that it intervenes or refrains from interfering in religion, depending entirely upon whether or not some values (liberty and equality) are protected or advanced. Moreover, it is to admit that a state may interfere in one religion more than in others, depending once again on the historical and social condition of all relevant religions. For the promotion of a particular value constitutive of secularism, some religion, relative to other religions, may require more interference from the state. On this interpretation of separation, a secular state neither mindlessly excludes all religions nor is blindly neutral towards them. This view allows the public or even the political presence of one, some or all religions but only if their publicizability or politicization is compatible with some antecedently defined values or principles that are also constitutive of secularism.

A secular state can then take four forms. (a) It can one-sidedly exclude religion from its own affairs without excluding itself from the affairs of religion. (b) It may profess a policy of mutual exclusion both for itself and for all religions. (c) It may be neutral with respect to all religions. (d) It may have a policy of principled distance with respect to all religions. Barring the first, all other secular states are not anti-religious but they exist and survive only when religion is no longer hegemonic. A secular state in each of these other three senses admits a more general equality between believers and unbelievers. It secures peace not only between different kinds of religious believers but between believers and non-believers. It legally sanctions freedoms for all religions but also freedom from religion itself. (All these aspects make it different from a state with multiple establishment) Thus, in a secular state, a formal or legal union between state and religion is impermissible. Official status is not given to religion. Persons are as free to disavow religion as they are to profess one. No one is compelled to pay tax for religious purposes or to receive religious instruction. No automatic

¹¹ Ronald Dworkin, "Liberalism, in Stuart Hampshire (ed.) Public and Private Morality, CUP, Cambridge, 1978, p.125

grants to religious institutions are available. The state of Virginia, after the disestablishment of the Anglican church (1786), the United States of America, particularly after the first amendment to its constitution (1791) and France, especially after the separation law of 1905, provide the clearest examples of a secular state. Am I saying then that the states of England and Sweden with established religions are very low on a freedom and equality index? This would be absurd. To counter this objection, it is useful in contemporary settings to draw distinction between states that only formally establish one more religions and those that establish them substantively. Many contemporary states such as England and Sweden have establishments only in name. Since they have substantively disestablished religion, they are virtually secular¹². As Donald Smith points out, ‘any modern state within the liberal democratic tradition will have many of the characteristics of a secular state’.¹³

Values of a Secular state

So, a secular state is constitutively tied to the value of religious liberty that has three dimensions. The first refers to the liberty of members of any one religious group. (Feature-b) It is a brute fact that in most religious communities, one or two interpretations of its core beliefs and practices come to dominate. Given this dominance, it is important that every individual or sect within the group be given the right to criticize, revise or challenge these dominant interpretations. Historically, most religious communities have excluded some of their own members from participating in its practices and from the decision-making. The right to religious liberty must be granted equally to all its members. The second aspect of this important liberty in a secular state, (feature-c), is that it is granted non-preferentially to all

¹² The de facto disestablishment in England (the relaxation of Anglican monopoly) began with the Toleration act of 1689 that granted limited, hitherto unavailable freedom to non-Anglican but Trinitarian Protestants, was continued first by the repeal of the Test and Corporation Act (1828), then by a series of acts relating to the emancipation of Roman Catholics (1829) and Jews (The Jewish relief act of 1858) . The secular nature of the state of United Kingdom is likely to be tested by the presence of Hindus, Muslims and Sikhs. My discussion confirms that the terms theocracy, establishment in both forms, and secular state are all ideal typical. No actual state was unambiguously theocratic or established or is purely secular. Most really existing states, as T.M. Scanlon, points out, are likely to reflect a mixed strategy. See T.M. Scanlon, The difficulty of Tolerance, in Bhargava, (ed.), op cit, p 54-70.

¹³ See Smith, op cit., p. 21. My discussion confirms that the terms ‘theocracy’, ‘monopolistic and multiple establishment’ and ‘secular’ are all ideal typical. No actual state has been unambiguously theocratic or established or purely secular. Most really existing states, as T.M. Scanlon, points out, are likely to reflect a mixed strategy. See T.M. Scanlon, The difficulty of Tolerance, in Bhargava, (ed.), op cit, p 54-70.

members of every religious communities. It is entirely possible that non-preferential treatment by the state of groups that accord religious liberty to its members is also found in states respecting multiple establishment. But religious liberty is not part of the core principles of multiple establishment. However, it is a constitutive feature of the secular state. Even more importantly, a secular state must give space for inter-faith dialogue, discussion and, within limits, for critique to all religions. It is part of what we mean by religious liberty that people of one religion are responsibly critical of the practices and beliefs of another religion. This right must be available, without prejudice, to members of all religious communities and only secular states can ensure them. The third dimension of religious liberty, (feature-d), quite unthinkable in states with multiple establishment, is that individuals are free not only to criticize the religion into which they are born, but at the very extreme, given ideal conditions of deliberation, to reject it and to remain without one. There is a massive difference between merely tolerating atheists, which may happen in states with multiple establishment and granting them full legal rights to be what they are, a feature of modern, secular states.¹⁴

Religious liberty, when understood broadly, is one feature of a secular state. To understand its second crucial ingredient, it is necessary to grasp the point that liberty and equality in the religious sphere are all of a piece with liberty and equality in other spheres. It is not a coincidence that the disestablishment clause in the first amendment to the American constitution institutes not only religious freedom but also the more general freedom of speech, of peaceful assembly and political dissent. It is entirely possible that a state respecting multiple establishment permits *religious* liberty and equality but forbids other forms of freedom and equality. For instance, it may be that a person freely defies the authority of the religious head of his own denomination but is not free to challenge the authority of the state or that the undisturbed conduct of religious worship is guaranteed to religious dissenters or minorities, though they continue to suffer the statutory disabilities which had accumulated in the past against them. A degree of religious liberty may easily go

¹⁴ On this see for example John Semonche, *Religion and Constitutional Government in the United States*, Signal Books, North Carolina, 1986, pp22-25. He writes: ‘establishment in the United States meant a linkage of the state with religion in the sense of using the force of the state, primarily through the use of its taxing power and its enforcement of other laws, to aid the religious cause’. He continues, ‘often this basic faith was labelled Protestantism which excluded, among other groups, Roman Catholics and Jews, or to Christianity which included Catholics but still excluded Jews and others.’ Semonche notes that ‘When requirements were changed to a simple belief in God, the reformers concluded that they had achieved true religious freedom.’ Clearly, as he acknowledges, they saw ‘no infringement of liberty in a discrimination between believers and non-believers’.

hand in hand with second class citizenship.¹⁵ This is impermissible in a secular state which is committed to a more general freedom and equality. Thus, the second value to which a secular state is constitutively linked is the equality of free citizenship.

The value of equal citizenship has two dimensions that require elaboration, one active, the other passive. To be a passive citizen is to be entitled to physical security, a minimum of material well-being and a sphere of one's own in which others ought not to interfere. Although a part of this idea of passive citizenship goes back to ancient Rome, the radical emphasis on material well-being and on privacy is a result of a profound trans-valuation of values that has taken place under conditions of modernity¹⁶. This lies at the root of the idea of the right to life, liberty, material welfare and perhaps, education. A citizen is entitled to these benefits. This is partly an extension of the point implicit in the defence of religious liberty but in part it adds something substantial of its own. The benefits of citizenship must be available to everyone and there is no room here for discrimination on grounds of religion. (Feature-e) This equal treatment is entailed by equal (passive) citizenship. State agencies and the entire system of law must not work in favour of one religious group. If the state works to protect the security and well-being of some individuals or groups but fail to secure these meagre but important benefits to others then the principle of equal (passive) citizenship is violated.¹⁷ Likewise, since citizenship is conditional upon education, no one must be denied admission to educational institutions, solely on grounds of religion (Feature-f).

The active dimension of citizenship involves the recognition of citizens as equal participants in the public domain. Such active citizenship rights can be denied in two ways.¹⁸ Either when they are brutally excluded from the political domain or when their recognition in the public domain betrays the social acceptance of a belief in the intrinsic superiority of one group as when there is communally weighed voting or efforts to dilute the votes of religious minorities through the use of gerrymandering techniques¹⁹. Groups singled out as less worthy

¹⁵ On these points see the excellent discussion of religious toleration in England by U. Henriques, *Religious Toleration in England, 1787-1833*, Routledge and Kegan Paul, London, 1961.

¹⁶ See Charles Taylor, *Sources of the Self*, Cambridge University Press, Cambridge, 1989.

¹⁷ As briefly discussed above, these civic disabilities were commonplace in states with religious establishment. For instance, 'Protestants in France were outlawed, their marriages illegitimized, their children bastardized, their inheritance and even their lives insecure'. See, Henriques, *op cit.*, p13.

¹⁸ Once again such political disabilities were common in established states. For example, the Test and Corporation Acts in England disqualified dissenters from office by requiring communion in the Anglican Church. Before 1858, Jews were not even qualified to vote in England. Similar test oaths were used, prior to disestablishment, in Maryland, North Carolina, New York. Indeed, oaths requiring a belief in God survived in a number of states well into the twentieth century. See Semonche, *op cit.*, p23.

¹⁹ Charles Beitz, *Political Equality*, Princeton University Press, New Jersey, 19 p.110

are demeaned and insulted, encouraged to feel that patterns of disrespect existing in society at large enjoy official sanction. In contrast to this, equality of citizenship to which secularism is tied conveys a community wide acknowledgement of equal respect for everyone in the political domain. (Feature-g)

It is important to reemphasize that the idea of separation within a value-based secularism cannot mean exclusion, especially exclusion of the state from religious institutions. Recall the ties of secularism with the value of equal citizenship. Equal citizenship rights easily challenge hierarchical religions which are particularly insensitive to the vital interest of some of its members, those at the bottom of a sanctioned hierarchy. To uphold the value of equal citizenship, to ensure equal treatment and protect the ordinary life of citizens, the state may have to interfere in hierarchically organized religions. Secularism is consistent with, indeed requires such intervention.

However, the constitution explicitly sanctions interference of the state in only religion, Hinduism. Do articles 25(2) and 17 violate Articles 15(1) and 26 of the constitution? Take for instance the Hindu Bigamous marriages Act (1946) and the Hindu Marriage Act (1955). Does the fact that monogamy is enforced on Hindus and not on Muslims constitute discrimination against Hindus? Or for that matter against Muslims? More importantly, does it not breach the wall of separation, and by implication, secularism? Such interference violates secularism only if separation is taken to mean exclusion or a poorly understood neutrality. Indian secularism departs from exclusion or strict neutrality but not from a more sophisticated view of neutrality, which I have called 'principled distance'.²⁰ (The important thing is that the state be just or impartial and impartiality does not entail the crude view of neutrality as equidistance).

Consider once again laws that constitute an interference within Hinduism. The relevant consideration in their evaluation is not whether they immediately encompass all groups but whether or not they are just and consistent with the values undergirding secularism. Three reasons exist for why all social groups need not be covered by these laws. First, they may be relevant only to Hindus. Take the abolition of child marriage and devadasi dedication or the introduction of the right to divorce. Here, before deciding whether it was necessary to enact a

²⁰ Rajeev Bhargava, What is Secularism For? in Bhargava (ed.) op cit., p 511.

special provision for Hindus, the legislature took into account their social customs and beliefs. Similar laws for Muslims were simply redundant. Second, laws in liberal democracies require legitimacy; the consent of at least the representatives of communities is vital. If consent has indeed been obtained from the representatives of only one community, it is sometimes prudent to enact community-specific laws. It is wise to apply the general principle in stages, rather than not have it at all. Finally, 'it is perfectly within the competence of the legislature to take account of the degree of evil which is prevalent under various circumstances and the legislature is not bound to legislate for all evils at the same time. Therefore, an act passed by the legislature cannot be attacked merely because it tackles only some of the evils in society and does not tackle other evils of the same or worse kind which may be prevalent.' Thus, if the legislature acting on these considerations, wanted to enact a special provision in regard to, say, bigamous marriages among Hindus, it cannot be said that the legislature was discriminating against Hindus only on the ground of religion.²¹ A state interfering in one religion more than in others does not automatically depart from secularism. Secularism requires principled distance but not necessarily exclusion or equidistance.

One other point may be noted. If Political Secularism is what I say it is, then a secular state is not just a tolerant state. To tolerate is to refrain from interfering in the affairs of an individual or group, however disagreeable or morally repugnant, despite the fact that one has the power to do so. If so, a tolerant state is at ease with religious inequalities and with social and political equalities between religious groups. In a tolerant state, a minority religious group lives on the sufferance of the majority group. Such a state does not guarantee, as a secular state does, equal citizenship rights to everyone.

Let me conclude this section. A maximally inclusive society is one where all citizens identify with the state and enjoy the maximum possible religious liberties consistent with the liberties of others and equal passive and active citizenship rights regardless of their religious affiliations. As the table below shows theocracies and states with substantive singular establishments are least inclusive. They allow both internal and external religious exclusion as well as religiously grounded political and economic exclusion. To a large extent, states with substantive multiple establishment may have external religious inclusion but they allow internal religious exclusion as well as religiously grounded exclusions. By and large, states

²¹ AIR, 1952, Bom.84, *The State of Bombay vs. Narasu Appa*.

with formal singular or multiple establishments have religious inclusion as well as religiously grounded inclusion. But they may lack the fullest possible citizen identification and therefore may have citizens who may occasionally feel alienated from them. They may also have remnants of laws, conventions and practices that are potentially exclusionary. An intrinsically anti-religious secular state, in its form, is virtually like a theocracy or like a state with substantively singular establishment. It is likely to score low on the index of freedom and equality and is bound to be exclusionary. Only a contextually sensitive, liberal and democratic secular state is maximally inclusive.

Values: Inclusion Form of State	Peace with Justice	Religious liberty			Citizenship Identification			Passive citizenship benefits/rights			Active citizenship rights		
		Domi- nant Group		Others	Domi- nant Group		Others	Domi- nant Group		Others	Domi- nant Group		Others
		Elites	Others		Elites	Others		Elites	Others		Elites	Others	
Theocracy	A	P	A	A	P	A	A	P	A	A	A	A	A
States with substantive singular establishment	A	W P	A	A	P	P	A	P	A	A	A	A	A
States with substantive multiple establishment	WP	W P	A	WP	P	P	A	P	W P	A	A	A	A
States with formal singular establishment	P	P	P	P	P	P	A	P	P	P	P	P	P
States with formal multiple establishment	P	P	P	P	P	P	WP	P	P	P	P	P	P
Anti-religious secular state	A	A	A	A	P	A	A	P	P	P	A	A	A
Liberal and democratic secular state	P	P	P	P	P	P	P	P	P	P	P	P	P

Ab – Absent; WP – Weakly Present; P - Present

II

Religious Communities in South Asia: A brief history

In South Asia, almost all states have found it difficult to foster religious inclusion. All states started with the promise of secularism but have found it extremely difficult to sustain their secular character. Both Pakistan and Bangladesh have elements of substantive singular establishment and a strong ethno-religious movement in India has adversely affected the secular character of the Indian state. However, thanks largely to its constitution and to its wobbly but enduring democracy, India remains the most inclusive of South Asian states. Many problems in building inclusive societies in South Asia have historical roots and are linked to the development of religiously-grounded nationalisms. Therefore it is best to begin with a brief glimpse into the historical background of South Asian religious movements and identities.

There was much in common between Hindus and Muslims in pre-independent India.²² A majority of Muslims belong to the same ethnic group as Hindus. Urdu, widely thought to be the language of Muslims was actually spoken only about 30% of total Muslims and by a large number of Hindus in the North. Certain social customs were common to both communities. Many Muslims retained Hindu names. Hindu rites were sufficient in many parts of the country to solemnise Muslim marriages. Indeed, many Muslims continued to follow Hindu law in matters of marriage, guardianship and inheritance. Muslim *Pirs* had Hindu disciples and Hindu Yogis had Muslim *Chelas*. The caste system remained integral to both communities. Apart from Bengal, Hindus and Muslims were not divided along class lines or along nor the rural-urban continuum. There is then strong evidence to support the contention of several historians that ‘objectively speaking’, differences between Muslims and Hindus

²² For example, in Karla, till at least 1865, Muslim peasants were worshipping old village deities. In Altar and Bharatpur, the Meos continued to have Hindu names and celebrated, not just joined in, festivals such as Janamashtami and the Parihar Minar forbade the consumption of beef. Muslim cultivators near Ratlam followed Hindu customs in marriage. The sect of Mehadawis near Ahmedabad, steeped in Muslim orthodoxy in appearance, were known for concealing their real, un-Islamic beliefs. In Sind, among Sunni Memans, ancient cults of the worship of trees and rivers were freely practised and both living and dead saints were revered. The list of sects and communities who, despite the formal adoption of Islam, retained their pre-Islamic beliefs and practices, is endless. For a good account of this see M. Mujeeb, *Indian Muslims* Munshi Ram Manoharlal, Delhi, 1985.

were not large enough to justify a separatist movement.²³

Yet, a successful separatist movement strongly ethno-nationalist in form did occur in India. A number of processes set in motion in colonial India created the conditions for the emergence of ethno-nationalist movements in the sub-continent. The first of these was the search for a “deeper understanding” of India: western Orientalists imposed a set of attributes on Indian religion and society that was supposedly essential to them. Definitions of Hinduism carved out of this essentializing discourse were then taught to the Indians themselves, and readily learned in the new colonial educational institutions. Second, a fundamental change occurred in the self understandings of people and in the way in which they held their identity. As in many Asian countries, Indians had highly diffused and fluid self-understandings, which made possible an easy identification with two or more fuzzily defined communities. Colonial classifications and census enumeration changed this by compelling people to choose a single, well-demarcated communal identity. Thanks to these two processes, the end of the nineteenth century witnessed the birth of powerful revivalist movements among Hindus along with a sense of the need to be unified and recognised as one homogenous group. This growing self-awareness and the heightened use of religion as an identity marker was often accompanied by the feeling that Hindus had been a subject group, subordinated first to Muslims and later to the British. Revivalist movements therefore, frequently assumed a strident anti-Muslim character. The third was the introduction of separate laws and electorates for Hindus and Muslims, which consolidated neatly compartmentalized religious identities. While the law entrenched identities, British policies, such as the introduction of separate representation, politicized them. The colonial government nominated Indians on government councils on communal grounds. Separate electorate were promised to Muslims in 1909. Over time, Indians began to negotiate with each other along communal lines. Before long the system was so entrenched that any proposal of joint electorate was summarily dismissed by Muslim politicians. The politicization of religious communities was complete when in 1935 separate electorates were guaranteed to Muslims, Sikhs, Indian Christians and Anglo-Indians. A space was now opened up for the full-fledged use of religion for political mobilization, for the

²³ Muslims anyway began to feel insecure by the pressure of change put on them by the ‘rise of monied men and resurgence of Hindu landholding communities and by some colonial government policies such as making it mandatory on Indian officials to be able to read both the Devnagri and the Persian script. See, Mushirul Hasan, *Indian’s partition, Process, Strategy and Mobilization*, Oxford University Press, 1993, p. 36.

launching of a majority-minority discourse. and for the transformation of a religious community into a nation. Soon a fourth process that transformed a religious community into a nation was set in motion. Henceforth, a qualitatively different kind of majority-minority framework with a demand for self-government rights was put forward by elites for statutory majority in both previously existing and newly carved provinces where Muslims had majority. Once Muslims elites began to believe that Muslims too were a nation, they also began to dream of complete economic and political power for themselves and to demand, finally, that these self-government rights be exercised only within an independent, politically sovereign nation-state.²⁴ However, these demands were laced with a long list of imaginary grievances conjured up by them. Muslim elites were really not backward but they feared being left behind in a predominantly Hindu regime, so they created the myth of the backward Muslim. They were not really oppressed but feared political domination in a Hindu-majority India so they spun tales of Hindu tyranny. They were neither historically disadvantaged nor unable to voice their demands but still manufactured the fiction of marginalization. Perhaps the term 'imaginary' should not be identified with 'unreal'. As the historian Beniprasad, writing in the thick of the demand for partition, said, 'in politics there is a profound significance in Adler's thesis that complexes are due not to the past but to the fear of the future'.²⁵ But by 1940s this fear has turned into paranoid which contributed greatly to the development of the majority-minority syndrome.

By the majority-minority syndrome, I mean a diseased network of neurotic relations, so completely poisoned and accompanied by a such a vertiginous assortment of negative emotions (envy, malice, jealousy, spite, and hatred) that, collective delirium and cold-blooded acts of revenge, sending groups on a downward path of deeper and still deeper estrangement are mindlessly, alternately, cyclically, generated. It is a feature of this syndrome that, groups make demands on one other that can rarely be fulfilled, conjure up imaginary grievances, insist precisely on that which hurts the other most, at one time obsessively desires the very same thing that the other wants, at another time the exact opposite, always with the sole

²⁴ The installation of a Congress government in UP started this phase. While keen to have a large Muslim representation within the government, the Congress, believing itself to be the party of all Indians, refused to induct the largest group of Muslims in the legislature, members of the Muslim league, into the ministry, unless the league was disbanded as a party. This was unacceptable to the League. As a result, Muslim elites were deprived of a share in power. Soon they lost some of their privileges. Even more importantly was the realization that for any more political favours, they would now have to lean not on the British but on the Congress, a political organisation that also relied on Hindu support. This generated in them a propensity to be receptive to the mobilising strategy of the Muslim league and eventually to espouse separatism. See, Mushirul Hasan, *ibid.* pp. 1-43. For Hindu communalism in Bengal see, Joya Chatterjee, *Bengal Divided, Hindu Communalism and Partition 1932 – 1947*. Cambridge University Press, 1995

²⁵ Beniprasad, *Op cit.*, p. 59.

purpose of negating the claims of the other. Ambedkar provides several examples: ‘Hindus and Muslims make preparations against each other’, he tells us, ‘without abatement reminding one of a ‘race in armaments between two hostile nations. If the Hindus have the Banaras University, the Musalmans must have the Aligarh University. If the Hindu start *Shuddhi* movement, the Muslims must launch the *Tablig* movement. If the Hindus start sangathan, the Muslims must have the *Tanjim*. If the Hindus have the R.S.S., the Muslims must reply by organising the *Khaksars*.’²⁶ Again, ‘the Muslims (read extremist Muslims) agitated fiercely to introduce representative government in Kashmir but elsewhere they opposed it. Why? Because in all matters their determining attitude is how will it affect the Muslims vis a vis the Hindus. In Kashmir it would have meant transfer of power from Hindu king to Muslims masses; elsewhere where the ruler is Muslim and subjects Hindus, it means Hindu masses will be victorious.’ He adds, ‘The determining and dominating consideration is not democracy but how democracy with majority rule will affect the Muslims in their struggle against the Hindus.’²⁷ Ambedkar was wrong about Kashmiri Muslims but he had grasped the mindset of extremists more generally. As he himself recognised, extremist Hindu politics was similarly perverted. In different circumstances, a political majority-minority framework for Muslims within a united India should have been a satisfactory solution to all sides. But given the majority-minority syndrome, ‘in which a hostile majority is forever pitted against a hostile minority’, Ambedkar concluded, only a separate state seemed viable.

The development of the majority-minority syndrome prevented a reasonable and accommodating solution to the Muslim question in India. It also had a debilitating impact on the possibility of reforms, particularly for Indian Muslims. This is so because anti-reformist tendencies within a group are severely intensified if a society is in the grip of a majority-minority syndrome. Ambedkar was quick to grasp this point. When groups regard each other as a menace, he argued, all their energies are spent on preparing to meet ‘the menace’. The exigencies of a common front of the majority against a powerful minority and the minority against the majority generates a ‘conspiracy of silence over social evils’.²⁸ Neither attend to them ‘even though they are running sores and requiring immediate attention, for the simple reason that they view every measure of social reform as bound to create dissension and division and thereby weaken the ranks when they ought to be closed to meet the menace of the other community.’ This ensures that there is social stagnation and the spirit of

²⁶ Ambedkar *ibid.* p. 246.

²⁷ Ambedkar, *ibid.* p. 236.

²⁸ See Ambedkar, *ibid.*, p. 247.

conservatism continues to dominate the thoughts and actions of both. The gradual political democratization, which sharpened differences between Hindus and Muslims and generated new fears and anxieties about lower-caste assertion. A conservative upper-caste ultra-traditionalism has always been a major ingredient of Hindu nationalism, driven as it was, by the anxiety to preserve a beleaguered cultural and social order.

In a passage that anticipates the dilemma faced many decades later over the Shahbano case, he laments the passing of the Dissolution of Muslim Marriage Act VIII of 1939. This Act annulled the previous law for which the apostasy of a male or a female married under the Muslim law *ipso facto* dissolved the marriage with the result that if a married Muslim woman changed her religion, she was free to marry a person professing her new religion. The effect of the new retrograde law was to bind a married Muslim woman to her husband even if his religious faith was repugnant to her liberty denied. A conversion of a woman and her subsequent marriage were seen to be undertaken solely with a view to change the relative numerical strength of communities and therefore as a depredation by one community against the other,. Thus the real motive, Ambedkar claimed, was to prevent the illicit conversion of women to alien faiths in order to ensure that the numerical balance between the two communities remains undisturbed. Ambedkar concluded that the law was changed and the rights of women sacrificed purely in order to maintain a certain numerical balance between the two communities. Such reasoning which turned a social issue requiring urgent reform into a contentious matter between warring communities epitomises a majority-minority syndrome.

III

Religion and the State: Legal Reality and Social Practice in India, Pakistan and Bangladesh

At the time of independence, South Asian states inherited a perverted majority-minority syndrome that exaggerated religious and communal differences and stalled internal religious reform, features that inspire exclusion, not inclusion. Despite partition and a fairly strong movement of religious nationalism that ultimately took Gandhi's life, India managed to install a secular constitution with a set of fundamental rights, including religious and cultural

rights for minorities. Even Jinnah who had led a movement of ethno-religious nationalism said in the first constituent assembly of Pakistan that: “You are free to go to your temples or your mosques. You may belong to any religion..... that has nothing to do with the business of the state” and “We are starting with this fundamental principle: that we are all citizens and equal citizens of one state.” Jinnah also hoped that in due course of time Hindus and Muslims would cease to be Hindus and Muslims, “not so in the religious sense because that the personal faith of the each individual, but in the political sense as citizens of the state. Bangladesh which attained independence from Pakistan in 1971 also had its genesis in cultural and linguistic nationalism of the Bengali people who began their existence by rejecting the proposal of West Pakistan that Urdu be imposed as the official language of the entire state. In the new constitution, Article 8 adopted the principle of secularism and all religious parties were banned. Over time, however, both Pakistan and Bangladesh have abandoned their commitment to secularism and currently, the secular state in India is undergoing a major crisis.

Self-designation of states and its consequences for inclusion:

What is the formal relationship between religion and the states of Bangladesh, Pakistan and India? What is the primary self-identification of these states? Are they theocratic? Do they establish religions? Are they secular? If secular, what kind of secularism do they embody?²⁹ Formally, neither Pakistan nor Bangladesh are secular states. Bangladesh dropped Articles 8 and 12 replacing the principle of secularism with a clause that stated “Absolute trust and faith in the Almighty Allah to be the basis of all actions.” ‘Bismillah ar Rahman ar Rahim’ were inserted before the preamble. Gradually, the ruling elite has tried to Islamicise the polity and to build an exclusionary ‘mosque-centered society’.³⁰ General Irshad began the process of Islamicization in earnest. In 1982 he declared that the Martyrs Day commemorating the sacrifices of the martyrs of the language movement of 1952 would henceforth be observed in the proper Islamic manner at the Shahid Minar through prayers and recitations from the Holy Quran and not by drawing Alpana (act of painting the floor with the liquefied pigment of rice

²⁹ Whatever they may formally say, in reality most states are impure. States that establish religion do possess theocratic or secular features. Even theocratic states in reality contain secular features. It is an assumption of this paper that all states are imperfectly and impurely whatever it is they claim to be.

³⁰ Amina Mohsin, National Security and the Minorities: The Bangladesh Case, in D.L. Sheth and Gurpreet Mahajan (ed) *Minority Identities and the Nation-State*, Oxford University Press, New Delhi, 1999. Also see, Rafiuddin Ahmed, *Religion, Nationalism and Politics in Bangladesh*, South Asian Publishers, New Delhi, 1990 and Anisuzzaman, *Religion, Politics and the State in Bangladesh* in N.N. Vohra and J.N. Dixit (ed.) *Religion Politics and Society in South and Southeast Asia*

powder) which had been a long standing practice and which was considered to be a Hindu custom.³¹ In 1988, through the eighth amendment, Islam was declared as the state religion of Bangladesh. Other religions are formally allowed, however, to be practiced in peace and harmony in the republic. At best then Bangladesh professes to be a tolerant Islamic state. It would be suicidal now for any political party to attempt to secularise the constitution. As Khalida Zia put it ‘any attempt to remove Islam as the state religion would hurt the sentiments of the Muslims who constitute 95% of the total population of the state.’ The amendments to the Constitution have resulted in the destruction of the ideals of the Bangladesh liberation war and taken away from the religious minorities their deep sense of belonging to the country.³² Citizen identification of the minorities is, therefore, extremely weak. The introduction of state religion has not, however, touched the laws of the land. No attempt has been made to bring civil or criminal laws in line with Islamic laws. As one commentator puts it ‘the once secular state of Bangladesh still a far cry from the Islamic policy of Iran or even Pakistan’.³³ Yet, the overall consequence of blending religion and politics has not only been to divide Muslims from Non-Muslims but also one Muslim group from another.

Pakistan is an overwhelmingly Muslim country with more than 90% of its 142 million inhabitants adhering to Islam. In 1990 the minorities were 3.1% of the total population. There were 1.76 million Christians in Pakistan, 1.72 million Hindus, 9462 Parsis, 3,500 Buddhists and about 3,000 Sikhs. By 1998, the minorities were anywhere near 11 and 13 million with Ahmedis, Christian and Hindus each claiming to have a population of 4 million. Pakistan has had four constitutions since its independence. The first 1956 constitution declared Pakistan to be an Islamic republic. Though it granted equal citizenship rights to all men, it refused to offer the same treatment to women- a religion-based internal exclusion by a religious group of a section of its own members. By and large, however, the document did not formally commit itself to religion-related exclusions of minorities. Indeed, in 1962, Gen. Ayub Khan who introduced his own Constitution, dropped the word ‘Islamic’ from the country’s title and sought to make it more liberal in character. For example, progressive Islamic laws in the sphere of marriage and divorce were adopted in the Constitution. Ayub attacked theocratically inclined Islamic parties and institutions. To challenge the hegemony

³¹ Ishtiaq Ahmed, *Ibid.*, p126.

³² Rafiuddin Ahmed (Ed.), *Religion, Nationalism and Politics in Bangladesh*, South Asian Publishers, New Delhi 1990, p.68

³³ Ishtiaq Ahmed, *State, Nation and Ethnicity in Contemporary South Asia*, Pinter, London and New York, 1996, p.150

of Islam, his government nationalized religious endowments and assumed guardianship of religious shrines. He also sought to regulate religious education.

This phase was short-lived, however, as in 1973, paradoxically, precisely when Pakistan had a constitution ratified for the first time by elected representatives, the Muslim character of the state was reiterated. The 1973 Constitution defines Pakistan as an Islamic state. Article 2 of the constitution states that Islam shall be the state religion of Pakistan. Article 2A stipulates that principles of democracy, freedom, equality, tolerance and justice shall be fully observed but only as enunciated by Islam. Article 31 calls on the government to promote an Islamic way of life. Article 228 gives the council of Islamic ideology an institutionalised role in overseeing legislation. Under Article 203(D) the Sharia Court, also established by an amendment to the Constitution, can declare any law defunct if it finds it against Islamic injunctions. Indeed, now the Sharia is the supreme law of Pakistan, making it formally resemble theocratic states. So the Pakistan state has a formally, and as we shall see substantively established state religion-Islam - with theocratic overtones. The consequences of such a state are that Pakistan has been unable so far to build an inclusive society.

The unamended Indian Constitution of 1950 did not use the word 'secular' but all the features of a secular state are present in the formal structure of the state enunciated by the document. India has no state religion. The principle of non-establishment (Feature-a) is not formally or explicitly avowed but is implicit in Article 27 which rules out the public funding of religion and in Article 28(1) under which 'no religious instruction is to be provided in any educational institution wholly maintained out of state funds'. The Constitution does not formally give religion any right to oversee the law of the land. All criminal laws are secular. There is only one major anomaly: by default, a part of the civil law dealing with family, marriage and inheritance falls within the domain of religion. Articles 25, 27 and 28 guarantee religious liberty and meet the conditions specified by features-b, c & d. Under Article 25(1), 'all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.' (Feature-b and c) The phrase 'freedom of conscience' is meant to cover the liberty of persons without a religion (Feature-d). Under Article 27, 'no person is compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.' Finally, under Article 28(3), 'no person attending any educational institution..... shall be required to take part in any religious instruction or to attend any

religious worship that may be conducted in such institution'. Equality of citizenship is guaranteed by Articles 14, 15(1) and 29(2) of the Indian constitution. Article 15(1) states that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (Feature-e). In 1975, the term 'secular' was formally introduced in the Constitution and India was declared a secular republic

When a state declares itself to be secular, it is pertinent to ask what form of secularism it embodies? Recall that on the wall of separation model there can be no support for religion even on a non-preferential basis. Even partial aid to educational institutions run by religious organizations will constitute some form of establishment. Moreover, a state that disestablishes all religions is one that has no power to interfere in the affairs of religious institutions. For better or for worse, the state is powerless to bring about changes in religion.

Does Indian secularism erect a similar 'wall of separation' for the sake of individualistically construed values? Articles 15, 16, 25, 29(2) and 325 support the 'wall of separation' interpretation. Though there is no direct reference to disestablishment, Articles 27 and 28(1) imply strict separation. By giving the President of the Republic the option of not taking oath in the name of God, Article 60 confirms the strictly neutral character of the Indian constitution. From the discussion so far, it appears that the state in India is constitutionally bound to follow the wall of separation model of secularism. However, further examination of the constitution reveals this impression to be mistaken. To begin with, Article 30(1) recognises the rights of religious minorities and therefore, unlike other Articles applicable to citizens qua individuals, it is a community-based right. Indeed, another community-specific right granting political representation to religious minorities was almost granted and was removed from the constitution only at the last minute. Second, Article 30(2) commits the state to give aid to educational institutions established and administered by religious communities. Also permitted is religious instruction in educational institutions that are partly funded by the state. These are significant departures from the 'wall of separation' view of the secular state. Even more significant are Articles 17 and 25(2) that require the state to intervene in religious affairs. Article 25(2)(b) states that 'nothing in Article 25(1) prevents the state from making a law providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.' Article 17 is an uninhibited, robust attack on the caste system, arguably the central feature of Hinduism, by abolishing untouchability and by making the enforcement of any disability

arising out of it an offence punishable by law. Both appear to take away the individual freedom of religion granted under Section 1 of Article 25 and to contravene Article 26.

These features of the Indian constitution depart from the strict separation view in two ways. First, unlike the strict separation view that renders the state powerless in religious matters, they enjoin the state to interfere in religion. Second, more importantly, by giving powers to the state in the affairs of one religion, they necessitate a departure from strict neutrality or equidistance. This power of interference may be interpreted to undermine or promote Hinduism. Either way it appears to strike a powerful blow to the idea of strict neutrality.

In short, some Articles in the Indian constitution support an individualist interpretation and others a non-individualist one. Some conceive separation as exclusion, others as strict non-preferential neutrality and, finally, some depart altogether from separation understood as exclusion or neutrality. Therefore, the Indian model supports the view that the state must keep principled distance from religion.

The legal reality of secularism in India must not be confused with its reality on the ground. Whatever the formal position, evidence from the ground has always been mixed. Indeed, recent trends are very disturbing, with a sustained attempt by right-wing Hindu forces to install in effect a homogenized newly-invented Hinduism as the established religion and Hindus as the religious group favoured by the state. This threatens not only the security and freedom of minorities but also to change the plural character of Hinduism. Yet a secular Constitution constrains the activities of these forces and continues to be the basis for including minorities in Indian society.

Religious Exclusion: The denial of religious liberty and equality

We must address several issues in this section. Do individuals have freedom of conscience, the freedom to interpret beliefs and practices in their own way, to dissent from their religion, even to exit the religion into which they are born? Do they have a right to propagate their religion? Do they live without fear and dignity or are they terrorized by leaders of their own group, by other religious groups or by the state? Are their places of worship protected by law or from majoritarian forces? Do religious groups have a right to maintain their beliefs and practices, aspects of their culture that are presupposed or entailed by their religion? Do they

have a right to maintain their educational institutions? Is the discrimination within a religious community against some of its own members – internal minorities, women or lower castes? What is the overall status of women within religious communities? How reflective are personal laws of particular religions and how discriminatory are they with respect to women? What role does the state play in removing obstacle to religious freedoms? These are large issues, all of which cannot be covered by this paper. Even issues that are dealt here can be given only a very cursory treatment. My attempt here is only to give a general impression of the status of these issues in India, Pakistan and Bangladesh.

External Exclusion

Legally, Hindus, Christians and Sikhs have religious liberty and enjoy the right to maintain their own educational institutions in Pakistan. The Pakistani Constitution ensures to every citizen the right to freedom of religion and to manage religious institutions. Article 22(1) assures every citizen that no one shall receive religious instruction or take part in religious ceremony other than his/her own. Article 33 makes the state responsible for safeguarding the legitimate rights and interests of minorities. Yet, the ground reality in Pakistan is different. The accent on Islam has accentuated the marginalisation of all minorities. The Sikhs are very small in number and have become smaller after the ascendancy of Taliban as several Afghani-Sikh families have migrated abroad out of fear. After the Babri Masjid destruction angry mobs destroyed Hindu temples in both Pakistan and Bangladesh. Most temples were no longer in use as places of worship in Punjab simply because there were no Hindus around to use them. Only poor homeless Muslims had been living there since 1947. Recently in 2001, a Church was attacked by grenades in Islamabad. Churches were also attacked in Murree and Taksila. One of the worst incidents against Christians took place in 1997 when the twin towns of Shanti Nagar and Tibba Colony were demolished over a supposed case of blasphemy. A police party which had gone to investigate a kidnapping case was alleged to have desecrated the Bible. Local Muslims were incited when residents protested against desecration. Torn pages of the Koran were found on the streets with names of their supposed desecrators. After this, all hell broke loose. 13 Churches and 700 households were raised ground by a strong mob of 10,000 people. The Bahais also keep a very low profile. There are no reports of harassment or anger against the Parsis. This is partly because of their strong commercial links and because of the non-evangelical nature of their religion.

The tiny community of some 4000 of the Kalash Kafirs of the Chitral Valley are victims of an aggressive conversion campaign during the Zia regime. There is even a demand by the Ulama to declare non-Muslims as Dhimmis (protected minorities) and made to pay the Islamic pole tax, Jizya. However, the state has not given attention to this demand.

Several new articles in the constitution have introduced an institutionalised system of external religious exclusion. For example, the anti-blasphemy law in Pakistan has been used against both Muslims and non-Muslims. Under the Blasphemy Ordinance of 1986, Gul Masih, a Christian, was sentenced to death by a Pakistani lower court in October 1992 for allegedly making abusive remarks about Prophet Mohammad.

The Islamisation of Pakistan continues unabated. For example, the government is enjoined to make serious efforts to teach Islamic studies and the Sharia. The state has a project of Islamising the national educational system. The government is also supposed to overhaul the judicial system so that it becomes a real Islamic state. Any activity deemed against the teachings of the Sharia is to be harshly dealt with. In the Federal Ministry of Religions and Minorities Affairs, an inscription in the main hall says 'Of course, Islam is the best religion in the eyes of God'³⁴. Radio and television offer programmes on Islam but make no effort to raise awareness of other religion. Teaching in school is often tantamount to Islamisation of pupils. For example, 20 extra marks are given to any candidate for admission into schools and higher institutions for memorizing the Koran. The educational system does not take Pakistan's plural tradition into account.

In Bangladesh, the Adibashis who live in the Chittagong Hill Tracts (CHT) are mostly Buddhists, Hindus, Christians and Animists and according to the 1991 census have a total population of about half a million people.³⁵ Bengali nationalism under Mujibur Rahman entirely excluded the Adibashis. When their leader, Manobendra Narayan Larma called on Mujib asking for cultural and political autonomy for the CHT, his demands were rejected. Thus the Adibashis have no separate cultural rights, no self government rights and not even special rights in representative institutions. The Bangladeshi Constitution does not recognize special cultural or religious rights for the Adibashis. The Garos, 90% of whom are Christians

³⁴ Iftikar Malik, *Religious Minorities in Pakistan*, page 22

³⁵ Amena Mohsin, *The Chittagong Hill Tracts, Bangladesh*, Lynne Rienner Publishers, USA, 2003, p.16

and who are the 5th largest ethnic group in Bangladesh numbering about 64,000 in 1991, have no religious or cultural rights

In India, a vigorous campaign of external religious exclusion of Christians and Muslims has been a feature, particularly since the late 1980s. In the 90s a concerted campaign has been carried out against Christians.³⁶ On July 8, 1998 the body of Samuel Christian was exhumed from a cemetery in Gujarat and thrown outside the Methodist Church. In June, a century old Christian girls school in Rajkot was attacked and several copies of the New Testament were snatched from the hands of students and burnt. During the Christmas week the Christian Dangs were attacked. Between 25 December and 3 January, 24 Churches, 3 Schools and 6 Houses or Shops were burnt or damaged and 9 Christian tribals suffered serious injuries. Such incidents were not restricted to Gujarat. On 23 September, 4 nuns were gangraped in Madhya Pradesh and finally in January 1999 came the most atrocious incident in which the Australian Missionary doctor Graham Stains and two of his children were burnt alive amidst slogans of *Jai Shri Ram*. Most such incidents are preceded by a systematic campaign of lies and distortions concerning Christians, disseminated through leaflets and brochures. Most of these attacks are justified by the claim that this is legitimate anger against conversion of Hindus to Christianity by anti-national Christian missionaries.

Oppression also takes more subtle forms. The chief of the RSS, the parent body of the Hindu nationalist party, the BJP, persists in advising Catholics to reject the Pope, and sever their association with the Vatican. Christians are frequently stigmatized as aliens. Christians and Muslims are told that if they do not acknowledge their Hinduness, for instance, if they do not accept Ram as a national hero, then they must live in subordination to the Hindu majority. Even the Sikhs are not spared. Much to the consternation of a majority of Sikhs, the RSS insists that though distinct, Sikhs are not separate from Hindus. It even tried to have the Sikh holy book, the Guru Granth Sahib, read in the mandirs in Punjab. For these ethno-majoritarian forces, therefore, inclusion can only be possible on terms set by them. If these terms are not accepted, then the lot of the minorities can only be severe exclusion. As one commentator put it, “The only way the Sangh Parivar can deal with Christians and Muslims is either as hostile aliens or converts of Hindu stock awaiting purification.”³⁷

³⁶ Sumit Sarkar, in K.N. Panikkar (ed.) *Every Man's Guide to Secularism and Communalism*, Penguin, pp.73-77

³⁷ Mukul Kesavan, *Secular Common Sense*, Penguin Books, New Delhi, 2001, Page 94.

Since 1984, the Vishwa Hindu Partishad (VHP- World Hindu Council) has engineered the revival of a movement to liberate “sacred” Hindu sites believed to have been usurped by Muslims--an issue that has excited and invigorated Hindu nationalists for more than a decade now. *Ayodhya*, the mythical birthplace of Lord Rama, the main protagonist of the great epic, *Ramayana*, remained the most evocative and significant rallying cry. Hindu nationalists claim that a temple dedicated to Lord Rama stood on his *Janam Bhoomi* (the site of his birth) until it was destroyed in the 16th century by Babur, the first Mughal ruler, and replaced by a mosque. Hindu nationalists contended that this mosque **must** be handed over to them, and in 1992, after this demand was refused, a well-armed mob led by VHP activists reduced the mosque to rubble as senior BJP leaders looked on. Almost everyone can see that the Ram Janma Bhoomi Movement is less about God Ram and more about Hindu consolidation. It is less about building a temple and more about the denigration and humiliation of Muslims. It is about showing Muslims their place in a Hindu country.

In most societies with majoritarian states, the minority group was at least economically powerful in the near past. This is not the case in India where Muslim minority in much of India is among the poorest and socially “backward”. By all measures of development – income, wealth, education, employment, ownership, health – the Muslims are among the least well off of all Indians. This is why ethno-majoritarian forces re-invent old, mostly imaginary Hindu grievances: the destruction of Hindu temples by Mughals, the temerity of supporters of partition to even ask for a framework respecting minority rights, the disloyalty induced by pan-Islamicism, the alleged Muslim propensity to flout family planning norms with the sole purpose of increasing their numerical strength and the alleged role that polygamy and therefore Muslim personal law plays in their march to outpopulate Hindus. Hindu nationalists now make instrumental use of memory, emotion, prejudice, religious difference, and generalized deprivation to advance their extremist agenda of external religious exclusion.³⁸

Hindu-Muslim riots have an old pedigree. The partition of India was accompanied by violence that killed over half a million people. Even after independence, communal riots have not abated. Indeed, their incidents has increased over the last four decades.³⁹ While no one can deny the economic and political reasons underlying communal violence, a direct

³⁸ Ibid.

³⁹ M.J. Akbar, *Riot After Riot*, Penguin Book, New Delhi, 1988; Siddharth Varadarajan, *Gujarat: The Making of a Tragedy*, Penguin Books, 2002; *Crime against Humanity*, Anil Dharkar; *Damning Verdict*, Sabrang Communications and Publishing, New Delhi; Ashutosh Vershney, *Ethnic Conflict and Civic Life*, OUP, New Delhi, 2002; Ashis Nandy, Shikha Trivedy, Shail Mayaram, Achyut Yagnik, *Creating a Nationality*, OUP, Delhi, 1997

exclusionary motive is always present. This was no where more evident than in the recent pogrom in Gujarat in which over 2,000 Muslims were brutally killed after a Muslim mob burnt down a train compartment containing 39 Hindus.⁴⁰ But this exclusionary motive was present in the past. For example, on August 13, 1980, the Provincial Armed Constabulary (PAC) opened fire on several thousand Muslims at their Id prayers at Moradabad. In 1984, following the assassination of Mrs. Indira Gandhi by a Sikh, her personal bodyguard, several thousand Sikhs were killed in northern India. After the demolition of Babri Masjid in 1992-93, about 600 Muslims were killed and over a thousand injured in the Bombay riots.⁴¹

Internal Exclusion

Internal exclusion is a problem in all South Asian societies. I shall take two examples: one of dissenting religious groups in Pakistan and the other of women and Dalits, particularly in India. A turning point in the history of inclusion and exclusion in Pakistan was Bhutto's anti-Ahmadi legislation.⁴² Zia consolidated this move by declaring, under Article 260, Ahmedis to be a non-Muslim minority. Ahmedis were forbidden from using Islamic nomenclature in their religious and social lives. A whole community of people were formally excluded both symbolically and materially from the dominant religion of Pakistan. Ahmedis have since been tried and convicted under the law for calling themselves Muslims or using the word 'mosque' as their place of worship. They have also been physically attacked. Many recanted their faith, others fled to the west. The Ahmedis are today an officially persecuted community in Pakistan. The example of Ahmedias show that there is no freedom of dissent from the dominant religion and that religious freedom is not available to every citizen. Most minorities fear their minority status because of the stigma attached to the term 'minority'. For example, Ahmedis do not openly profess their identity nor congregate visibly. There is very little open social interaction between the Ahmedis and Muslims and no inter-marriage.

Since Zia's regime, the state has acquired fundamentalist Sunni overtones. This has resulted in the intensification of Shia-Sunni conflict and the persecution of the minority Shia

⁴⁰ Events in Gujarat could hardly qualify as a 'riot'. For a detailed account, see Varadarajan, p.229.

⁴¹ The final tally of casualty figures for December 1992 and January 1993 are – Dead-900 (575 Muslims, 275 Hindus, 45 unknown and 5 others), Injured-2,036, Muslims-1,105, Hindus-893, Others-38. See Justice B.N. Srikrishna Report, in Damning Verdict, Sabrang Communications.

⁴² The Ahmedi sect owes its origin to Mirza Gulab Ahmed and after he claimed to be a Prophet and formed the Ahmedia mission, it was declared a separate sect.

community. The first clash between the state and Shias took place when the latter refused to pay to the state Zakat, the alms tax and Ushr, the land tax, which was introduced by Zia in the 80's. Members of the Shia community argued that they paid this tax to their own clergy. A long agitation followed that resulted in the exemption of Shias from these taxes. But some extremists, even as they go unheeded, continue to demand that Pakistan be made into a Sunni state and that Shias be declared non-Muslims. There are militant Shia and Sunni groups that want to transform the Pakistani state in accordance with their own sectarian vision. In 2000, there were 150 sectarian killings. In 2001, between January and September 120 professionals and scholars, mostly Shia were killed in sectarian murders. In February, 2002 Sunni militants attacked a Shia mosque in Rawalpindi and killed 12 worshippers. In February, 2002 five members of Shia family were murdered by Sunni militants in Multan.

An accent on majority Sunni Islam also threatens the small group of Zikris. The Zikris who live in Baloch also fear the minority status and therefore stay away from the public domain. The Zikris believe in the idea of the revealed Imam (Mahdi) and consider Syed Mohammad Jaunpuri a contemporary of Akbar to be their Mahdi. They believe that the Imam appeared on a hill-top in Baluchistan where he performed religious and spiritual rites. Zikris who remember and constantly recite the name of God, assemble on this hill-top every year to commemorate this occasion. The opponents of Zikris allege that they do not pray regularly. They also allege that they do not go for pilgrimage to Mecca but visit the hill-top instead and that their Zikrakhanas do not have pulpits pointing towards Mecca. The Zikris too are a persecuted internal minority in Pakistan whose religious freedom is constantly threatened.

Anyone found to be denigrating the name of Prophet Mohammed is punished by virtue of an amendment to Pakistan's Penal Code. The law against blasphemy enables any male Muslim to initiate litigation against an individual and if found guilty the individual is to be given the death penalty. In August, 2002 a woman Ruksana Bunayad became the first-ever Muslim woman to be charged with blasphemy against the Koran. There is no religion in the world where women are given the same status as men. Women are generally excluded from several practices of their own religion. For example, Islam does not permit women to offer prayers in mosques. There are no known women archbishops, Imams or pujaris. In Hinduism, there are restrictions on their participation in religious rituals at the time of menstruation. Entry to temples is similarly restricted during this period. The Ayyapa temple in Kerala forbids the entry of women between ages 15-65, entirely because their very capacity to menstruate

makes their bodies impure are for this entire period. But Dalits have suffered the severest from of internal religious exclusion in the subcontinent. The Indian Constitution tries to remove this disability. Article 17 has legally abolished untouchability. Under Article 25(2)b, Hindu religious institutions of a public character are thrown open to all sections of Hindu society. The (Central) Untouchability (Offences) Act of 1955 provides penalties for enforcing any religious disability. Any person who on grounds of untouchability prevents any other person from worshipping, offering prayer, performing religious service, bathing, using the water of a sacred tank, well, spring or watercourse is punishable with imprisonment. Despite the Constitution and other legal provisions, however, the National Commission for Scheduled Castes and Scheduled Tribes report of 1990 states that in UP, Tamil Nadu, Kerala, Rajasthan and Karnataka, dalits still do not have access to temples and other places of worship.⁴³ This is also true of an important study conducted earlier on rural Gujarat.⁴⁴ The Andhra Committee too found that as many as 80 temples in the 249 villages it visited explicitly forbade entry of dalits into the temples.⁴⁵

Religion-based Legal, Social and Economic Exclusion:

The denial of passive Citizenship rights

Is a person's religion the basis for his/her exclusion from the social, political and economic domain of liberty and equality? What is the legal status of women, internal minorities and religious minorities in Pakistan, India and Bangladesh? Does the legal machinery work impartially? Does it provide equal protection to everyone? Indeed, is the state impartial? What role does the police play in inter-communal violence? Are the perpetrators of communal violence ever punished? Does the state discriminate in the distribution or provision of benefits? In civil society, is there religion-related discrimination, for example in housing, jobs, school and college admission? What role does the state play to prevent or remove it? Do members of minority groups migrate to neighbouring countries to escape severe economic or political marginalisation? How does religion-based discrimination work against women and other oppressed internal groups? What is the status of personal laws? How do they discriminate against women?

⁴³ Harsh Mander, Status of Dalits and Agenda for State Intervention in Ghanshyam Shah (ed.) Dalits and the State, Concept Publishing Company, 2002, pp. 149-152

⁴⁴ Desai, I.P., Untouchability in Rural Gujarat, Bombay: Popular Prakashan, 1976.

⁴⁵ Harsh Mander, Status of Dalits and Agenda for State Intervention in Ghanshyam Shah (ed.) Dalits and the State, Concept Publishing Company, 2002, pp. 149-152

External Exclusion

Apart from Muslims, there are two main ethno-religious groups in Bangladesh: the Hindus and the Adibashis who are Buddhists, Hindus, Animists or Christians. The Hindus are socially and economically marginalised. The economic marginalization of the Hindu community is caused by the Vested Property Act, according to which the government has power to acquire any land it considers necessary for administration. This act has been widely used against Hindus.⁴⁶ This continues a practice started as long ago as 1951 when the East Bengal Evacuees Act was passed whereby the government could acquire the property of an evacuee. Hindu Zamindars allege that their property was requisitioned even though they chose to live in East Pakistan.⁴⁷

Similarly, when a war broke out in 1965 between Pakistan and India, India was declared an enemy country. A new Act was passed according to which all interests of the enemy situated in Pakistan were confiscated by the Custodian of Enemy Property in Pakistan. (Muslims residing in India were excluded from the category of the enemy!) When the war ended, this Act, with its overt communal bias, was continued. Worst still, despite the declaration that it was a secular state, independent Bangladesh retained this act. This 'black law' continues to cause insecurity and out-migration among Hindus. It is estimated that out-migration during 1964 and 1991 was 5.3 million, or 538 persons each day.⁴⁸ (In 1947 Hindus were 23% of the population in East Pakistan. This declined to 22% in 1951, 18.3% in 1961, 13.5% in 1974 and 12.1% in 1981.⁴⁹ This decline is attributed to migration.) The Act also discourages the minority community from acquiring new land. According to an estimate, out of a total arable land of 21 million in the country, one million acres of land belonging to the minority community have been transferred to the dominant sections of society.⁵⁰ According to Sultana Nahar, Hindus face persistent discrimination in business, employment and education⁵¹.

⁴⁶ See Abul Barkat et. al, Political Economy of the Vested Property Act in rural Bangladesh, Dhaka, ALRD, 1997, Page 27.

⁴⁷ Amena Mohsin, National Security and the Minorities: The Bangladesh Case, in D.L. Sheth and Gupreet Mahajan (ed) Minority Identities and the Nation-State, Oxford University Press, New Delhi, 1999

⁴⁸ Amena Mohsin, *ibid*, p.326. Also see, Ranabir Samaddar, *The Marginal Nation*, Sage Publications, New Delhi, 1999

⁴⁹ Persecution is not the only reason for migration, however. Many people cross the border also in the hope of a better life.

⁵⁰ Amena Mohsin, *ibid*, p.326

⁵¹ See Sultana Nahar, *A Comparative Study of Communalism in Bangladesh and India*, Dhaka: Dhaka Prokashon, 1994.

The Adibashis of the CHT consider land to be communal property but, with the introduction of private property, commercial exploitation and because of Government sponsored projects of development, they have gradually lost it. For example, the construction of the dam of the Karnafuli river in Rangamati resulted in 40% of the total acreage of the district getting submerged by dam waters. The Adibashis were not fully compensated for the land they lost. A hundred thousand people were uprooted of which approximately 40,000 became refugees in India. Is this negative outcome a result of religion-related discrimination? It is difficult to answer this question, though it is pertinent to ask whether the same fate would have befallen Muslim citizens had they been in the shoes of the Adibashis.

The Garos too are largely excluded from the economic mainstream. Garos consider the forest not just an economic asset but as the core of their socio-cultural life. They see themselves as children of the forest. To evict them from the forest is to cut their lifeline. However, several government policies have caused their displacement from the forest. The settlement of Bengalis in north Mymensingh resulted in the outbreak of riots and the migration of Garos to India. The exclusivist nationalism of the Awami league failed to co-opt the non-Bengali population within the nationalist fold. For the Garos, the liberation of Bangladesh was the 'second riot'. The contributions of the non-Muslim population who were recruited into the freedom movement has never been recognized, a fact that underlines their alienation from their society.

The legal, social and economic position of religious minorities in Pakistan is hardly any better. Minorities continue to be excluded from socio-economic life and from high positions in civil and military sectors. Changes in the economy have not helped the position of Christians, low caste converts from Hinduism, who were rendered landless and forced to take up stigmatised jobs such as sweeping the streets. When minorities are confined to menial, low-paid work, their self esteem diminishes and as a result ethno-religious stereotypes are reinforced. The nationalisation of educational institutions run by Christians blocked assured access to jobs and education and further alienated the Christians. Rural Hindus remain vulnerable in Pakistan to feudal and state oppression. What is worse, there are no clear state policies to reduce the marginalisation of minorities.

Sadly, despite its secular Constitution, the partisan character of the state is most blatant in incidents of communal violence in India. I have already mentioned the calculated, cold-

blooded massacre by a communalized police force in Moradabad that tried to cover this up by making it out to be a Hindu-Muslim riot.⁵² But the communal role of the PAC can also be seen in Meerut where custodial deaths of Muslims became a regular feature in 1987. Meerut then was in the grip of communal tension and the police was doing its usual rounds of Muslim locality, searching every Muslim house and picking up youths for cross examination. At night the parents of these young men were quietly asked to come to the police station, take away and bury the bodies of their children before dawn. Some days later, more than two dozen young Muslims were picked up some days later, shot dead and dumped into the water. Riots are bad enough, but surely much worse is the arbitrary murder committed by the guardians of law.⁵³

Direct violence is not the only expression of police brutality towards religious minorities. The murderously partisan attitude of the state was in view in the recent pogrom in Gujarat where the entire Gujarati Muslim community was deemed 'responsible' for the burning of a coach in the Sarbarmati express and its violent punishment was actively aided, abetted and justified by the state machinery. The police abetted violence against Muslims in at least two ways –

- (i) By not responding to cries for help – This is epitomised by the case of former parliamentarian Congress MP – Ehsan Jafferri and the sitting Judges of the Ahmedabad High Court, Justice Akbar Divecha & Justice M.H. Kadri, whose calls to the police went unheeded.⁵⁴
- (ii) By actively goading/encouraging the mob – On several occasions, ostensibly to protect them, the police surrounded the Muslims only to block their escape routes and thus let them fall to the fury of mob.⁵⁵ It was also reported that the police 'combed' Muslim areas and brutally assaulted the women, men and children.

Deliberate indifference to the plight of the needy manifests the same exclusionary intention. For example, there was delay in setting up relief camps. Outrageously, the Gujarat government did not set up a single relief camp for Muslim victims. It was left to Muslim-dominated Panchayats or Muslim religious trusts, to provide protection, to feed and house the

⁵² M.J. Akbar, *Riot After Riot*, Roli Books, 1988, p.33-34

⁵³ M.J. Akbar, *Riot After Riot*, Roli Books, 1988, p. 151-158

⁵⁴ Varadarajan, p.189

⁵⁵ For details, see Varadarajan, p.99-100

victims. Shortage of ration was characteristic of these camps. ⁵⁶ Evidence also exists for discrimination in compensation paid to victims.⁵⁷ Damage to property owned by Muslims was rarely recompensed. Persons who lost property worth lakhs were given a few thousands.

Internal Exclusion: Direct

Customary practices with at least some association with local religious belief directly stipulate death for women. The whole issue of sati – the immolation of a widow following her husband’s death – is a complicated one but there is no denying its link with local religious beliefs. Despite a law against sati, Roop Kanwar, an 18 year old student was burnt alive in Rajasthan in India on the funeral pyre of her husband. Soon after the event, she began to be revered and glorified as a Goddess. Huge public outrage followed in India, not least thanks to powerful women’s movements. A stringent new law was passed in the Parliament prohibiting the glorification or justification of sati, including, the justification of sati. This has had some effect but the practice continues.

In many countries with Islamic laws, women require some form of male guardianship to enter into contracts. A conflict between religious legal systems and the constitutional provision of equality is common in India. For example, in 1983, Mary Roy, a Syrian Christian challenged the Travancore Christian Act that governed them in Kerala on the ground that it violated the equality provision guaranteed by the constitution. When the Supreme Court overturned the act to be replaced by the Indian Succession Act of 1925 that grants daughters and sons equal rights, several members of the Christian community protested against the judgment and were supported by the Synod of Christian churches.

Similarly, in a landmark judgement in 1985, the Indian Supreme Court granted a small maintenance allowance to Shah Bano, a 73-year old divorcee, to be paid by her husband

⁵⁶ The PUDR report notes that a camp for 700 people in Anand town was functioning from 3 March when displaced persons started arriving. With over 700 people in the camp, a week’s ration arrived only on 6 March. Nothing after that, even numbers rose to 1155 proper. The next ration on 2 April was sanctioned only for 247 people. Pleas for more supplies fell on deaf ears.

⁵⁷ The 28 Feb. resolution fixed an ex-gratia payment of Rs.5,000 – 50,000 for permanent disability and Rs.1,000 – 5,000 for temporary disabilities. For the predominantly Muslim victims of the subsequent genocide, a 2 March resolution provides no payment for temporary disabilities at all. Even for permanent disabilities, the amount has been substantially scaled down: Rs.2,000 for disability upto 10%, 3,000 for disability between 10 & 30%, 5,000 between 30 & 40%, 50,000 for above 40% disability.

under the provisions of the Criminal Procedure Code. The husband had appealed to the court that since he had fulfilled his obligations under Muslim personal law by paying her an allowance for three months during the *Iddat* period, he was not bound to maintain her any further. The court ruled that Indian Criminal law overrode all personal laws and therefore, rejected the appeal. For reasons still not entirely clear the then Congress government enacted a legislation that ‘literally adopted the provisions of the Shariat into the secular law’⁵⁸ and excluded Muslim women from secular legal provisions.⁵⁹

In India, although secular marriage is available as an option, secular divorce is not. For divorce, a couple must appeal to the religion of their birth. There is no right of exit from one’s religion when it comes to important issues such as marriage or death. This is a direct infringement of one’s freedom. In most systems of Islamic law, a woman is the guardian of a male child only until he is seven years old. Till very recently, the Hindu law regarded only the father as the natural guardian of the child, except for children under the age of five.⁶⁰ The mother could have custody only of an illegitimate child. The right to adopt a child is also directly affected by religion. For many years, the Hindu adoptions and maintenance act passed in 1956 was the only law of adoptions in India and applied only to Hindus. This meant that for all these years only Hindus could adopt a child and only a Hindu child could be adopted.⁶¹ All attempts to enact a new law covering all religions was resisted by conservative Muslim leaders on the ground that adoption is forbidden by the Quran. In 1980 a new bill was passed and adoption rights were granted to Jews, Christians and Parsis but Muslims were exempted. The orthodoxy denied members of its own religion an important human freedom.

More on Direct, Internal Religion-based Exclusion: Dalits in India

⁵⁸ Paul Brass, *The Politics of India Since Independence* (second edition), Cambridge University Press, Cambridge, 1994

⁵⁹ See, Zoya Hassan, ‘Uniform Civil Code and Gender Justice in India’, in ‘Peter deSouza (ed.) *Contemporary India-Transitions*’, Sage, 2000, pp.282-301. For a philosophically informed reflection on the same issue, see Rajeev Bhargava, ‘Do Muslims have a Right to their Personal laws?’, in deSouza (ed.) *Contemporary India-Transition*, pp.182-202

⁶⁰ See, Kirti Singh, ‘The Constitution and Muslim Personal Law’ in Zoya Hasan (ed.) *Forging Identities: Gender, Communities and the State in India*, West View Press, 1994, pp.96-107

⁶¹ See Martha Nussbaum, *Sex and Social Justice*, OUP, Oxford and New York, 1999, p.99

Gopal Guru, a leading dalit intellectual, writes poignantly about the exclusion of dalits⁶². He argues that historically dalits have been denied the freedom to control their own time and space, that time and space have never belonged to dalits. For example, in south and western India, dalits were confined to prescribed areas and, without the permission of the upper castes who policed these boundaries with both physical force and an ideology of purity and pollution, were not allowed outside internment camps. Dalits had no freedom to walk on the main streets of the villages. When they did walk these streets, it was only to serve the upper caste feudal lords and always with brooms tied to their waist so as to erase polluting footprints, and with earthen pots around their necks to protect the earth from their impure sputum. Guru argues that the religious core found in the Hindu text, Manusmriti, sanctions restrictions on freedom of space or mobility for dalits.

Dalit life was also marked by a complete lack of control over their time. They worked round the clock for their feudal lords, except when their appearance was dangerously polluted. Under the Peshwa rule in Maharashtra, dalits could enter public streets that went past upper caste homes only around noon because during this hour, the shadow of the dalits was shortest and therefore least likely to pollute the upper caste. As Guru puts it, ‘the beautiful mornings and cool evenings were denied to dalits’; in their lot fell only the scorching afternoon. Thus, even their time was policed by upper castes.

Much of this has changed for many dalits. The arrival of colonialism itself was a blessing of sorts. Emancipatory ideas came with colonial modernity and sections of dalits were quick to use them. Some control over space and time was now possible, as was the opportunity to enter educational institutions or the legal domain. They were even included in the British bureaucracy. After independence, dalits benefited from constitutional provisions that initiated political inclusion at several levels. Yet, it has been an uneven, partial success at least partly because the force of specific cultural memory is not diminished by colonialism, capitalism or the law.⁶³ Religiously sanctioned structures of exclusion and marginalisation still remain intact. Institutionalised ideas of impurity and pollution lurk in the hearts, minds and actions of large number of people, in rural India, and even urban India.

⁶² Gopal Guru, ‘Dalits: Reflections on the Search for Inclusion’ in Peter Ronald deSouza (ed.) *Contemporary India: Transitions*, Sage, 2000, pp.59-72. Also see Ghanshyam Shah (ed.) *Dalits and the State*, Concept Publishing Company, New Delhi, 2002, especially the articles by Harsh Mander, M. Thangaraj, Ramesh Kamble, Susan Chaplin and S.R. Shankaran and S.M. Michael (ed.) *Dalits in Modern India*, Vistaar Publications, New Delhi, 1999.

⁶³ Peter Robb, *Dalit Movements and Meanings of Labour*, OUP, New Delhi, 1993, p.66

Several empirical studies indicate that untouchability – the practice of avoiding physical contact with persons and things believed to be polluting – is an integral part of the experience of dalithood. The findings of both the National Commission for Scheduled Castes and Scheduled Tribes and the Ambedkar Centenary Committee in Andhra Pradesh in 1990 concluded that untouchability was still prevalent in many areas. For example, the Andhra Committee found that of 249 villages, in 122 tea shops tea was still served in separate glasses for dalits who had to wash the tumblers themselves. In many parts of Tamil Nadu, UP, Rajasthan and Kerala dalits were denied access to the village well even barbers and washermen because none would serve them. Participation in social ceremonies was difficult and discrimination existed in the use of even cremation grounds. Dalits are still excluded from most occupations considered dignified and worthy. They are forced to work in jobs considered demeaning such as the tanning of leather and scavenging. In 16 of the 249 villages studied by the Andhra Committee revealed that dalits had never walked through the streets with any type of footwear. Indirect religious exclusion is not the only exclusion practiced in contemporary India.

Internal Exclusion: Indirect

Amendments to the Penal Code made by the Zia regime in Pakistan deepened socio-legal discrimination against minorities as well as against Muslim women.⁶⁴ The law of evidence holds on par the evidence of two women or two non-Muslims with that of a single male Muslim.⁶⁵ *Qanoon-e-Shahadat* establishes the intrinsic superiority of Muslim men over women and minorities and contravenes the fundamental principles of equality. Perhaps the most outrageous instance of indirect internal exclusion is the Hudood ordinance, an anti-women measure that punishes women unable to establish that they have been raped. Under the Hudood ordinance, rape convictions require four male witnesses. A failure to produce such witnesses results in the prosecution of the complainant who is liable for punishment for fornication (Zina). Stories related to this ordinance abound but none is worse than that of a minor blind girl, named Safia Bibi whose father lodged the complaint on her behalf. Since Safia or her father were unable to produce these witnesses, Safia was charged, found guilty

⁶⁴ For a good and succinct account of the impact of Islamisation on the exclusion of women, see Shahla Zia, *Women, Islamisation and Justice*.

⁶⁵ For a detailed treatment of this issue, see I. Ahmed, *The Concept of an Islamic State: An Analysis of the Ideological Controversy in Pakistan*, Frances Pinter, London, 1987

and sentenced to 3 years hard labour in prison. The 1973 Pakistani Constitution forbids discrimination on the basis of sex alone. How then can these exclusion occur? Women are excluded because of other contradictory provisions in the Constitution and even more due to the Constitutional stipulation that no law be passed if it is against the injunctions of the Koran and the Sunnah.

Violence against women is not uncommon in South Asia. Women are easily subjected to violence not only because direct sanction by religion is available but because of the subordination that flows from religious world-views. When such sanction is not available, it is invented. For example, Noorjahan, a young Bangladesh from the Sylhet District was charged with adultery on the ground that she married a second time without securing a divorce from her first husband.⁶⁶ The village Maulvi issued the fatwa against her and together with the village elite pronounced that she be punished. She was buried waist down and stoned 101 times. This public humiliation drove her to suicide. But the case against her was largely fabricated because she was legitimately divorced from her husband, the real culprit, who failed to provide maintenance for her in accordance with the law of the land and the Sharia. Noorjahan's family sought legal redressal for her death. They were supported by women's organizations and the media. Their pressure succeeded in punishing the Maulvi and the village elite who were convicted for 7 years rigorous imprisonment for the murder of Noorjahan. Dowry killings, only indirectly related to religion, are also not uncommon.⁶⁷ In many parts of India, Hindu widows undergo a social death, excluded from virtually every aspect of social and domestic life.

Women are most severely affected in communal riots, due both to the death of loved ones and to the brutal injury and humiliation to which they are subjected, sometimes minutes before they are killed. Disturbingly, inquiry commissions are 'unable' to determine the exact or approximate numbers of rapes and murders of women. In filing the FIRs, charges of rapes are collapsed with that of general looting or robbery, thus obfuscating heinous crime.

A formal and legal equality granted to women in the Indian Constitution does not always change their status or alter their living condition. For example, the female child in India always suffers unequally from hunger and malnutrition as well as from unequal access to

⁶⁶ Roushan Jahan, Mahmuda Islam (ed.) *Violence Against Women in Bangladesh, Analyses and Action*, 1997

⁶⁷ Pakistan is known to have 'honour killings'. One Human Rights report claim that in 2000 there were 315 killings in Punjab alone. Most persons so killed are women.

basic health care. Several Human Development Reports give us much data on health care among girls and women. According to the 1999 UNDP report, the female to male ratio in India had recently fallen to 938 – from 945 females per 1,000 males in 1991 and 1010 females per 1,000 male children in 1941.⁶⁸ The unfavourable ratio is due to higher levels of mortality among girls and women in their child-bearing years. This is due to discriminatory practices which treat women as an economic burden. Women themselves contribute a great deal to their own overall neglect and indifference. The past two decades have seen a resurgence in India of the practice of female infanticide. It is practiced in the states of Tamil Nadu, Gujarat, Bihar and Rajasthan. Worse, ultrasound techniques developed for the discovery of birth defects, are used to determine the sex of the child before birth and has led to the growth of the scandalous practice. According to the Human Development in South Asia 2000 report, there were 40,000 known cases of female foeticide in a single year in Bombay alone and 10,000 in Ahmedabad. 72% of pregnant women in South Asia are anaemic and 9.2% of maternal deaths in India are directly caused by this anaemic condition. Several studies conducted in Punjab showed the low nutritional status of female children. This lower status was irrespective of the economic group into which they were born, confirming that it is not caused poverty alone.

Legally, women have equal access to education but female literacy rates in India tell a different tale. They are much lower for women compared to men. In 1997, it was 39% compared to 67% in males⁶⁹. The percentage of women working outside their home continues to be much smaller than men. The earned income share in 1995 for women compared to men was 34% and the economic activity rate in 1997 for women was 50% of the economic activity rate of men.⁷⁰ The most elementary (passive) citizenship rights are therefore denied to large sections of women in India because they are not seen to possess the same worth as men, an attitude indirectly encouraged by most religions.

More on Indirect, Internal Religion-based Exclusion: Dalits

In urban India, greater anonymity and occupational mobility blurs caste identities and has greatly diminished the practice of untouchability. This is particularly true in the public and

⁶⁸ On the missing women in Asia, see Amartya Sen, *More Than 100 Million Women are missing*, New York Review of Books, December 20, 1990. The female/male ratio in Bangladesh is 954 and in Pakistan 937.

⁶⁹ However, it is worth noting that the percentage of increase from 1970 to 1997 is marginally better for women than it is for men. Male literacy rate has increased from 47% to 67% and female literacy rate from 19% to 39%.

⁷⁰ *Human Development in South Asia 2000*, Oxford University Press, Oxford, 2000. In Bangladesh female illiteracy is 74% compared to 51% in males. In Pakistan it is 76% compared to 46% in males.

the political sphere. But it has not disappeared altogether. Inclusion is uncommon in marriage, inter-dining and other forms of social intercourse. This 'new' inclusion is infused with newer forms of hierarchy and inequality, however. Instead of becoming equal participants in the mainstream, dalits are jostled to the margins and perpetually remain on the verge of exclusion. For example, they are still unable to get decent jobs and continue to perform work that no one else wants to. In a soap factory, they are forced to handle tallow. In textile mills, they are excluded from weaving on the ground that they would pollute the entire fabric. Dalits are often kept out of hotel industry and would certainly not work in the kitchen. In educational institutions, they are frequently ghettoized in one part of the hostel, generally acknowledged to be the filthiest. Paradoxically, what is bestowed as a special privilege soon beings to perpetuate exclusion. This is certainly the case with backward class hostels, Ambedkar Foundations and schools run by the Social Welfare Departments. Guru rightly points out that the dominant framework of these provisions is a demeaning form of charity rather than an uplifting vision of equal concern and respect.

In many parts of rural India, dalits continue to suffer from all kinds of exclusions. It is difficult to say with any confidence that they now have a sense of control over their own time, space and movement. What is worse, several invisible castes remain in independent India that are not included in the list of scheduled caste communities, beneficiaries of the provisions of affirmative action enshrined in the Constitution. One such community is the Kahars in Bihar. Their social exclusion is so extreme that even harijans do not deign to interact with them. 'We are not allowed into the vicinity of the others houses. And they won't even let us catch fish in the river or in regular ponds.' So the Kahars fish by draining ditches and catching them with bare hands. They are paid a wage far below the official minimum wage and remain outside the public distribution system. Most of them are landless and without the requisite skills necessary for raising a standard of living. Their houses, if they can be called houses at all, are never lit. 'The average kahar home is really a hovel'.⁷¹ A vanishing group, the main demand of the kahars, is to be included in the scheduled caste list. Apart from this, they want education and land. 'If these demands are not met, there may be no kahars to count some years from now.'⁷²

⁷¹ P. Sainath, 'Everybody Loves a Good Drought', Penguin, New Delhi, 1996, pp.175-178

⁷² Ibid, p.178

Dalits present the most heart-rendering example of indirect religious and religiously-grounded exclusion of communities and individuals. What is worse these form of exclusion is also found in the professedly more egalitarian religions such as Christianity. The Pulaya Christians of Kerala, who were formerly untouchable Hindus are still treated as untouchables by the Syrian Christians. Similarly, conversion to Islam has helped dalits to read the Namaz in the Mosques along with co-believers. But this religious inclusion has not curbed indirect religious exclusion. The social stigma attached to them has not evaporated and non-dalit Muslims avoid dining or having marital relations with them.

Religion-based Political Exclusion: The Denial of Active Citizenship Rights

Do religious minorities have a right to vote? Are votes cast on the basis of joint or separate electorates and what is the effect of these on actual empowerment? Do religious minorities have a right to stand for public office? Is there religion-related discrimination in the public sector or in the state machinery? How do public officials take oath? Do all religious groups have a right to participate in collective deliberations on the future course of society? Do minority religious groups or individuals have an effective presence in the media and the wider public sphere? Answering these questions in detail requires a whole book. I can take only a cursory glance at the status of active citizenship rights in these countries.

External Exclusion

The minorities in Bangladesh are virtually absent in the political process. The Bangladeshi parliament has no seats for ethno-religious minorities. The three seats reserved for the CHT can all be appropriated by Bengalis. The Garos do not have the wherewithal to fight elections, which is why they are not represented in the Parliament. The invisibility of the hill people is such that the government can confidently say that there are no Adibashis in Bangladesh. If this is the official position, how can special representation or self-government rights be even conceived? In Bangladesh, the entire electoral system reproduces ethno-religious majoritarianism.

In Pakistan too, Islamicisation, the basis of exclusionary ethno-nationalism, is inscribed in the institutions and practices of its political society. For over three decades, citizenship in Pakistan is defined with reference to majoritarian and exclusionary Islamic parameters.

Therefore, political exclusion is built into the basic law of the land. By making adherence to Islam mandatory for anyone aspiring to the two highest offices in the country, that of the President and the Prime Minister [Article 41(2) and 91(3)], the Constitution ensures the exclusion of religious minorities from high political office. There is no political equality in Pakistan. The very formulation of oaths is designed to exclude non-Muslims.⁷³

Zia even chose to divide Pakistanis into Muslims and non-Muslims voters. On top of the law of evidence and discriminatory clauses in the penal code, a politically segregationist regime was established after the introduction of separate electorate for minorities. Non-Muslims were to have their own constituencies and separate representatives. In the past, at least some representation for non-Muslims was ensured by a policy of reservation. But now a regime of apartheid was introduced. Separate electorate forced a dilemma on the minority leadership: non-participation as a form of protest would disenfranchise them completely, while participation would endorse forced segregation. Separate electorates had other consequences too. They were economically disastrous for the minorities because their exclusion from the constituencies of most elected representatives meant that their interests could be completely ignored by them. Mercifully, separate electorates were abolished in 2002 under pressure from civil society groups. This has brought minorities back into the political mainstream, at least potentially. But in a country with an unstable democracy, ruled increasingly by a military-clerical nexus, the right to vote does not carry the same weight it does in stable, functioning democracies.

The secular state in India de-politicised religion with the result that there is neither a separate electorate nor reservation of seats for Muslims. Given the ghettoization implicit in the institution of separate electorate and the separationist legacy it still carries in post-independent India, the rejection of separate electorates appears justified. However, in view of the severe under-representation of Muslims in the Indian Parliament, indeed its steady decline over the years, one wonders if justice does not require some form of reservation of seats for them. Though they constitute about 12% of the Indian population, the percentage of Muslims in Parliament is a little above 2%. The Muslim share in public employment hovers around 3%.⁷⁴ Muslim representation in the police is also inadequate. For example in Delhi, it is only 2.3%, in UP, 4.9% and in Maharashtra, 4.2%.⁷⁵ The Indian Armed Forces do not mirror the social diversity of the Indian population. In the paramilitary forces, the percentage ranges

⁷³ Iftikhar Malik,

⁷⁴ Mushirul Hasan, *Legacy of a Divided Nation*, OUP, New Delhi, 2001, p.282

⁷⁵ Mushirul Hasan, *Legacy*, p.294

between 1.81 and 6.9%.⁷⁶

Internal Exclusion

Despite a vague consensus that representation of women must increase in the Parliament, there has been no real effort in India by political parties to push through the women's representation bill that guarantees 33% of seats to women. Therefore, in reality, women's representation in the Parliament is a hotly contested issue. In 1999, women occupied an abysmal 8.7% of seats in Parliament. After the 73rd amendment and the introduction of the Panchayati Raj Bill, women's representation in village Panchayats has increased but the entire institution is still suffused with patriarchal values. Under the Constitution, the SC/STs have 22% reservation in Parliament and in the government. Thus, both the scheduled castes and the scheduled tribes are adequately represented in the Parliament. But real empowerment is still a long way away. In rural India, their political marginalisation continues. The National Commission for SC/STs found that in Tamil Nadu and UP and to some extent in Rajasthan, discrimination in Panchayats, village Chaupals and Ram Sabhas continues to exist.⁷⁷

Conclusion

In this paper, I have argued that in order to build inclusive societies, we need secular states. All other forms of states are exclusionary. Theocracies and states that formally and substantively establish single religions are the most exclusionary. They curtail religious liberty in all its forms and undermine equality within and between religious groups. Thus, they perpetrate internal as well as external religious exclusions. They fail to grant passive or active citizenship rights or else actively undermine them. Hence, they introduce and perpetuate both direct and indirect, internal and external religion-based exclusions. States with multiple establishments tend to be more inclusive but are compatible with strong exclusionary practices because they exclude non-believers and tend to exclude internal minorities, dissenters and women.

⁷⁶ Omar Khalidi, *Khaki and the Ethnic Violence in India*, Three Essays Collective, New Delhi, 2003, pp.62-63

⁷⁷ p.149-153

I have also argued that the structure of an authoritarian, anti-religious secular state is identical to a theocracy or a state with established religions. The kind of secular states that, in my view, are necessary for building inclusive societies are not of the strict wall of separation or the strictly neutral variety. I suggested that principled distance is the best interpretation of 'separation'. At any rate, this principled distance variety of secularism is most suited to South Asian conditions which have inherited ethno-religious mindsets, a majority-minority syndrome and a propensity to stall internal reforms within religions. To make their societies more inclusive, South Asia must have secular states of the principled distance variety.

A theocracy or a state with established religion(s) is structurally incapable of inclusion. If societies with such states develop inclusive features, they do so despite not because of them. Their overall impact is to inhibit forces of inclusion. On the other hand, most secular states are structurally inclined towards inclusion and when a society with a secular state develops exclusionary properties, it does so despite it, rather than because of it. Secular states constrain forces of exclusion.

All South Asian societies inherited a legacy of the majority-minority syndrome and have a propensity to thwart the internal reform of religion. All these societies began with the intention of being inclusive. Only India managed to contain ethno-religious exclusionary forces, at least for some time, and India alone has the capacity to resist and perhaps even transform them. This is not because of some innate propensity of Hindus or Indian Muslims but largely due to the presence of certain institutional structures.

Let me briefly mention the inclusive potential of the secular state in India. Gujarat's genocide, by the Indian Prime Minister's own admission is a blot on the country. I have already spoken about the state-sponsored violence there. Yet, the entire political machinery of the country did not collapse. The Chief Election Commissioner, Lyngdoh played an exemplary role. Lyngdoh came down heavily on the Gujarat government for its purported claim of readiness to face the next state elections. He used the state's own report that '151 towns and 993 villages covering 154 out of 182 assembly constituencies in the state and 284 police stations out of 464 police stations were affected by the riots, to falsify the Gujarat Chief Minister's claim that the riots were localised only in certain pockets of the state.'⁷⁸ The structural impartiality of the Office of the CEC and its autonomy from the government of the

⁷⁸ Varadarajan p.329

day was demonstrated when Lyngdoh recommended that, in view of the vitiated atmosphere in the state, elections be held at a future date. He successfully resisted the pressure of the ruling party bent upon exploiting Hindu communalism in Gujarat for its electoral benefits. The National Human Rights Commission and the National Minorities Commission demonstrated their integrity and their autonomy by bringing to the notice of the Supreme Court the threats faced by witnesses of the pogrom in Gujarat. When in June, 2003, the Fast Track court of H.V. Mahida at Vadodara, set up to speed up trials involving serious offences, acquitted, for lack of evidence, all 21 persons accused of killing 14 Muslims in the Best Bakery case, the Supreme Court granted permission to the NHRC to file a special leave petition seeking the quashing of the trial court's judgement and the retrial of the case. The SC also issued notices to the central and Gujarat governments for their sloppiness in handling such cases. It asked the Chief Minister of Gujarat to quit if he was unable to ensure justice to the victims.⁷⁹ The secular Constitution of India continues to inhibit the exclusionary designs of ethno-religious forces.

It would be entirely mistaken to conclude from this that secular states are sufficient for building inclusive societies. Secular states are part of a wider institutional matrix and a larger public and political culture. They work well only in appropriate public, political, social and institutional settings. For example, no secular state can work without a properly functioning regime of rights. More generally, they work only with an appropriate legal culture, one that is free from impunity. They also require a democratic culture with space for dialogue, discussion, criticism as well as accommodation. Without these background conditions, a secular state cannot work well. Yet, a secular state, no matter how imperfect in form, can itself contribute to the creation of these wider cultures. The struggle for a secular state is related to and dependent on a struggle for an appropriate legal, rights-endowed and democratic culture. But so is the struggle for a rights-endowed, democratic culture dependent on an appropriate way of relating religion and the state. These cultures and institutions must work in tandem with one another. One plain conclusion from this is that it is not enough to have a single short-term public policy to solve the problem of religion-related exclusion. Rather, it is important to have a package of policies, some that are to be floated together right

⁷⁹ The Chief Justice told the Additional Solicitor General who appeared for the Gujarat government: 'I have no faith left in the prosecution and the Gujarat government. I am not saying Article 356. You have to protect people and punish the guilty. What else raj dharma? You quit if you cannot prosecute the guilty. It is not your personal property. If you cannot protect the property of the people, you cannot continue. Frontline October 10, 2003, p.37-38

away and others that must follow today's policies at an appropriate time. In short, every single policy must be complimented with a vision of other succeeding policies.